Navigating Information Sharing (NIS) was developed as part of the National Center for Mental Health Promotion and Youth Violence Prevention (NCMHPYVP), a technical assistance and training center funded by the Substance Abuse and Mental Health Services Administration (SAMHSA) to support the Safe Schools/Healthy Students (SS/HS) Initiative’s grantees. SS/HS grantees are funded through a federal partnership among the U.S. Departments of Education, Justice, and Health and Human Services. The SS/HS Initiative encourages schools and communities to work in partnership to create safe and healthy school environments in which youth can learn and develop. School districts partner with law enforcement officials, local mental health authorities, and juvenile justice officials to provide students, schools, and communities with the benefits of enhanced, comprehensive services that can promote healthy childhood development and prevent violence and alcohol and other drug use. NIS was developed by the NCMHPYVP and is the work of many hands. Lourdes Rosado of the Juvenile Law Center authored much of the material. Education Development Center, Inc.’s talented team of Research Assistants, Technical Assistance Specialists (TASs), and technical support staff contributed throughout the process of developing NIS. In particular, Susana Valverde and Emily Veysey did an extraordinary job of researching existing material from SS/HS sites and other sources, editing new materials, and providing critical skills to keep the project on track. Terri Yellowhammer and Matt Ryerson served in twin roles as legal experts and TASs. John Rosiak served as Project Manager. While developing NIS, we sought input from many sources, including the following:

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- Members of the law enforcement community: Bernard James, Pepperdine University; and Curt Lavarello, School Safety Advocacy Council
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- NCMHPYVP National Center TASs

Acknowledgments
# Navigating Information Sharing

**Why Did We Develop This Resource?**

- Why Information Sharing Is Important
  - Purposes of different types of information sharing
  - Benefits of information sharing
  - Why information is not shared

**What contributions does this toolkit make to the field?**

- Laws that Pertain to Information Sharing
  - Family Educational Rights and Privacy Act (FERPA)
  - Health Insurance Portability and Accountability Act (HIPAA)
  - Federal Drug and Alcohol Law
  - State Laws

**Why Information Sharing Is Important**

- Purposes of different types of information sharing
- Benefits of information sharing
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**Laws that Pertain to Information Sharing**

- Family Educational Rights and Privacy Act (FERPA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Federal Drug and Alcohol Law
- State Laws

**Information Sharing in the Real World**

- FAQs related to real-life situations
- Scenarios

**Implementing Information-Sharing Policies and Protocols**

- Gather stakeholders
- Discuss various information-sharing situations
- Discuss legal mandates and confidentiality requirements
- Review model policies and procedures
- Establish procedures for information sharing
- Transparency
- Develop an MOU
- Develop a uniform “authorization to release” form
- Change the system
- Train stakeholders
- Use technology to support information sharing

**Sample Information-Sharing Documents**

- Sample policies, protocols, and procedures
- Sample confidentiality release and authorization forms

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- Health Insurance Portability and Accountability Act (HIPAA)
- Family Educational and Rights and Privacy Act (FERPA)
- Federal drug and alcohol laws and regulations

Other federal laws
  - Individuals with Disabilities Education Improvement Act (IDEIA)
  - Protection of Pupil Rights Amendment (PPRA)
  - Child Abuse Prevention and Treatment Act (CAPTA)
  - Juvenile Justice and Delinquency Prevention Act (JJDPA)

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State laws

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Why Did We Develop This Resource?

This *Navigating Information Sharing* (NIS) toolkit was created to help your local school community address the complexities of information sharing. Many students today face multiple challenges—including violence, poverty, mental health disorders, truancy, and unstable home lives. For our youth to reach their full potential, schools and communities must find effective ways to help students and their families deal with these problems. Information sharing among adults working in systems that serve youth (schools, mental health, law enforcement, juvenile justice, or child welfare) is central to addressing these problems more effectively.

Unless information is shared, providers may only have a partial picture of what is going on between a student and his or her family. They will only know what the individual student or family member has shared and may not realize or know how to treat the root cause of a problem. If information is not shared, the school and provider could develop and implement plans that might have been deemed inadvisable had the complete picture been available.

However, it’s important to note that there are privacy requirements that govern most information sharing and that it needs to be done in compliance with federal and state privacy laws.

This toolkit was developed by the National Center for Mental Health Promotion and Youth Violence Prevention (NCMHPYVP) at Education Development Center, Inc. With funding from the Substance Abuse and Mental Health Services Administration (SAMHSA), the NCMHPYVP provides technical assistance to Safe Schools/Healthy Students (SS/HS) grantee sites. The SS/HS grant program is a unique federal collaboration among the U.S. Departments of Education, Health and Human Services, and Justice. Grants are awarded to local education agencies working in partnership with local law enforcement, juvenile justice, and mental health agencies to implement change in their communities based on five core principles:

- Promoting early childhood social and emotional learning and development
- Promoting mental, emotional, and behavioral health
- Connecting families, schools, and communities
- Preventing and reducing alcohol, tobacco, and other drug use
- Creating safe and violence-free schools
What do we mean by “sharing information about youth involved in multiple systems”?

Consider the example of Michael, a student in your local school. He is surrounded by faculty and staff who know him and are aware of the issues he faces in the “school system.” If Michael becomes truant from school and starts to get into trouble by breaking other laws, he encounters the police and becomes involved in the “legal system.” If he continues down this path, he may end up going before a judge and being assigned a juvenile probation officer, thus entering the “juvenile justice system.” Somewhere along the way, adults in these systems may have realized that Michael is struggling with some mental health issues, so he sees a mental health counselor, which puts him in the “mental health system.” Michael is also in foster care and is part of the “child welfare system.” In this way, Michael becomes involved in “multiple systems.” For Michael and his family to get the help they need, all the caregivers in all these different systems have to figure out how to navigate through information-sharing laws and practices. “Information-sharing practices” refer to the day-to-day implementation of information-sharing activities.

While the NIS toolkit was designed with the SS/HS Initiative in mind, it is clearly applicable to any school-community partnership. To create the toolkit, participants at SS/HS grantee sites who had more information-sharing experience were interviewed, so that their hard work and success could provide a model for schools and communities with less information-sharing practice. In this way, the NIS toolkit became a living document, evolving based on the actual needs and critiques of schools and communities trying to figure out how to share information about youth involved in multiple systems. Sample information-sharing documents were also collected; examples of these can be found in the Sample Documents section of the NIS website.

What contributions does this toolkit make to the field?

The NIS toolkit makes a variety of contributions to the field of information sharing:

- It provides real-life scenarios, examples of effective approaches, protocol checklists, and key legal information—all in one source.
- It reinforces a collaborative focus among all partners serving youth (schools, mental health, juvenile justice, law enforcement, child welfare, etc.).
- It highlights schools as a major contributor to information sharing—school remains the place where most youth spend the majority of their time, thus increasing its potential for effective interventions.
- It addresses the importance of information sharing in reducing the disproportional representation of youth from sub-populations in multiple systems.
- It underlines including a local legal authority as part of a collaborative information-sharing process.

Navigating Information Sharing
Why Information Sharing Is Important

Information sharing prevents duplication of services, increases service delivery and effectiveness of services, and creates the environment for a team approach in solving behavior inconsistencies.

—Octavious Tookes, SS/HS Project Director, Madison, Florida

Purposes of different types of information sharing

Information sharing can serve many important purposes, depending on its scope. The Models for Change Information Sharing Tool Kit\(^1\) separated these purposes into three categories associated with three different goals, as outlined in the table below:

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<th>Category from Models for Change(^2)</th>
<th>Goal from Models for Change(^3)</th>
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<td>“Information sharing for purposes of individual case planning and decision-making”</td>
<td>“To reduce duplication of effort (e.g., multiple assessments) and enhance understanding of the child’s needs and circumstances for coordinated case planning.”</td>
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<tr>
<td>“Data collection and sharing for law, policy, and program development”</td>
<td>“To develop aggregated data on the characteristics of specific case populations and the processes for their handling to be used for the improvement of policies and practices and better coordinated responses involving multiple agencies.”</td>
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<tr>
<td>“Data collection and sharing for performance measurement and program evaluation”</td>
<td>“To develop aggregated data to measure performance and the effectiveness of programs and practices designed to achieve improved child and system outcomes.”</td>
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NIS addresses in depth the first category described above. Thus, for the purposes of this toolkit, information sharing will refer to information sharing \textit{for individuals}. For more information about the other two categories, visit the Models for Change website at www.modelsforchange.net.

Benefits of information sharing

Information sharing among agencies can enhance the efficiency of services and provide a more seamless experience for youth and families. Services are less likely to be duplicated, and professionals will spend less time gathering and finding information that partner agencies already have. Greater efficiency will lead to cost savings, allowing limited available resources to be used for a greater number of youth and their families.

Enhanced efficacy by service providers is especially important, as the issues that some youth struggle with can be cumulative and interrelated. For example:

- Youth who experience mental health disorders, such as a major depressive episode, are at greater risk for suicide and substance abuse.\(^4,5\)
- Youth who abuse alcohol and/or other drugs are more likely to miss school, earn poor grades, and avoid extracurricular activities.\(^6,7,8\)
- Youth who were abused or neglected as children are more likely to become involved in the juvenile justice system.\(^9\)
Information sharing can help practitioners and service providers better understand all the risks and issues impacting a particular child or young person. It can enable them to work together early in the process so that whatever course of action is decided on is inclusive and complete.

