

# **LEGAL ISSUES FOR SCHOOL NURSES**

**NEW ENGLAND  
SCHOOL NURSE CONFERENCE  
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# FIELD TRIPS AND EXTRACURRICULARS



# SCENARIO

- Luisa, a middle school nurse, receives a frantic phone call from a parent at 2:00 p.m. on a Friday. The parent is concerned because her daughter's Drama Club is a state finalist at a competition the following day (Saturday). The competition is in a town that is one hour away. The student is a Type I diabetic, and the Parent wants confirmation that Luisa will be joining the Student tomorrow to ensure that she has her medical needs met.
  - What are Luisa's obligations?
  - What should Luisa do next?

## LAWS THAT ADDRESS FIELD TRIPS

- IDEA: field trips are a nonacademic service, and districts are required to “take steps, including the provision of supplementary aids and services determined appropriate and necessary . . . to provide nonacademic and extracurricular services . . . in a manner necessary to afford children with disabilities an equal opportunity.”
- Section 504: applies to school-sponsored field trips, as the law states that districts “shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.”
- The law does not distinguish small group field trips (ex. Chess Club) from large group field trips (ex. the whole fourth grade).



## OUT-OF-STATE/INTERNATIONAL FIELD TRIPS

- Guidance from NASN (National Association of School Nurses):
  - For school-sponsored trips ... in a different state... review licensing laws, regulations, and scope of practice in the destination state well in advance of travel (Krol & Penny, 2024; Brous, 2019).
  - U.S. states and territories participating in the Nurse Licensure Compact (NLC) allow nurses to practice in all compact states/territories under one multistate license (National Council of State Boards of Nursing [NCSBN], 2023a).
  - The school nurse is responsible for abiding by the destination state's nurse practice act and licensing regulations, including NLC states (NCSBN, 2023a).
  - U.S. state nursing licenses are not recognized in most other countries.
  - For trips occurring outside of the U.S. that may require the provision of nursing care, it is necessary part of trip planning to determine the destination country's nursing license requirements and scope of practice (National Council of State Boards of Nursing, 2023b).

## EXTRACURRICULAR AND NONACADEMIC ACTIVITIES

- Districts are required to provide nonacademic and extracurricular services in a manner that provides students with disabilities an equal opportunity to participate in such activities
- Under Section 504, Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, **health services**, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment. (34 C.F.R. 104.37(a)(2)) (emphasis added)

## THE ROLE OF THE SCHOOL NURSE IN SCHOOL-SPONSORED ACTIVITIES

- School sponsored activities are activities that are organized, scheduled, and directly supervised by the District. School sponsored activities may occur on school grounds (ex. sports, clubs, band) or off school grounds (ex. field trips, off-site competitions)
- School Sponsored Activity = School
  - Consider the *Substantial Assistance* Standard (34 C.F.R. Section 104.4(b)(1)(v))
- In Massachusetts, school nurses are responsible for developing and managing medication administration in alignment with District policies and procedures (105 CMR 210.005(B))
- Additionally, in Massachusetts, school nurses (with school physicians) have final decision-making authority regarding delegation (105 CMR 210.005(C))

## GENERAL TIPS RELATED TO FIELD TRIPS AND EXTRACURRICULARS

- School nurses need advance notice of both field trips and extracurricular activities that will be offered in any given school year
- Collaborate with school nurse colleagues to share information and strategies related to ensuring compliance with state and federal regulations. This could include reaching out to colleagues in a neighboring town as well as out of state colleagues (in the case of out-of-state field trips)
- Record-keeping is key! When you are on notice of an upcoming field trip or extracurricular activity, be sure to make notes about the medical needs of students that are participating, particularly when students have an IEP or a Section 504 Plan
- To properly plan for an international field trip, be sure that you are notified about the trip at least three months in advance (the District may have to place calls to the receiving country and/or research their procedures)



# FERPA AND HIPAA



# SCENARIO

- Ari is an elementary school nurse in her second year of practice. She works with another nurse who has more than 20 years of experience. One Friday, Ari is taking lead in the nurses' office because her colleague is absent. She receives a letter via email from a doctor at Mass General Hospital. The letter states that one of her students has been diagnosed with Cyclical Vomiting Syndrome (CVS) and lists accommodations needed in school. Ari gives the letter to the Assistant Principal who schedules 504 Meetings. On Monday, Ari's colleague tells her that she should never have shared the document because it is confidential medical information protected by HIPAA.
  - What are Ari's obligations?
  - What should Ari do next?

