

GUIDELINES FOR SCHOOL NURSES ON CONFIDENTIALITY OF SCHOOL HEALTH INFORMATION

INTRODUCTION

Issues of confidentiality present unique problems for the school nurse. The complexity of meeting the privacy needs of each student, complying with state and federal regulations both education and medical, meeting professional standards, and involving families, can present conflicting directions. Students and families entrust private health information to schools and it is incumbent upon school to assure that information is safeguarded, yet simultaneously, assure the safety of students by sharing health information when necessary.

Over the last several decades, the practice of school nursing has dramatically changed. The Individuals with Disabilities Education Act and the Americans with Disabilities Act have allowed many students with special needs to be educated within the public school system. Addressing the multiplicity of issues that students now bring to school is a far cry from the historical role of the school nurse. Students are more likely than in the past to bring to school issues such as depression, eating disorders, substance abuse, physical abuse, and chronic diseases that demand a high level of skill and a clear standard of practice.

It is important that school nurses understand the legal and ethical issues surrounding student and family rights of privacy and confidentiality. This document is intended to provide guidance to school nurses in developing standard protocols around issues of confidentiality.

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I. WHAT IS CONFIDENTIAL INFORMATION?

All health information should be considered confidential. Procedures and protocols should be developed to address the handling of school health information and assure that protections are in place. The ethical responsibility of school nurses is critical in considering issues of confidentiality. The responsibility of school nurses is described in the Scope and Practice of School Nurses adopted by ANA and NASN in 2001, and should be reinforced in training for new school nurses and in ongoing in-service opportunities for experienced school nurses.

Information in the school health record falls under Family Educational Rights to Privacy Act (FERPA) of 1974, that allows for parental access (and ‘eligible student’ at age 18) and for sharing of health information with “school officials with legitimate educational interest” as defined by school policy. School Health Records are EDUCATION records and are part of the child’s permanent school cumulative folder.

II. DOCUMENTATION GUIDELINES

The school health record is the compilation of health information concerning an individual student. This may be a manila folder with specific health information for each student attending public school in Maine. An electronic record may be kept in lieu of a hard copy.

INFORMATION THAT SHOULD BE INCLUDED:

Identifying information

Student name	Parent/Guardian name and address
Date of birth	Current phone number
Gender	Emergency Contacts
Grade level	

Health History

Communicable Diseases – Dates and supporting documentation when available.

Medical Conditions - supporting documentation included in record.

Food/Drug Allergies **in red**. Anecdotal information included in record.

Immunization Dates

Assessment data and narrative

Health appraisal/assessment
Health Screening
Physical Exam
Accident/Injury Reports
Narrative Notes
Physician Notes (pertinent to student’s education)
Alcohol/Drug Use in School
IDEA/504 documentation that include health issues

Inserts to the Folder

Documented proof of immunization/waiver
PET/staffing minutes if pertinent
In school medications/Dr. ’s order, parental permission, daily record sheet
In school emergency care plans
Individual Health Plans (IHP’s)
IEP’s that include pertinent health planning

WHAT **NOT** TO INCLUDE IN A HEALTH RECORD

- Academic/educational records – Except for IEP’s as stated above.
- Nurses’ personal notes. “Under “Family Educational Rights to Privacy Act (FERPA), the “personal notes” of school health professionals’ are not considered part of the school records when they are primarily “memory joggers,” are kept in the sole possession of the maker, and are not accessible or revealed, orally or otherwise, to any other person except a temporary substitute for the maker of the record. All information pertinent to appropriate care should be adequately documented in the record.” (Guidelines for Protecting Confidential Student Health Information, pg 38, 2000, ASHA)
Personal notes are kept separate from the Narrative Notes.

III. HOW HEALTH RECORDS ARE CREATED AND STORED

Record Creation

Health information obtained from students and families must be gathered in a private, confidential manner. Office protocols should be established to assure health information is not inadvertently released to individuals not needing this information. When talking with families on the telephone, calls should be made from a private office. Staff opening mail must be educated about the importance of keeping health information confidential. When information is obtained by fax, a cover sheet marked "Confidential" should accompany the fax and be given directly to the school nurse. Conversations with students should occur in a private setting with only individuals directly related to the situation present. Health records and other health information must be handled as confidential at all times and not left open on desks. When records are being typed, information should be covered to protect from the casual observer. (Guidelines for Protecting Confidential Student Health Information pg 39, 2000, ASHA).