Additionally, when information is shared, it is easier to develop an overall picture of what elements should be in place to support young people who face multiple problems. This approach enables providers to understand the policy and program improvements they can make to serve different groups of youth. For example, looking at data collectively can allow youth-serving professionals to understand where communication within and among systems is breaking down, which is harder to do with individual data points in a single database. There is also a public expectation that agencies communicate with one another, which includes sharing information about youth who interact with multiple organizations.

Information sharing can help providers better understand and address ways in which the various systems treat different youth disproportionately. Disproportionality occurs when the proportion of a population that falls into a particular category is different from that group’s proportion of the general population. An example would be if youth from a particular community are twice as likely as youth overall to be expelled from schools.

To address disproportionality, communities should collect and analyze information to find out why it exists—and at which points in youth-serving systems changes should be made. For example, it is important to know the following:

- Which students are referred to the school office for discipline
- Why a referral is made, and by whom
- Which students are referred to the school resource officer (or police officer) for legal matters
- Which students are referred to the juvenile justice system or diverted
- Which students are referred for mental health assessment
- Which students may be involved in the child welfare system

By looking at these separate points of contact, providers can see how a policy or practice might inadvertently affect a group of youth disproportionately and then take steps to remedy the situation. Each community may want to approach this task differently.

In the same way, the community may want to look at any disparities that may exist. The term disparity is different from disproportionality because it refers to differing rates of care or services. For example, a higher percentage of white children might receive mental health services than African American children. Each community should decide who the best person is to collect this information and which steps require parental consent under the Family Educational Rights and Privacy Act (FERPA).

Information sharing across agencies is beneficial because it affects both the agencies and the youth they serve in multiple ways. It helps each agency run better, saving money that can be used to assist more people in need. It gives providers a more complete picture of the issues an individual may be facing, and it provides a way to gather aggregate information about the cross-cutting issues youth face. Cross-agency information sharing also helps to identify where systems are failing or impacting groups of youth disproportionately. However, many communities struggle to share information across agencies.

**Navigating Information Sharing**
next section outlines some common reasons that information is not shared, presents typical situations requiring information sharing, and offers strategies to help schools and communities implement effective information-sharing plans.

**Why information is not shared**

Different systems (schools, mental health, law enforcement, juvenile justice, child welfare, etc.) often do not share relevant information that could make agencies work more efficiently and better assist children and youth in dealing with the problems they face. This issue challenges communities across the country.

Schools and community partners are often unsure about a variety of issues related to information sharing, for example:

- When is it acceptable to share information about young people?
- Are the limits to information sharing clear?
- What are the laws that enable or restrict the sharing of information?
- Are these laws understood and practiced?
- Are we sharing too much or too little information?
- What needs to be in memoranda of understanding, information releases, court orders, or other vehicles that enable the sharing of information?

Based on our experience working with grantees as well as schools and communities across the country, it seems that the problem is not solely about knowledge of the law. Schools and community partners often have not engaged in the process necessary to develop the relationships and trust to work through the protocols enabling them to share information legally across these multiple systems. As a result, they are often unsure about a variety of information-sharing issues, several of which are described below.

**Are all parties on board?**

Communities often hesitate to share information because agencies have not worked out a legal way to do so. Often, no one has stepped up to lead the process of developing or refining an information-sharing system in which all involved parties have confidence. This can result in too little information sharing, with partners not sharing information that legally can and should be shared in order to help young people. Cross-agency training to educate partners and foster a willingness to work together can be one solution. 

**What do the laws really say?**

Many communities do not share information because partners are unsure about what can be shared legally, and they worry about possible lawsuits if information is not shared appropriately. Providers are often not aware of key provisions that authorize information sharing. For example, FERPA allows disclosure to another person without parental consent in connection with a health or safety emergency, if that other person’s knowledge of the information is necessary to protect the health or safety of the student or others. Moreover, partners often do not know that the FERPA only covers written records, not observations made by school personnel.
At Virginia Tech University in 2007, a student opened fire, killing 32 and wounding 17. In the days following the tragedy, authorities wondered about the level of knowledge among those who had reason to know about the perpetrator’s mental state. This information was captured by multiple systems but was not effectively communicated in a manner that would have allowed for a multi-system intervention.

FERPA’s Exception for Health and Safety Emergencies

- The school can release the educational documents with enough time for staff to act to keep people from harm or injury.
- The incident must be related to an immediate act of danger, such as a terrorist attack, a natural disaster, a campus shooting, or an epidemic disease outbreak.
- This exception applies to incidents in which a person gives sufficient and credible warning that he or she will soon harm him- or herself or others.
- It does NOT cover the threat of a possible or eventual emergency, such as something that would normally be covered in an emergency preparedness drill.

As this tragedy showed, “education officials, health care providers, law enforcement personnel, and others are not fully informed about when they can share critical information on persons who are likely to be a danger to self or others, and the resulting confusion may chill legitimate information sharing.”

In the wake of the Virginia Tech tragedy, the U.S. Department of Education issued guidance on the health or safety emergency exception in FERPA. The guidance advises that a school must make the decision to disclose on a case-by-case basis, taking into account the totality of the circumstances pertaining to a threat to the health or safety of the student or others. If the school determines that there is an articulable and significant threat to the student or other individuals and that a party needs information to protect his or her health or safety, it may disclose that information to appropriate parties without consent.

“Articulable and Significant”

- An articulable threat is one that can be easily defined and understood by another person with no background knowledge of the situation. It does not have to be a verbal threat.
- A significant threat is one where the immediate safety of students and staff is in danger.

How do you begin to develop information-sharing policies and procedures?

All of our partners wanted aggregate attendance data; however, they all asked for it in different ways. After years of discussions, we learned that none of the service providers had a particular need for the data to be in any of those formats!! When we asked across the community if they would be OK with one standardized aggregate attendance report, they were ecstatic!

—Brenda Hummel, SS/HS Project Director, Austin, Texas

Navigating Information Sharing
Schools and community partners often have not considered all the necessary steps to develop information-sharing protocols. At times, agencies state that they have no problem sharing information; however, on deeper analysis, they may not be aware of the relevant laws. This situation may result in sharing more than is legally permitted, given the policies and protocols the involved groups have worked out.

**Who owns the information, who can receive the information, and who can house the information?**

Some communities avoid sharing information across multiple systems because they are not sure who “owns” the information, what they are allowed to do with it, and under what circumstances they are allowed to share. The Springfield, Missouri, SS/HS Initiative faced this issue when the school and the community mental health provider working in the school wanted to share information, but came up against regulations from both FERPA and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The school and the community agency dealt with the situation by developing a unique set of protocols to allow for maximum information sharing, while also protecting the privacy of the students and adhering to the regulations. 14

**Who is going to pay for this?**

Creating an information-sharing system across multiple agencies and systems requires clarity on funding. Issues such as whether resources are available to support the different components, how costs will be allocated across agencies, and how intra-agency budgets will impact a jointly managed system need to be considered. 15 In addition to seeking new funding opportunities, agency leaders need to decide if it is feasible to reallocate existing funds or to re-assign staff within or across partnering agencies. These decisions should include considerations regarding joint infrastructure opportunities, any cost savings the partnership may obtain, and blended funding capabilities. For a more in-depth discussion of financing multiagency collaborative work, see Sustainability: Financing on the SS/HS website.
What follows are descriptions of laws that pertain to information sharing. They are followed by information-sharing scenarios that describe real situations involving school-community partnerships and offer potential solutions to common challenges.

**Family Educational Rights and Privacy Act (FERPA)**

**Overview**
The Family Educational Rights and Privacy Act (FERPA) of 1974 governs access to and release of education records by public and private schools that receive federal funding. FERPA defines a student’s education record as records, files, documents, and other material containing information directly related to a student that are maintained by a school or a person acting for the school. As a general rule, parents, guardians, or persons standing *in loco parentis* to the child have the right to review their minor child’s education record, including any health-related information it contains. However, any notes made by a school professional, such as a school counselor or psychologist, belong solely to the school professional and may not be released with the child’s education file, even to parents. Additionally, any law enforcement information contained in the education file does not qualify as information in the education record that can be shared. Parents are the only individuals who can control the release of their child’s education records and third-party access to them. Students assume the rights of review and control third-party access to their education records when they turn 18.

In certain circumstances, a signed authorization from the parent is not needed for the release of education records. Schools may release information without parental consent to other school officials for enrollment purposes or in connection with the student’s financial aid application. Education records may also be released without parental consent to school officials or teachers within the school who have a “legitimate educational interest”; the school district must define the criteria for determining when a school official or teacher’s request for access to information in a student’s education record meets that standard. It is critical for SS/HS staff and all those working in a school to be familiar with their school district’s policy on this issue.