## HIPAA BASICS

- HIPAA (Health Insurance Portability and Accountability Act) includes a set of rules intended to establish a national standard for protecting individuals' medical records.
- The Privacy Rule sets limits on the conditions and use of disclosures of protected health information.
- Generally, an organization is a HIPAA Covered Entity when it is:
  - A healthcare provider that conducts electronic transactions.
  - A health plan
  - A healthcare clearinghouse

45 CFR Parts 160 and 164



# FERPA BASICS

- FERPA (Family Educational Rights and Privacy Act) protects the privacy of students' education records, which are "records that are: (1) [d]irectly related to a student; and (2) [m]aintained by an educational agency or institution or by a party acting for the agency or institution." 34 CFR Part 99
- U.S. DOE issued Guidance for School Officials on Student Health Records on April 12, 2023. Purpose was to clarify common questions related to student health records maintained by schools.
  - The status of Students' health records maintained by the school varies based on the student's age:
    - If the student is less than 18 years old, health records qualify as education records under FERPA.
    - If the student is over 18 years old, health records that qualify as "treatment records" are excluded from FERPA's educational record definition.
- Health records that are education records under FERPA may only be disclosed to a third party if there is written consent by parent or student (18+) OR one of FERPA's permissive exceptions to general consent applies.



# FERPA EXCEPTIONS TO GENERAL CONSENT

- Districts may disclose personally identifiable information from an education record of a student without parental consent if the disclosure is:
  - to other school officials within the agency whom the agency has determined to have legitimate educational interests.
  - subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if for purposes related to the student's enrollment or transfer.
  - To a contractor/consultant/volunteer/other party to whom an agency has outsourced institutional services or functions, provided that the outside party—
    - Performs an institutional service or function for which the agency or institution would otherwise use employees;
    - Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and
    - Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

## HIPAA VS. FERPA

- Determining whether a health record falls under FERPA or HIPAA:
  - Was health record completed by a school nurse or school physician? – **FERPA**
  - Was the health record for a student UNDER the age of 18 and created by an outside medical provider and then received by a school nurse (or any other school staff member)? – **FERPA**
  - Was the health record for a student OVER the age of 18 and a “treatment record” in that it was: (1) made or maintained by a physician or other recognized professional acting in that capacity; (2) made, maintained, or used only in connection with treatment of the student; and (3) disclosed only to individuals providing the treatment? - **HIPAA**
  - Was the health record for a student OVER the age of 18 and created by an outside medical provider and then received by a staff member, and the record is NOT a “treatment record”? – **FERPA**

## GENERAL TIPS RELATED TO FERPA

- Keep your paper records secure
- If you have electronic records open, close them before you walk away from your computer
- Be careful about your emails!
- When considering disclosure of information, ask the question, “Who needs to know this?”
- Remember there are two forms of PII (Personally Identifiable Information)
  - Direct
  - Indirect

# GENERAL LIABILITY





# SCENARIO

- James is a school nurse in a high school. He receives a phone call from the physical education teacher stating that one of his students fell during a game of kickball and hit his head on the gymnasium floor. James runs to the gymnasium, assesses the Student and determines that it is likely that the Student has a concussion. James follows the District's concussion protocol perfectly. The Student is transported to the hospital and is diagnosed with a significant head injury which requires surgery. One month later, the District receives notice of a lawsuit by the Parents, alleging negligence. Both the physical education teacher and James are personally named in the lawsuit.
  - What are James' obligations?
  - What should James do next?

## QUALIFIED IMMUNITY

- Qualified Immunity is a legal doctrine that bars school district employees (including school nurses) from being personally liable so long as they are acting:
  - Within the scope of employment
  - In a legal manner
  - In an appropriate manner
    - Legal and appropriate includes taking the necessary precautions through planning and preparation

## MANDATED REPORTING

- School nurses are mandated reporters in all New England states
- As mandated reporters, nurses have a duty to file a report with the state agency responsible for investigating abuse and/or neglect of a child
  - In MA, CT, VT the agency is DCF
  - In NH, ME the agency is DHHS
  - In RI, the agency is DCYF
- In many instances, students who are experiencing abuse or neglect will disclose the information to a school nurse as a trusted adult
- School nurses are also in the unique position of having a running log of illnesses and injuries of students (through their nurse notes), so they can see patterns more readily

## GENERAL TIPS RELATED FOR LIMITING LIABILITY

- Keep yourself updated on the state and federal regulations that govern your work as a school nurse
- Engage in frequent communication with families, teachers, and administrators and document your communication (using just the facts!)
- Follow appropriate procedures for mandated reporting in your state if you receive information from a student that leads you to suspect abuse and/or neglect
- Meet regularly with other school nurses to share information about accepted standards of practice, particularly with conditions that are newer and/or evolving



# DOCUMENTATION



# SCENARIO

- Cece is a school nurse in a middle school. One of the students on Cece's caseload is an 8<sup>th</sup> grader who is prescribed medication for a severe anxiety disorder. Following a particularly difficult year, the Student's parents admit the student to an inpatient facility for treatment. The Parents want the facility to have all of the student's records to share with the facility. In their record request, the Parents ask for all personal notes that Cece has taken related to the Student.
  - What are Cece's obligations?
  - Is she required to turn over her personal notes?