A chronological log of students served by the school nurse, violates student's privacy as the names of other students and the reason for the visit can be seen when recording on the log. Alternatives to a log include recording in individual charts, recording on individual index cards, and electronic recording. (Guidelines for Protecting Confidential Student Health Information pg 39, 2000, ASHA).

Record Storage

Student health information should be stored in locked file cabinets or secure computer files with restricted access. FERPA {Sec.99.32 (a) (1)} requires that each record have an access log, showing the name and title of the person receiving information, the date of access, and 'legitimate interest' the person had in requesting the information. This does not apply to the maker of the record but does include school staff. For any record that is copied or released to individuals outside the school, the nature of the disclosure should be documented along with written parental consent for the disclosures.

Transfer of Health Information

Schools should have procedures and protocols on transferring records to another school. FERPA {Sec. 99.31 (a) (2)} allows for the transfer of educational records without parental consent to another school where the student seeks to enroll.

When transferring individual school health records, they should be put in a sealed envelope and labeled **CONFIDENTIAL for School Nurse** and included with the Educational Record.

IV. SHARING OF INFORMATION

Essentially, a school nurse may not release personally identifiable information, except that which is explicitly allowed in FERPA, without written consent of the parent. That written consent must include the specific record to be disclosed, the purpose for the disclosure, and the identification of the person or individuals to whom the disclosure will be made. {Sec. 99.30 (a)} There are a number of exceptions that should be noted. FERPA designates that information may be released without parental consent under the following conditions. (These are not exclusive.)

- To another school official within the agency or institution whom the school has determined to have the legitimate educational interest. {Sec. 99.31 (a) (1)}
- To another school to which the student seeks enrollment. {Sec. 99.31 (a) (2)}
- To organizations conducting studies on behalf of educational agencies with specific specifications. {99.31) (a) (6)}
- To comply with judicial order or lawfully issued subpoena. {Sec. 99.31 (a)(9)(i)}
- When the information is in connection with a health or safety emergency. {Sec. 99.36 (a)}

There are other situations in which information may be disclosed without parental consent. Maine state law requires schools to report cases of suspected child abuse and neglect to Child Protective Services within the Maine Department of Human Services. In addition, if there were a reason to believe that the child may be dangerous to himself or others, the school nurse would be required to report this information to proper authorities according to local school protocol. In order to protect public health, certain health conditions in the school health record may be reported to, and/or investigated by public health authorities.

FERPA does allow for health information on a specific student to be shared with other individuals within the school system who have been determined to have legitimate education purposes. A ‘legitimate educational need’ is generally determined when sharing information will benefit the student or is needed for the individual to carry out his or her duties. It is not always necessary to share a precise medical diagnosis or share specific information about a medication. In most cases a nursing diagnosis would be sufficient. Included in this nursing diagnosis would be the functional implications (strengths, needs and limitations) of the illness or condition. For example, if a child has attention deficit disorder, the school nurse may describe the behaviors and discuss methods to improve behavior with the teacher. As the school nurse is the primary health care provider in the school system, it is generally more effective for the school nurse to provide an interpretation of medical information rather than providing medical information that is not understood by non-medical staff.

Posting the name of a student on a health list circulated to teachers is not appropriate as not all teachers provide services to the students on the list therefore they have no ‘need to know’. Informing teachers individually of their students in need of accommodations or who have potential emergency medical needs is appropriate.

As described above, only individuals in the school with legitimate education interest in the student may be given information without parental consent. The Superintendent, in conjunction with the school nurse, should clarify circumstances under which a school staff would have ‘legitimate education interest’. Based on this understanding, the school nurse would determine on a case-by-case basis, when a staff would have access to health information.