Schools may also release information without written consent to comply with a judicial order or subpoena, but the school must make reasonable efforts to notify the parent before releasing the record. In the case of an emergency, where the information is necessary to protect the health or safety of the student or other people, records may also be released without parental consent. The federal government can cut off federal funding to penalize a school for violating FERPA.

**FERPA and the Child Welfare and Juvenile Justice Systems**
FERPA does not specifically address the release of education records to child welfare agencies. Therefore, as noted above, child welfare agencies must generally obtain parental consent or a court order to obtain a child’s school records. The Legal Center for Foster Care and Education points out that FERPA regulations define the term “parent” to include “an individual acting as a parent in the absence of a parent or guardian” and notes that some states specifically include child welfare agencies in the definition of parent by statute or regulation, thus enabling them to gain access to a child’s education records. Court cases are often, but not always, opened when children become involved in the child
welfare system; agencies can then seek a court order from the judge authorizing the school to release the child’s education record to the caseworker.

FERPA does specifically address the circumstances in which schools may release education records to juvenile justice agencies. Juvenile justice personnel may receive educational information regarding a student involved in the juvenile justice system without the consent of the student’s parent when the following five conditions are in place: (1) the child has not yet been adjudicated delinquent under state law; (2) a state law specifically authorizes the disclosure; (3) the disclosure is to a state or local juvenile justice system agency; (4) the disclosure relates to the juvenile justice system’s ability to provide pre-adjudication services to a student; and (5) state or local officials certify in writing that the institution or individual receiving the information has agreed not to disclose it to any third party other than the juvenile justice system agency. Each SS/HS site should find out whether such a law exists in that state.

**Health Insurance Portability and Accountability Act (HIPAA)**

HIPAA, Public Law 104-191, was enacted on August 21, 1996, to ensure that an individual’s health information is properly protected while allowing the flow of health information needed to provide and promote high-quality health care and to protect the public’s health and well-being.

**Privacy**

The Privacy Rule of HIPAA seeks to protect all “individually identifiable health information” held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. “Individually identifiable health information” is information, including demographic data, that relates to (1) the individual’s past, present, or future physical or mental health or condition, (2) the provision of health care to the individual, or (3) the past, present, or future payment for the provision of health care to the individual, and that identifies the individual, or for which there is a reasonable basis to believe can be used to identify the individual. Individually identifiable health information includes many common identifiers, such as name, address, birth date, and Social Security number.

**Victims of Abuse, Neglect, or Domestic Violence**

In certain circumstances, covered entities may disclose protected health information to appropriate government authorities regarding victims of abuse, neglect, or domestic violence.

**Law Enforcement Purposes**

Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specified conditions:

1. As required by law (including court orders, court-ordered warrants, and subpoenas) and administrative requests
2. To identify or locate a suspect, fugitive, material witness, or missing person
3. In response to a law enforcement official’s request for information about a victim or suspected victim of a crime
4. To alert law enforcement of a person’s death, if the covered entity suspects that criminal activity caused the death
5. When a covered entity believes that protected health information is evidence of a crime that occurred on its premises
6. By a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.

Federal Drug and Alcohol Law
In the substance abuse field, confidentiality is governed by federal law (42 U.S.C. § 290dd-2) and regulations (42 CFR Part 2) that outline under what limited circumstances information about the client’s treatment may be disclosed with and without the client’s consent. Determining when 42 CFR Part 2 is applicable and how to legally access information about substance abuse treatment requires practitioners to work through a series of questions, which are listed below.

What Does the Federal Drug and Alcohol Law Cover?
42 CFR Part 2 applies to any program that involves substance abuse education, treatment, or prevention and is regulated or assisted by the federal government (42 U.S.C. § 290dd-2; 42 C.F.R. § 2.11-2.12).

What Information Is Protected?
42 CFR Part 2 applies to all records relating to the identity, diagnosis, prognosis, or treatment of any patient in a substance abuse program that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States.

How Can Protected Information Be Shared?
Information can be shared if written consent is obtained. A written consent form requires 10 elements (42 C.F.R. § 2.31[a]; 45 C.F.R. § 164.508[c]):

1. The names or general designations of the programs making the disclosure
2. The name of the individual or organization that will receive the disclosure
3. The name of the patient who is the subject of the disclosure
4. The specific purpose or need for the disclosure
5. A description of how much and what kind of information will be disclosed
6. The patient’s right to revoke the consent in writing and the exceptions to the right to revoke, or, if the exceptions are included in the program’s notice, a reference to the notice
7. The program’s ability to condition treatment, payment, enrollment, or eligibility of benefits on the patient agreeing to sign the consent, by stating either that the program may not condition these services on the patient signing the consent or that these are the consequences for the patient refusing to sign the consent
8. The date, event, or condition upon which the consent expires if not previously revoked
9. The signature of the patient (and/or other authorized person)
10. The date on which the consent is assigned

When used in the criminal justice setting, expiration of the consent may be conditioned on the completion of, or termination from, a program instead of a date.

Mandatory Disclosures
42 CFR Part 2 allows for disclosure where the state mandates child abuse and neglect reporting (42 C.F.R. § 2.12[c][6]); 45 C.F.R. § 164.512[b][1][ii]); when cause of death (42 C.F.R. § 2.15[b]) is being reported; or with the existence of a valid court order.
State Laws

Information-sharing laws vary among states, as federal law allows states some latitude in regulating certain aspects of information sharing in the areas that the federal laws govern. HIPAA establishes a minimum level of privacy protection for health care records (45 C.F.R. § 160.203); states are free to enact laws that provide greater protections to such records. For example, while HIPAA allows a health care provider to release records upon receipt of a subpoena if the person seeking the records demonstrates that he or she has made a reasonable effort to notify the patient about the requested disclosure and/or obtains a court protective order (45 C.F.R. § 164.512[e][1][iii] and [v]), a state may enact laws or regulations that prohibit health care providers from releasing records upon receipt of a subpoena that is not accompanied by a court order. That is the case in Pennsylvania, where mental health care providers cannot disclose records in response to a subpoena alone (55 Pa. Code § 5100.35[b][1]).

Both HIPAA and the federal drug and alcohol regulations defer to state law as to the age when a minor (as opposed to the minor’s parent or guardian) controls release of the minor’s records (45 C.F.R. § 164.502[g][3]; 42 U.S.C. § 290dd-2[b]; 42 C.F.R. § 2.14[a] and [b]). That is why, for example, one state can have a law that says a minor can give consent for STD testing at age 14 and, therefore, that minor then controls the records regarding the STD testing, while another state can set the age at 16.

Additionally, certain federal privacy laws apply only to certain types of entities. For example, the federal drug and alcohol regulations only apply to “federally assisted” programs, which are defined in 42 C.F.R. § 2.12(b). Consequently, states may implement laws and regulations that cover non-federally assisted drug and alcohol treatment programs.

To find out more about relevant state laws, visit the Child Welfare Information Gateway (www.childwelfare.gov/systemwide/laws_policies/state) and to find more information about state juvenile agency records provisions, visit Fox Valley Technical College’s list (http://dept.fvtc.edu/childprotectiontraining/states.htm).
Information Sharing in the Real World

FAQs related to real-life situations

This section describes an approach for solving information-sharing questions in the context of some common scenarios posed by SS/HS site staff.

Every day, individuals working in SS/HS sites are confronted by the question of whether they can or cannot share or obtain information about the students they serve. Sometimes, staff may be uncertain as to whether they can give information to or get information from other school personnel. At other times, there is a question about information sharing between school personnel and entities serving children outside the school, such as health care providers and social services caseworkers.

When confronted with a situation in which you think it would be helpful or necessary to share or obtain certain information about a student, consider the following questions:

- Who [what agency] has the information?
- Who [what agency] wants the information?
- What specific information does the requester want?
- What exactly does the requester want to do with the information?
- What laws are relevant to this situation?
- What do these laws permit, and what do they prohibit?
- How can school personnel proceed legally to get the student help?

These questions can be applied to any situation. See how each question is addressed in the following scenarios.

Scenario 1: Principal and mental health counselor sharing observations about a student

A local high school principal hears a rumor that one of his students was arrested for possession of drugs and underage drinking at a party over the weekend. This student has been aggressive toward other students in the past and has a history of self-harming behaviors. The principal believes that this student has been seeing the on-site mental health counselor, because he has seen them walking in the hall together. He approaches the counselor and asks how the counseling sessions are going and if she is aware of the details of the arrest. He also asks if the student is all right and if the school should do anything to help support him. The counselor says, “I cannot speak to you about any potential clients I am serving.”

Who has the information?
The high school’s on-site mental health counselor.

Who wants the information?
The high school principal.

What specific information does the requester want?
The high school principal asks the mental health counselor how the counseling is going, whether the counselor is aware of the details of the arrest, whether the student is all right, and if the school should do anything to help support the student.
What exactly does the requester want to do with the information?
The high school principal wants to take steps to support the student, so that he can keep him and others in the school safe. It is possible that the high school principal would have to disclose the information he receives to others in the school in order to develop a support plan for the youth.

What laws are relevant to this situation?
We don’t know the complete answer from the information given. The high school principal’s ability to disclose information from the student’s education record is likely governed by FERPA.