## ARE “PERSONAL NOTES” DISCOVERABLE?

- Generally, Education Records are discoverable as part of records requests, educational disputes and litigation
- Under FERPA, “Education Records” are those records that are directly related to a student AND maintained by an educational agency or institution or by a party acting for the agency or institution (34 C.F.R. 99.3)
  - The term “Education Records” does NOT include “Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.” (34 C.F.R. 99.3)
- Therefore, so long as your personal notes (handwritten or typed) are used for you as a personal memory aid, and they remain in your possession only, these notes do not need to be provided in discovery or in response to a records request

## IS CELL PHONE DATA DISCOVERABLE?

- In Massachusetts, YES, if there is cell phone data (ex. text messages) that reference a student.
- In *Student v. Arlington Public Schools* (BSEA # 1611465), BSEA Hearing Officer issued a Ruling on Arlington Public Schools' Motion for Protective Order. The District requested an order barring production of text messages "from or to any employee, consultant, agent and/or contractor of the district, referencing student."
- Hearing Officer found that "some [text messages] may be relevant as to the student's academic and/or emotional functioning, and or a staff's impressions or concerns regarding the student. . . . and therefore, should be part of the student's record . . . [with personal cell phones] there may be a false sense of privacy regarding those communications; **while the device may be private, the communications are not.**



## GENERAL TIPS RELATED TO DOCUMENTATION

- When drafting nurse notes, be factual and concise. Limit notes to facts that can be observed. Avoid notes that suggest a student's emotional state or internal feelings unless the student has expressed his/her/their state (ex. Student specifically states, "I'm feeling overwhelmed.")
- Notes that refer to parents should only include information that the parent has shared that is medically relevant.
- If you are using a cell phone (district-issued or personal) to text information to parents and staff, be sure that the texts are solely used to seek or provide medical information (glucose numbers, trips to the bathroom in a day, etc.)
- If you are a Team member at an IEP Meeting or a 504 Meeting, and you take notes at the meeting, be sure to keep those notes stored away in a file or folder and do not share them with others.

# MISCELLANEOUS



# STUDENTS WHO HAVE REACHED THE AGE OF MAJORITY

- For the New England states, the “Age of Majority” is 18 years old:
  - In Massachusetts, see M.G.L. c. 4, § 7
  - In Maine, see 1 M.R.S.A. § 73
  - In New Hampshire, see N.H. Rev. Stat. Ann. §§ 21-B:1 and 21:44
  - In Vermont, see 1 V.S.A. § 173
  - In Rhode Island, see RI Gen L § 15-12-1
  - In Connecticut, see CT Gen Stat § 1-1d
- In practice, this means that our students retain the right to make their own decisions about medical care and treatment on their 18<sup>th</sup> birthday
- At times, parents and families need support and reminders that the student’s right to make decisions turns on like a switch!

## STUDENTS WHO ARE 18+ AND UNDER GUARDIANSHIP

- When a student is over 18 but has been appointed a guardian through the court, it is important for the nurse to know the type of guardianship:
  - Full Guardianship: Guardian can make all life decisions for the student, which will include medical care and medical treatment
  - Limited Guardianship: Guardian can make decisions for the student only in the areas where the student needs help, which may or may not include medical care and medical treatment
- In Massachusetts, we also have what is called a Rogers Guardianship:
  - Comes from the case *Rogers v. Commissioner of the Department of Mental Health*
  - Grants the guardian permission to agree to extraordinary medical treatment for the student (ex., antipsychotic medication, sterilization, electroshock therapy). Requires annual review



## MARIJUANA AND PSYCHOSIS

- More potent cannabis and more frequent use are contributing to higher rates of psychosis, particularly in young people.
- A May 2024 study led by University of Toronto found an 11 times higher risk of developing a psychotic disorder among teens who used cannabis compared with those who did not. This includes schizophrenia, anxiety, and depression.
- Marijuana has been legalized in ME, VT, MA, CT, and RI. In NH, marijuana has been approved for medical use and decriminalized.
- Nurses should stay updated on medical signs and symptoms of marijuana-induced psychosis

# QUESTIONS?

# THANK YOU!

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