V. REFERRAL FOR CONFIDENTIAL SERVICES

Maine law provides for minors to obtain certain health services without parental consent such as substance abuse treatment, mental health treatment, treatment for STI’s and HIV/AIDS, and reproductive health services. Assessment, counseling, and referral of students to community providers for these protected services should be held at the same confidentiality standard as those used by health professionals outside the school system.

(Legal Issues In School Health Services, Schwab, Nadine and Gelfman, Mary, pgs 267-269, 2001.)

VI. NATIONAL TASK FORCE GUIDELINES FOR PROTECTING CONFIDENTIAL STUDENT HEALTH INFORMATION

The American School Health Association (ASHA) convened the National Task Force on confidential Student Health Information to develop guidelines to assist school administrators, health professionals and educators in developing policies that assure the confidentiality of student health information. The Task Force consisted of representatives of 20 national organizations including the National Association of School Nurses and the National Association of State School Nurse Consultants. The Guidelines below were published in 2000.

NATIONAL TASK FORCE OF CONFIDENTIAL STUDENT HEALTH INFORMATION (Guidelines for Protecting Confidential Student Health Information pg 34, 2000, ASHA).

- I** Distinguish student health information from other types of school records.
- II** Extend to school health records the same protections granted medical records by federal and state law.
- III** Establish uniform standards for collecting and recording student health information.
- IV** Establish district policies and standard procedures for protecting confidentiality during the creation, storage, transfer, and destruction of student health records.
- V** Require written, informed consent from the parent and, when appropriate, the student, to release medical and psychiatric diagnoses to other school personnel.
- VI** Limit the disclosure of confidential health information within the school to information necessary to benefit student's health or education.
- VII** Establish policies and standard procedures for requesting needed health information from outside sources and for releasing confidential health information, with parental consent, to outside agencies and individuals.
- VIII** Provide regular, periodic training for all new school staff, contracted service providers, substitute teachers, and school volunteers concerning the district's policies and procedures for protecting confidentiality.

VII. MINOR CONSENT TO CARE AND CONFIDENTIALITY LAWS (Refer to the statute directly for specific language.)

- Title 20-A, Chapter 201 § 4008 (2) – Privileged communication
- Title 22, Chapter 260 § 1502 – Consent for services
- Title 22, Chapter 260 § 1503 – Authority for consent for services

- Title 22, Chapter 260 § 1505 – Notification of parent and Consent of minors for health services
- Title 22, Chapter 260 § 1506 – Responsibility to pay
- Title 22, Chapter 260 § 1507 – Consent for sexual assault services. Minors may consent.
- Title 22, Chapter 263-B§ 1597-A – Consent for Abortion
- Title 22, Chapter 405 § 1823; Title 32, Chapters 3292, 3295 – Treatment of minors for alcohol/drugs, STD’s and sexual assault evidence
- Title 22, Chapter 406 § 1908 – Consent for family planning
- Title 32, Chapter 48 § 3292 - Treatment of minors
- Title 32, Chapter 56 § 3817 – Services to minors for drug abuse
- Title 34-B, Chapter 3 § 3831 –Mental health hospitalization

VIII. FERPA VS HIPAA

The Health Insurance Portability and Accountability Act (HIPAA) was signed into law in 1996. “The intent of the law is to reduce health care costs and administrative burden by standardizing the electronic transmission of administrative and financial transactions.” (HIPAA Hoopla: Privacy and Security of Identifiable Health Information, Bergren, Martha, The Journal of School Nursing, Vol. 17, No. 6, December 2001.)

Although the requirements of this legislation continue to unfold, it is still unclear how it will interface with state law. It does seem apparent that FERPA will have precedence within the educational setting. Yet to be revealed is how HIPAA will affect electronic records, communication and transactions.

XI. RESOURCES

American School Health Association, Guidelines for Protecting Confidential Student Health Information, National Task Force on Confidential Student Health Information, American School Health Association, 2002.

Bergren, Martha Dewey, HIPAA Hoopla: Privacy and Security of Identifiable Health Information, Journal of School Nursing, Vol. 17, No. 6, December 2001.

Schwab, Nadine and Gelfman, Mary, Legal Issues in School Health Services, Sunrise River Press, 2001.

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