The on-site mental health counselor’s ability to disclose information may be governed by FERPA or HIPAA. If the counselor is a school employee, her ability to share information is governed by FERPA. If she is employed by a health care provider outside the school, it’s likely that he or she has to follow the HIPAA confidentiality rules. HIPAA and FERPA cannot apply to the same records; only one or the other applies. So, the answer to this question depends on who employs the mental health counselor.

What do these laws permit, and what do they prohibit?
Let’s assume for the purposes of this scenario that the counselor is a school employee and therefore has to follow FERPA rules. Under FERPA, the student’s parent or guardian has access to the student’s records and generally must consent for those records to be disclosed to a third party. The counselor will need a signed authorization from the parent or guardian to share information with the principal. Under FERPA, written authorization to release education records must do the following:

- Specify the records to be disclosed
- State the purpose of the disclosure
- Identify the party or class of parties to whom disclosure is to be made
- Be signed and dated by the parent or guardian

(It is important to note, however, that if the counselor is employed by a HIPAA “covered entity,” it may be the minor student, not the parent or guardian, who controls third-party access to his records. If the student legally consented to the counseling, under many state laws the student would have to sign the authorization.)

Though we do not have enough information to know for sure, there are two FERPA exceptions to obtaining parental consent that may apply to this scenario:
• FERPA allows school officials to disclose information in the education record to other “school officials” within the school who have a “legitimate educational interest” in that information. If the school has a policy of allowing such release, the school must include, in its annual written notification to parents, the specific criteria for determining who is a school official and what constitutes a legitimate educational interest.

“School Official”
- The law does not specify who is a school official, so each school district must include its own definition in its annual written notification to parents.
- School districts commonly define “school officials” as teachers, teachers aids, health and counseling staff, and administrative and legal staff. School officials can also include school board and committee members, and volunteers or employees of organizations with whom the school has contracted.

A “legitimate educational interest” can include providing health care or counseling to a student and the student’s family, and a “school official” can include someone the school contracts with to provide services. But any disclosure made under this exception must satisfy the criteria included in the school’s annual written notification to parents. Also, individuals who receive information under this exception must be made aware that they cannot re-release the information except in accordance with FERPA.

“Legitimate Educational Interest”
- The information is needed in order to complete the employee’s job responsibilities.
- It occurs on a “need to know” basis.

• FERPA allows disclosure to another person without parental consent in connection with a health or safety emergency, if the other person’s knowledge of the information is necessary to protect the health or safety of the student or others. The U.S. Department of Education has issued guidance on the health or safety emergency exception, advising that a school must make the decision to disclose on a case-by-case basis, taking into account the totality of the circumstances pertaining to a threat to the health or safety of the student or others. If the school determines that there is an articulable and significant threat to the student or other individuals and that the information is needed to protect their health or safety, it may disclose that information to appropriate parties without consent.

When a school deems a situation an “articulable and significant threat” to the student or other individuals, it becomes a health or safety emergency and can allow disclosure to appropriate parties without parental consent.

Typically, law enforcement officials, public health officials, trained medical personnel, and parents are the types of appropriate parties to whom information may be disclosed under this FERPA exception. An
“articulable and significant threat” means that a school official can explain why, based on all the information then available, the official reasonably believes there is a substantial threat. This is a flexible standard under which the Department of Education defers to school administrators, provided that there is a rational basis for the decision. Given the information presented here, the scenario does not meet the definition of a health or safety emergency.

**How can school personnel proceed legally to get the student help?**
The best approach is for the high school counselor to invite the parent to discuss the situation with her and the principal and to then have the parent sign a consent form allowing the counselor to share information. The authorization can and should contain assurances that the principal will use the information only to assist the student and to develop a support plan and that no further disclosures will be made without the parent’s consent.

Alternatively, the counselor can advise the principal how to support the student without disclosing confidential information that was revealed in counseling. The counselor’s suggestions to the principal for possible support plans would not be considered part of the student’s education records (unless the principal writes down these suggestions) and could be made without obtaining parental consent.

For future situations, school personnel can advocate that the school include in its annual written notification to parents specific criteria for determining who is a school official and what constitutes a legitimate educational interest so that this type of scenario would fall under the “legitimate educational interest” exception to obtaining parental authorization.

**Scenario 2: Teacher sharing student information with external agency**
A teacher at a local elementary school has referred a student and his mother to an on-site counseling service provided by a community mental health agency. The on-site service did an intake interview of both the student and his mother, and assigned a counselor to them. The counselor comes to school after class one day and asks the child’s teacher for school-related information about the student (grades, attendance, discipline issues, etc.). The teacher is confused about what he is and is not allowed to share. He also wants to ask how treatment is going and he has some background information he’d like to share with the counselor, but he isn’t sure what information he can request and/or offer.

**Who has the information?**
An elementary school teacher and a school counselor employed by a community mental health agency.

**Who wants the information?**
The teacher and the counselor both want information about a particular student.

**What specific information does the requester want?**
The counselor wants to know about the student’s grades, attendance, and discipline issues; the teacher wants to give the counselor some “background” information, but we don’t know more specific details. The teacher would also like to know how the student’s treatment is going.

**What exactly does the requester want to do with the information?**
We don’t know exactly. We can guess that the counselor wants the information to have a fuller, more complete picture of the student she’s treating.
What laws are relevant to this situation?
The teacher’s disclosure of information to the mental health counselor is governed by FERPA, which requires a signed consent from the student’s parent in order for the teacher to share information with the mental health counselor.

The mental health counselor’s disclosure of information to the teacher, however, is not governed by FERPA because the counselor is an employee of a community mental health agency rather than the school. The mental health agency and, thus, the on-site counselor based at this school, are likely governed by HIPAA rules if the agency transmits health information in electronic form; they may also be subject to other state laws governing health care records.

What do these laws permit, and what do they prohibit?
The mental health counselor will probably need a signed authorization to release information to the teacher as required by HIPAA (see the section on HIPAA above).

There are some exceptions to the HIPAA authorization requirement. For example, the counselor could release information to a school official if it was necessary to prevent or lessen a serious, imminent threat to the health or safety of the student or others and the school official could reasonably act to do so. The scenario provided here does not qualify as an emergency, though, so the exception would not apply.

FERPA
According to FERPA, the teacher will need a signed consent from the student’s parent to share information with the mental health counselor.

State Laws
Greater protections may be accorded to citizens under state law than are found under a federal law such as HIPAA. In this scenario, the counselor needs to consult state law to determine whether it is the parent or the student who must sign the authorization. If state law allows the student to consent to receive mental health services from the counselor, the student must sign the release. If state law requires parental consent before the student can receive the counseling, then the parent must sign the authorization to release information.

How can school personnel proceed legally to get the student help?
School personnel can ask the parent and student to sign authorizations to allow information sharing. The authorizations can and should contain assurances that the information will be used only to assist the child and that no further disclosure will be made.

Scenario 3: Parent seeking information about child’s drug and alcohol prevention and treatment services
A teacher at a local high school has referred a student to a student assistance program (SAP) that provides drug and alcohol prevention and treatment services. The student’s parent is now contacting the SAP counselor and teacher to find out what kind of treatment the student is getting and how he’s doing.
Who has the information?
The SAP counselor.

Who wants the information?
The student’s parent.

What specific information does the requester want?
The parent wants to know what kind of treatment the student is getting and how he’s doing in SAP.

What exactly does the requester want to do with the information?
It is not clear from this scenario.

What laws are relevant to this situation?
The teacher’s disclosure of information to the SAP counselor and to the student’s parent is governed by FERPA.

The SAP counselor’s disclosure of information to the teacher and the student’s parent is governed by federal drug and alcohol law and regulations that outline under what limited circumstances information about the client’s treatment may be disclosed with and without the client’s consent. Schools providing drug and alcohol prevention and treatment services must abide by the confidentiality provisions found in these regulations. See the section above on federal drug and alcohol law.

What do these laws permit, and what do they prohibit?
• For the teacher to disclose information to the SAP counselor: He needs a signed consent to share information unless school district policy defines the SAP counselor as a “school official” who has a “legitimate educational interest” in this information. (See the discussion of Scenario 1, above.)
• For the teacher to disclose information to the student’s parent: The teacher’s information is governed by FERPA, and the school must give parents access to their child’s records.
• For the SAP counselor to disclose information to the teacher: According to federal regulations, if state law allows the student to consent to drug and alcohol counseling, only the student can consent to the release of those treatment records, even to parents.
• For the SAP counselor to disclose information to the student’s parent: This is tricky. As described earlier in the section on FERPA and federal drug and alcohol regulations, the U.S. Department of Education and SAMHSA have recognized the conflict between 42 CFR, which gives control of records to the student, and FERPA, which gives parents access to their child’s records. Federal guidelines say that 42 CFR trumps FERPA and that the student controls access. Federal guidelines also suggest, though, that schools should require students to consent to giving their parents access to records as a condition of receiving drug and alcohol treatment services at school.

How can school personnel proceed legally to get the student help?
If the school does not want to be in the position of disclosing information about a student’s drug and alcohol counseling, the school can refer students to an off-site treatment provider.
Scenario 4: External physician sharing student’s information with school counselor

A medical director of an inpatient facility recently released a middle school student from her care to the student’s home. Upon the student’s return to school, the school counselor asks the facility for any information (behavior plan, medications, coping skills, etc.) that may assist the school in supporting the student’s return to the classroom. The physician responds via e-mail, stating, “We cannot confirm or deny that this student was ever a patient in our facility.”

Who has the information?
The inpatient facility’s medical director.

Who wants the information?
The school counselor.

What specific information does the requester want?
Any information (behavior plan, medications, coping skills, etc.) that may assist the school in supporting the student’s return to the classroom.

What exactly does the requester want to do with the information?
The counselor wants to develop a plan to support the student as he or she returns to school. While it is not clear from this scenario, the counselor may also need to share the information with other school officials in order to develop and implement the plan.

What laws are relevant to this situation?
It’s very likely that the inpatient facility is governed by HIPAA, but it could also be governed by federal drug and alcohol regulations or other state laws; we need to know more about what type of facility it is to determine the confidentiality laws to which it must adhere. See the section on state laws above.

What do these laws permit, and what do they prohibit?
The medical director will need a signed authorization to release the information to the school counselor. Under HIPAA, state law will determine whether it is the parent or the child who must authorize the physician to release the information to the school counselor.

One additional note: HIPAA allows a health care provider to release records to a child’s other “treatment provider” without first obtaining a signed authorization. If the student is seeing a treatment provider in the school (e.g., psychologist, psychiatrist, school nurse), a physician would be authorized under HIPAA to release the information to that provider to ensure continuity of treatment.

How can school personnel proceed legally to get the student help?
School personnel can arrange for the parent or student (as determined by state law) to provide a signed authorization to the medical director so that she can share the information requested.

Scenario 5: School resource officer and school counselor discussing information about student’s attendance, grades, and home address

A school resource officer (SRO) employed by the school police department at the local high school is concerned about a student. He has observed the student hanging out with known gang members and
has seen him out after curfew a number of times. He asks the school counselor if she can share with him the student’s attendance records and grades. He’d also like the student’s home address and phone number, as he plans to go to the student’s home and ask the mother to work with him to help the student stay out of trouble. The school counselor says, “I can’t give you that information—it’s protected under FERPA.”

Who has the information?
The high school counselor.

Who wants the information?
The SRO.

What specific information does the requester want?
The SRO asks for the student’s home address, phone number, attendance records, and grades.

What exactly does the requester want to do with the information?
The SRO intends to go to the student’s home and ask the mother to work with him to develop a plan to keep the student from getting into trouble.

What laws are relevant to this situation?
The school counselor’s disclosure of information to the SRO is governed by FERPA.

What do these laws permit, and what do they prohibit?
A student’s home address and phone number are considered “directory information” under FERPA. According to the U.S. Department of Education, directory information includes but is not limited to the following data about a student:

- Name
- Address and telephone number
- Date and place of birth
- Major field of study
- Activities
- Dates of enrollment

A school may release directory information without obtaining parental consent if the school has given prior notice to parents of the specific types of directory information the school intends to disclose and parents have the opportunity to notify the school in writing that they do not want their child’s directory information disclosed. Thus, in this scenario, if the school has previously notified parents that it will disclose a student’s address and telephone number as directory information, and this student’s parent did not request that the information not be disclosed, the counselor may provide the address and telephone number to the SRO.

A student’s attendance record and grades, in contrast, are not directory information. Under FERPA, the school counselor needs the parent’s signed authorization to release the student’s grades and attendance records to the SRO. However, there are some exceptions to the parental authorization requirement that may be used in this situation if certain requirements are met:

- FERPA allows disclosure without parental consent to other school officials who have a legitimate educational interest in the records. The school must include in its annual notification to parents the specific criteria for determining who is a school official and what constitutes a legitimate educational interest.
educational interest. In this scenario, the counselor may provide the requested information to the SRO if the school’s notification specifies that the SRO is a school official with a legitimate educational interest. (If the school is permitted to release information to the SRO under this exception, the SRO may not re-disclose the information to a third party without the parent’s consent.) If the school does not meet these requirements, the school counselor can only disclose information to the SRO if the counselor has the parent’s signed authorization.

- Alternatively, the school counselor can disclose information to the SRO if served with a subpoena or court order to do so. But if the school receives such a subpoena, it must make a “reasonable effort” to notify the parent of the order or subpoena before releasing the records to law enforcement.

How can school personnel proceed legally to get the student help?
School personnel can ask the parent to come to the school to discuss the situation with the SRO and the counselor and then sign a consent form to allow the counselor to give the SRO the desired information. The authorization can and should contain assurances that the information will be used only to assist the student and that no further disclosure will be made.

Scenario 5: Parent and school sharing information about other students regarding bullying
Having previously reported many times that her son is a victim of bullying, a frustrated mother comes to the school demanding to know what is being done. Has any disciplinary action been taken against the youth doing the bullying? Has he been required to attend bullying prevention counseling, and is he doing so? The principal gently tells the mother that due to confidentiality rules, he cannot share that information with her. The mother believes that her son's safety is at risk and that if the school cannot assure her that it has taken proper measures, she may resort to suing the school for not protecting her child.

Who has the information?
The high school principal.

Who wants the information?
The mother of a student who has been the victim of bullying.

What specific information does the requester want?

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**FERPA says that a law enforcement agency working in the school may maintain its own law enforcement unit records for the purpose of law enforcement.**

- These records are not defined as education records and are not subject to FERPA.
- The U.S. Department of Education has determined that the term “law enforcement unit” refers to any individual or department of an educational institution, such as a unit of commissioned police officers or non-commissioned security guards that is officially authorized to enforce laws or refer individuals to an appropriate law enforcement agency.
The mother wants to know if any disciplinary action has been taken against the bullying child and whether that child has participated in any bullying prevention groups or counseling.

**What exactly does the requester want to do with the information?**
She wants to be reassured that the school is taking proper measures to ensure her son’s safety.

**What laws are relevant to this situation?**
FERPA rules govern the disclosure by the principal of any of the information requested by this parent.

**What do these laws permit, and what do they prohibit?**
The school may not release the information requested by the mother without the authorization of the other child’s parent. Given what we know about the situation, the health or safety emergency exception to obtaining parental consent does not apply here. Remember that the standard for invoking this exception is the following:

> If the school determines that there is an articulable and significant threat to the health or safety of the student or other individuals and that a party needs information to protect their health or safety, the school may disclose that information to appropriate parties without consent.

An “articulable and significant threat” means that a school official can explain why, based on the information available, he or she believes there is a substantial threat. The school can make a very general statement to the mother that it has taken appropriate action with regard to this student, but it cannot give the mother any more information.

**How can school personnel proceed legally to get the student help?**
Going forward, the school might want to institute a broad bullying prevention initiative to foster a more positive climate in the school. (For more information on bullying prevention, visit the SS/HS resources website and search for “bullying.”)

**Scenario 6: Juvenile court judge sharing information with a counselor treating a juvenile**
A juvenile court judge is considering a case of aggravated assault. The juvenile before him has been in his courtroom a number of times on various charges, this being the most serious. The juvenile has pled guilty to the current charge and has been an adjudicated delinquent (see below). The judge asks the counselor working with the juvenile to testify at the juvenile’s disposition hearing. But once he is on the stand, the counselor says, “I cannot share any information about my client due to confidentiality issues.”

**“Adjudicated Delinquent”**
A person under age 18 who has been found by a judge in juvenile court to have committed a violation of criminal law (a delinquent act).

*Note: An adult could be found guilty of the same violation since it is a criminal act; however, the term “delinquent” is used only with minors. A non-criminal act by a minor such as truancy is known as a “status offense” since the violation hinges on the child’s status as a minor.*
Who has the information?
A counselor who is working with the youth.

Who wants the information?
The judge in a delinquency case.

What specific information does the requester want?
We do not know for sure, but the judge may be seeking information about what services this youth has already received, including any treatment for substance abuse.

What exactly does the requester want to do with the information?
Having called the counselor to testify at a disposition hearing, the court likely wants to know what services the youth has already received so that it can plan for the youth going forward.

What laws are relevant to this situation?
We do not know. This scenario does not tell us where this counselor is from (school, mental health agency, substance abuse treatment agency, etc.). Therefore, the counselor’s disclosure of information about his client may be governed by FERPA, HIPAA, and/or federal drug and alcohol regulations, as well as by state laws.

What do these laws permit, and what do they prohibit?
If the youth is receiving counseling from a school counselor, under FERPA that counselor can disclose information to the court if served with a subpoena or court order. However, upon receipt of an order or subpoena to testify at a hearing, the school must make a “reasonable effort” to notify the parent of the order or subpoena before testifying. FERPA does not mandate that the school counselor testify, but the court could hold the counselor in contempt if he refuses to do so after receiving a valid subpoena or court order.

If the counselor works for a provider outside the school that is governed by HIPAA, he can disclose information to the court if served with a subpoena or court order. As with FERPA, HIPAA does not require the counselor to testify, but the court may hold him in contempt if he refuses to do so. The counselor, however, can only testify to information contained in psychotherapy notes if the youth gives his written authorization.

If the counselor is from a federally assisted drug and alcohol treatment facility, a court order accompanied by a subpoena may compel the facility to disclose information without the client’s written authorization. However, the court can issue the order only on a showing of good cause, weighing the public interest against the potential injury to the youth, and the facility must give notice to the youth before testifying.

How can school personnel proceed legally to get the student help?
School personnel can offer the court information about other community-based treatment programs to which the youth can be referred. They can also work to develop a behavior management and safety plan to support the youth upon his return to school.
Scenario 7: Case manager sharing information with multiple agencies all working with the same student

A case manager from a community agency has been assigned by a local high school to work with a student who is considered “at risk.” The student has a history of disciplinary problems, attendance issues, and poor grades. The case manager calls together a group of people who have worked with the student to gather information that could help him support the student; the group comprises a mental health counselor, a teacher, a department of children’s services worker, the school counselor, and a juvenile justice system probation officer. After the meeting starts, it immediately becomes apparent that nobody is willing to share information about this child or the family; all parties cite confidentiality issues.

Who has the information?
Everyone participating in the meeting: the case manager, mental health counselor, teacher, department of children’s services worker, school counselor, and juvenile justice system probation officer.

Who wants the information?
The student’s case manager.

What specific information does the requester want?
It’s not explicitly stated in the scenario, but it is likely that the case manager is seeking information about the student’s strengths and needs.

What exactly does the requester want to do with the information?
It seems likely that the case manager wants to use the information to develop an interagency support and treatment plan for the youth.

What laws are relevant to this situation?
Disclosure of information in the student’s education records by the case manager, teacher, and school counselor is likely governed by FERPA. This information would be covered by FERPA unless school staff are only asked to share personal knowledge and observations and not educational records.

If the mental health counselor is employed not by the school but rather by a community agency, he or she likely has to follow HIPAA rules with regard to the release of information about the student if the agency transmits health information in electronic form.

Disclosure of information by the department of children’s services officer is governed by state law and regulations.

Disclosure of information by the probation officer is also governed by state law.

What do these laws permit, and what do they prohibit?
FERPA permits disclosure of information with signed authorization from the parent.

HIPAA permits disclosure of information with signed authorization from the parent or from the child if the child legally consented to the health care services.
State law governs the disclosure of information by the department of children’s services worker and the probation officer.

**How can school personnel proceed legally to get the student help?**
The school can obtain signed releases from the parent or child (as specified above) for all the professionals mentioned above to participate in the meeting to discuss the student’s needs and to develop a support and treatment plan.

**Scenario 8: School personnel sharing information about a student’s activities on Facebook (outside school)**

A student has been posting violent messages on his Facebook page. The school principal is told about the messages, but she cannot discipline the student, as the messages are not direct threats to the school or students, although they cause her and the faculty great concern. The principal approaches the SRO, who is employed by the school, to express her concerns. The SRO agrees with her but says his hands are tied because no crime has been committed. He suggests that the principal and he talk to the school counselor, who is known to have worked with this student for much of the past year. The counselor, however, claims that she cannot share any information due to confidentiality rules.

**Who has the information?**
The school counselor.

**Who wants the information?**
The principal and the SRO.

**What specific information does the requester want?**
It is not clear from the facts given.

**What exactly does the requester want to do with the information?**
It is not clear, but presumably the principal and SRO want to intervene in some way to ensure that the student does not engage in any harmful behavior.

**What laws are relevant to this situation?**
While FERPA governs the principal’s disclosure of “education records” to others, a student’s posting on Facebook is not an education record.

FERPA governs the school counselor’s disclosure of information to other school personnel (*unless* the counselor is from a community mental health agency).

**What do these laws permit, and what do they prohibit?**
The principal and SRO can report their concerns to the school counselor. They can ask the school counselor to speak to the student about their concerns.

To release information about the student to the principal and SRO, the counselor needs a signed authorization from the child’s parent. But two FERPA exceptions to the need for consent may apply here:

- As explained in Scenario 1 above, FERPA allows disclosure without parental consent to other “school officials” who have a “legitimate educational interest” in the records. If the school has a
policy of allowing such release, the school must include in its annual notification to parents the specific criteria for determining who is a school official and what constitutes a legitimate educational interest. Therefore, in this scenario, if the school has included the required information in its annual notification, the counselor may share this information with the principal and the SRO (if the SRO falls within the notification’s definition of a school official) without first obtaining parent consent.

- FERPA allows school officials to release information to a person in connection with a health or safety emergency if that person’s knowledge of the information is necessary to protect the health or safety of the student or others. As explained in Scenario 1 above, if a school official determines that there is an articulable and significant threat to the health or safety of the student or other individuals and that a party needs the information to protect their health or safety, the school official may disclose that information to appropriate parties without consent. If the counselor were aware that the student had directly threatened to cause harm to other students or teachers, she could alert other school officials to the danger.

**How can school personnel proceed legally to get the student help?**

School personnel can bring the parents in for a meeting and ask them to sign an authorization to allow the school counselor to share information about the student. The authorization can and should contain assurances that the information will be used only to assist the child and that no further disclosure will be made.

**Scenario 9: Child welfare agency, school, and parents sharing information regarding the safety of all students**

The local Department of Children and Youth (C&Y) has completed an investigation and determined that a 12 year old was the perpetrator of sexual abuse against a much younger student at the same school. The perpetrating student remains in the parents’ custody. The perpetrator’s parents have consented to allow C&Y to obtain attendance records and report cards from the school, but no other information. The victim’s family has informed the school about the investigation, and the school in turn has contacted C&Y for corroboration about the abuse. C&Y says it cannot release information about the investigation and findings to the school due to confidentiality rules. The school is concerned for the safety of its other students.

**Who has the information?**

C&Y.

**Who wants the information?**

The school attended by both the perpetrator of sexual abuse and the victim.

**What specific information does the requester want?**

The school wants the report of C&Y’s investigation into the alleged incident, presumably in order to corroborate what the victim’s family has told them.

**What exactly does the requester want to do with the information?**

The scenario is not explicit, but the school may want to develop and implement a plan to keep all its students safe.
What laws are relevant to this situation?
Disclosure of the findings of an investigation by a local children’s and youth services agency is governed by that state’s child protective services law.

What do these laws permit, and what do they prohibit?
It depends on each state’s child protective services law.

How can school personnel proceed legally to get the students help?
In the absence of detailed information from the C&Y investigation, the school can work with both families to develop and implement a safety plan to protect the victim. In the process, the school should obtain authorization from the parents of both children to allow the information necessary to develop and implement such a plan to be shared with those who need to know. The written authorizations should contain assurances that those who receive the information will not disclose it to anyone other than the team responsible for implementing the plan. The school can call in professionals from local agencies that work with abused children to give them general advice on developing the plan.

Scenario 10: SRO sharing information with a law enforcement agency, and school counselor sharing information with a juvenile court

Note: This scenario was adapted from a hypothetical situation created by Bernard James, J.D., Professor of Law, Pepperdine University Law School.

Two high school students get into a fight in the school hallway. An SRO, who is employed by the local sheriff’s department and assigned to the campus, breaks up the fight and talks to the students involved as well as some witnesses. Based on her investigation, the SRO files an incident report with the assistant principal and keeps a copy for herself. One of the students involved in the fight goes to the sheriff’s department and states that he wants to press charges against the other student. The sheriff’s department contacts the SRO and requests a copy of the incident report that she prepared; the SRO complies. The alleged aggressor is arrested and given a court date. A court intake officer contacts the school counselor and requests information about the alleged aggressor’s grades, attendance, and disciplinary records. The school counselor tells the court intake officer that she needs parental consent before she can release this information.

Who has the information?
The SRO and the school counselor.

Who wants the information?
The local sheriff’s department and the court intake officer.

What specific information does the requester want?
The sheriff’s department wants a copy of the incident report prepared by the SRO, detailing the results of her investigation of the incident. The court intake officer wants information contained in the alleged aggressor’s grades, attendance, and disciplinary records.

What exactly does the requester want to do with the information?
It is unclear from the scenario what the sheriff’s department and the court intake officer plan to do with the information they request. Presumably, the sheriff’s department is seeking the SRO’s report as part of its ongoing investigation of the incident. The court intake officer is likely seeking information from the
student’s education record to provide to the judge assigned to the case. The judge, in turn, may rely on this information to make decisions about the youth.

**What laws are relevant to this situation?**
FERPA governs the disclosure of records by the SRO and the school counselor.

**What do these laws permit, and what do they prohibit?**
FERPA specifically exempts from the definition of “education record” those records that a law enforcement unit of a school creates and maintains for law enforcement purposes. Schools may disclose information from “law enforcement unit records” to a third party without first obtaining parental consent. In this scenario, the SRO conducted her own investigation and recorded the results in her incident report; she did not obtain and record in the incident report any information from either student’s education records. Therefore, her release of the incident report to the sheriff’s department likely falls under the “law enforcement unit exception” to the prior parental consent rule and was legitimate.

The school counselor requires prior parental consent to release the alleged perpetrator’s educational record to the court intake officer unless the situation qualifies under an exception. However, the state law juvenile justice exception may apply here. Under this exception, individual states may enact a statute permitting schools to release records to juvenile justice personnel in order to assist system-involved youth prior to adjudication if the recipient certifies in writing that he or she will not disclose the information to a third party without first obtaining parental consent. If such a law exists in this state, the school counselor may release the education records to the court intake officer. The intake officer then needs to provide the counselor with written verification that he will not re-disclose the information without parental consent.

If such a state law does not exist, the other alternative to obtaining parental consent is for the court intake officer to serve the counselor with a court order or subpoena. Upon receipt, the school must make a “reasonable effort” to notify the student’s parent of the order or subpoena before complying.

**How can school personnel proceed legally to get the students help?**
The first step should always be for the school to make an effort to get parental consent to share information. This consent must be specific in regards to what information is to be shared, with whom that information is to be shared, and for what purpose. The consent form must be dated and specify how long it will be valid. The parents must also be notified that they can void that consent at any time. The second step would be to ask the court officer to get a court order for the information. This order, like the consent form, should be specific in nature. The parents, obviously, do not have the ability to void a court order. See the [Sample Information-Sharing Documents] page of the NIS website for sample consent forms.
Implementing Information-Sharing Policies and Protocols

This type of system allows partners to gain a new and deeper appreciation for each other. It allows for everyone to identify the elephant in the room, not just the part that is in front of them that they have to deal with.

—Gary Houseman, SS/HS Project Director, Muskegon, Michigan

Communities can develop tools to enable information to be shared in a legal, thoughtful way that promotes better outcomes for students. One extremely useful tool is an interagency agreement called a memorandum of understanding, or MOU, which establishes clear rules and procedures for information sharing. Both the process of gathering stakeholders to create such a protocol and the protocol itself facilitate the sharing of information.

Gather stakeholders

Be sure to give partners the opportunity to state exactly what data they need—sometimes what they need is easier to provide than we think.

—Brenda Hummel, SS/HS Project Director, Austin, Texas

Collaboration requires leadership. The first step in creating an MOU is to get all the key stakeholders to the table. These include not only school personnel, parents, and students but also representatives from the community partners (mental health, law enforcement, juvenile justice, child welfare, etc.) engaged in serving children. This type of collaboration, in which schools and community partners share the common vision of protecting and supporting children and youth, creates an opportunity to develop and sustain long-term inter-agency trust and cooperation.

In Helena, Montana, the community resource and referral coordinator—a position created by the SS/HS Initiative—assembled a legal panel comprising the school district’s attorney, a HIPAA-certified expert, the deputy county attorney, and an SRO. This joint legal panel created and delivered confidentiality training for community and school partners on the intersection of HIPAA, FERPA, federal drug and alcohol laws, and state codes. Many scenarios were presented during the training. As a follow-up, the team of legal counselors agreed to continue to work together to review scenarios that arise and to provide guidance on how best to proceed.

The Austin (Texas) Independent School District School Board adopted local policies to clarify procedures through which partner organizations can gain access to data on the individual students they serve. In addition, the school district shares aggregate data with the city, county, and other agencies through a "safe harbor" arrangement in which a third party, Children's Optimal Health, houses the data for various
studies, often including geographic information systems maps with layered data from multiple sources. Forms, policy statements, procedures, and so on are all housed on the ACCESS homepage so that community partners have one entry point for information.

See the Sample Information-Sharing Documents page of the NIS website for a checklist of the key elements to consider when creating an information-sharing policy.

**Discuss various information-sharing situations**

*Start any discussion with clarity on what everyone understands “data sharing” to mean.*

—Brenda Hummel, SS/HS Project Director, Austin, Texas

The next step is to identify common situations that may require information sharing. You can start by having the group review the scenarios described in the preceding section and adding others that group members have encountered in their work. Be sure to discuss the questions that follow each scenario.

By discussing the details of a variety of situations, stakeholders will gain a deeper understanding of why their colleagues may request certain information about the families they mutually serve. Highly personal, sensitive information should be shared on a “need to know” basis—that is, the recipient should be given only the information needed to assist the child in question and that child’s family.

**Discuss legal mandates and confidentiality requirements**

Laws are central to the issue of information sharing. For that reason, local school-community partnerships should find experienced legal advisers who are knowledgeable about information-sharing laws and are willing to help develop legal and effective protocols. Legal credibility gives others confidence that the school and community partners can legally share information. Each community may have access to different sources of legal credibility. Judges are often key figures in this effort, as are school attorneys, bar associations, district attorney’s offices, and law professors.

Each stakeholder can also explain to the group the legal mandates that the stakeholder must follow, including the confidentiality laws that govern what the stakeholder is and is not permitted to share.

It is important to have at least one individual in the room, usually a lawyer, who has a good understanding of the various federal and state confidentiality laws and who can point out common misconceptions that arise during these discussions about what is permitted and prohibited. Through this process, the group will also identify the goals of its information-sharing collaborative.

Legal experts have played a variety of key information-sharing roles in SS/HS Initiatives:

- Grossmont Union, California: Professor Bernard James, a constitutional law expert at Pepperdine University, lent his expertise by presenting workshops for the SS/HS multidisciplinary partners.
• Austin, Texas: When questions arose about FERPA, the school’s legal counsel not only affirmed what FERPA allowed, he went on to explain what protocols could be put in place to share information legally. Brenda Hummel, project director of the Austin SS/HS Initiative, says that their general counsel has been “a champion of making the system work for kids and supporters.” She adds, “When we see a need that a community partner has, we figure out how we can legally get it for them.”

• Helena, Montana: Legal counsel from the school, mental health department, and juvenile justice agency jointly review questions about information sharing and render a consensus response.

Review model policies and procedures

Included as an addendum to this toolkit are several examples of model policies currently being used by school districts around the nation. In this case, model policies are defined as effective policies that have a proven record of protecting the privacy of students and their families while allowing for appropriate and legal information sharing that helps to better serve students across multiple systems. These model policies should not be used “as is”; rather, they should be used as a guide for developing locally tailored policies. Note that the model policies may have been developed in response to local or state laws for particular districts, and thus not all components of the policy may be relevant to your community. Guidance from local experts and legal counsel is advised in the formalization of your policies.

The authors of this toolkit would like to emphasize the importance of not making your policies too restrictive when it comes to information sharing. In an effort to protect against liability in unclear cases, many districts and organizations have created policies that are more restrictive than the prevailing laws require. In contrast, this guide presents information-sharing laws and allows for the creation of less restrictive policies and procedures that are more consistent and in line with current laws.

Establish procedures for information sharing

School-community groups have established various procedures for information sharing. For example, Helena, Montana, partners took a year to develop their procedures, starting with a local evaluator facilitating a community discussion on the topic of information sharing, which resulted in the realization that the community needed to do things differently. One outcome was the development of universal consent forms for referrals to four community agencies.

The Muskegon, Michigan, SS/HS site created a database that houses student information from multiple agencies in one easily updated location. Before information is entered or accessed, the protocol lists what types of questions need to be answered, what types of data need to be collected, and what type of reporting is required. Protocols have also been developed that allow access to information for students seen in the Family Resource Centers, while simultaneously protecting individual students’ information regarding specific providers and interventions. Documentation guides and user manuals have been created, and technical assistance and training are available to support users in learning how to use the database.
Transparency

While understanding the legal issues is critical, transparency is also key to the information-sharing process. The concept of transparency lends itself to openness, accountability, participation, and collaboration. As leadership expert Philip Lee points out, “Convincing people you are right is only marginally helpful . . . finding out what you need [through collaboration] is exponentially helpful.” A transparent approach for developing or refining information sharing is to pilot-test strategies suggested by stakeholders and then expand on them if they work. In this way, the collaboration gives power to a variety of partners who can work together to break through barriers and develop effective methods of sharing information to help youth in multiple systems.

Develop an MOU

Conversations among key stakeholders will add value to the process by building a shared will to tackle these issues collectively. Stakeholders typically understand that putting together an agreement or MOU that lays out the issues and gives specific guidance on when to share and not share information will reduce stress levels and improve the ability of all concerned to assist children.

But only after the group goes through the process of discussing why, how, and when to share information—which takes time, as there is a lot to discuss and figure out—will it be time to put pen to paper to draft the MOU. Communities are cautioned not to try to bypass this critical discussion period. Sometimes there is a rush to start developing a product, whether it is an MOU, a uniform consent form, or a list of FAQs. It is critical to consider why stakeholders need to share information, at what points they need to do so, and the purpose to be achieved by doing so before figuring out what can and cannot be shared in different circumstances.

The person with decision-making authority at each participating stakeholder agency, usually the agency head, will need to sign the MOU. The respective agency heads will ask their lawyers to advise them whether they should sign. It is critical that the stakeholder group keep these respective agency heads in the loop during the process and engage the agency lawyers in the MOU development process. The signing of the MOU is also an opportunity to hold a kick-off event with partner representatives, to create awareness of and support for the information-sharing collaborative.

This toolkit includes a number of sample MOUs that you can use as a starting point to draft an agreement. These samples are only a starting point, however. Remember that in addition to the federal laws described in the Learn the Laws page of the NIS website, each state has its own laws governing information sharing. Information sharing that is permissible in one community may not be permissible at yours, and vice versa. Also included is a sample checklist of the key elements that should be in any interagency agreement/MOU on information sharing (see the Sample Information-Sharing Documents page of the NIS website).
Develop a uniform “authorization to release” form

Start educating all partners early about language that needs to be in consent forms. It sometimes takes years to get these forms changed. . . . They can start getting their forms right long before they actually share data.

—Brenda Hummel, SS/HS Project Director, Austin, Texas

Another very useful tool is a uniform “authorization to release” form. While information can legally be released without consent in some circumstances, it is far preferable to obtain consent from the minor and/or the minor’s legal representative before disclosing information. Legal rules governing the content of consent forms vary by jurisdiction and by law, but all such forms do the following:

- Identify the individual whom the information concerns
- Identify the disclosing agency
- Identify as specifically as possible the information to be disclosed
- Identify the purpose of the disclosure
- Identify the agencies that will receive or access the information
- State the expiration date of the consent or the circumstances in which it will automatically expire or terminate (for example, when the youth leaves the court’s supervision with no subsequent oversight)
- Describe how a youth or legal representative can revoke the consent, and state explicitly that the consent is revocable
- Provide the date that consent is given, along with the signature of the party providing consent
- State that the person whose information is to be disclosed has a right to receive a copy of the consent

These particular elements are common to both HIPAA and federal drug and alcohol confidentiality regulations. Therefore, this list will be especially useful as you begin creating a uniform consent form for your site.

Whether the minor or the minor’s parent or guardian has to sign the authorization-to-release form depends on the type of record you seek to obtain. For example, under FERPA a parent needs to consent to the release of education records unless the student is 18 years old or in college. By contrast, a minor who consented to a health care service by a HIPAA-covered entity has to authorize the release of records regarding that service. All consent forms need to be dated and signed to be considered valid.

Agencies typically develop their own consent forms. However, in a jurisdiction where multiple agencies are agreeing to share information, it is recommended that the agencies develop a common consent form, which has several advantages:

- It ensures that all agencies are using forms that meet legal requirements.
- It eliminates debate over the particulars of one agency’s consent form over another’s.
- It enables multiple disclosures to be made at one time.
Communities may want to develop their own forms, particularly to ensure that they meet the relevant provisions of state law. To help you get started, look over the examples of consent forms that meet the requirements of multiple laws that are provided in the Sample Information-Sharing Documents page of the NIS website.

**Change the system**

Your information sharing approach should not only be founded on sound legal practice and collaborative protocols, it should also be communicated effectively to all partners and consumers in the community. Simply put, you must share information about information sharing. This communication should be proactive, but the community should also be equipped to deal reactively with any challenges or obstacles that arise. One strategy is to say, “We are concerned about the student and families. No system is perfect, but we are investigating to see how we can improve.” SS/HS Initiatives can also turn to their communications specialists for more support.

One SS/HS site that successfully changed its information-sharing system is Grossmont Union, California. Multiple SS/HS partners worked together to create an interagency agreement among school districts, law enforcement, probation, mental health, social service agencies, and community-based partners. To aid in the process, the collaboration brought in Professor Bernard James, who led two separate training sessions with community, education, and government leaders to explain the legal options for sharing information while protecting individuals’ privacy. The team also shared the draft agreement in public forums to gather input. The collaboration then created case managers from within both law enforcement and mental health agencies to raise awareness of and promote information sharing. One partner, Health and Human Services, held monthly meetings with all partner organizations to increase awareness and improve information sharing for youth involved in multiple systems. This document and information-sharing model now serve as a baseline for other MOU projects in the county.

**Train stakeholders**

An important and beneficial step is training. The MOU will most likely be ineffective if the staff on the front lines do not understand its content and what it means for their day-to-day work. As much as possible, these trainings should be interagency affairs, so that the rich discussion that was the foundation for the collaboration can be expanded and sustained. Training gives stakeholders an opportunity to understand the legal mandates under which their colleagues operate, to brainstorm solutions to common situations, and to build trust.

**Use technology to support information sharing**

As John Tuell, co-director of the MacArthur Foundation’s Models for Change Initiative and co-author of the recently published Models for Change: Information Sharing Tool Kit, states, information sharing “is not an issue of technology, as the technology exists to use Web-based portals that allow migration of information when users work out access.” Technology can help facilitate information sharing, if school and community partners decide to make it work, as demonstrated in the examples below.

The Austin, Texas, SS/HS site created a website called YSM (Youth Service Mapping), which helps professionals, educators, policymakers, and funders who serve youth to understand and view geographically, down to the neighborhood level, the services available for youth in central Texas. This mapping also gave providers the technical ability to track students’ mobility patterns—an essential feature, given that according to Texas Education Agency reports, some campuses in the Austin
Independent School District have a mobility rate up to 38 percent, which shows the importance of good information sharing to keep track of such a transitory population. Austin has also worked to create an aggregate report system with which providers can receive FERPA-compliant academic, discipline, and attendance reports on the students they serve, along with a randomly selected comparison group.

The Muskegon, Michigan, site created a multiagency database originally formed for students receiving services through Family Resource Centers. The database houses student information from the school, the local Department of Community Mental Health, the local Department of Human Services, family and juvenile courts, and private service providers. It was created using Microsoft Access 2003 but has since been updated to include SQL tables that allow users to enter updated relevant information. This database is used, for example, by the Supervisor of School Based Mental Health Services in therapy sessions for students involved with law enforcement to see, as she puts it, “when they are going to court, what happened, when they met with their probation officer, and if there is something that I need to discuss with the family” (Lisa Sias, personal communication, July 2011).
Sample Information-Sharing Documents

MOUs

Austin, Texas
- Paragraph 6 is particularly useful in describing how Austin, Texas, agreed to share information across multiple agencies.

Broome-Tioga BOCES, New York
- Page 7: Outlines responsibilities of partner agencies
- Page 9: Outlines specific responsibilities of mental health partners
- Page 9: Outlines specific responsibilities of law enforcement partners
- Pages 9–10: Include the following comment for law enforcement and juvenile justice partners:
  
  NOTE: All references to “data” in the above section refer to aggregate data collected annually for the purposes of grant performance measurement reporting purposes. No identifying information is included in this data. All State, Federal, and probation department laws, policies and procedures regarding confidentiality will be observed and enforced.

  - Page 10: Outlines specific responsibilities of juvenile justice partners
  - Page 10: Outlines responsibilities of school districts

Helena, Montana
Links to the following MOUs are offered with permission from the Models for Change Information Sharing Tool Kit:
- State of Washington consent form. Note that the form asks the person filling it out to insert the names of the agencies or persons who will receive information. It is also possible to create a form in which the various parties that have agreed to share information are listed individually, with a check box next to each agency.
- State of California consent form. This form is designed and asserts to be compliant with HIPAA, 42 CFR Part 2, FERPA, and various state laws. The form has the advantage of brevity and comprehensiveness. On the other hand, some might find it somewhat cursory in the manner in which it permits disclosure of virtually all information about the individual; jurisdictions that would like more specificity about or limits on certain types of disclosures might want more detail than provided here.

Sample policies, protocols, and procedures

Muskegon, Michigan—How to Use the SS/HS Database
This document was created for partners who were new to the information-sharing system that the Muskegon SS/HS Initiative developed. It includes screen shots of the information-sharing database.

Austin, Texas—Acceptable Use Student Aggregate Information Agreement
This document outlines the procedures and policies for entering and updating aggregate information for use in the Youth Service Mapping information-sharing tool.

Pueblo, Colorado—Authorization to Disclose General Information and Substance Abuse Information

Navigating Information Sharing
One of the unique aspects of this information-sharing policy is the inclusion of a “modification or revocation” clause that allows a user to modify or revoke the authorization at any time.

**Broome-Tioga BOCES, New York—Worksheet to Analyze Proposed Legislation, Memoranda of Understanding, and Protocols for Information Sharing Among Agencies Serving Youth**

Several documents from the Broome-Tioga BOCES SS/HS Initiative further divide the responsibilities and expectations of various members of the greater information-sharing team, for example:
- BOCES-Safe, Healthy Attitudes Require Education (SHARE) Project partner role
- BOCES-SHARE school district role
- BOCES-SHARE PD and PA role
- BOCES Core Management Team SHARE form

**Sample confidentiality release and authorization forms**

**Muskegon, Michigan—Multi-Agency Release Form**

This form includes several possible SS/HS Initiative partners and leaves room for other agencies to be added. It also includes a procedure to make sure that all necessary regulations are followed for releasing information.

**Seattle (Washington) Public Schools—Release of Education Records Agreement**

The Seattle example is specific to education records, but it exemplifies how to create a comprehensive, yet brief, release form.

**State of Washington—Criminal Justice System/Multi-Party Authorization for Release of Information**

This form, which focuses on mental health and substance abuse treatment, shows subdivided types of information, allowing those giving consent to check off specific information that they agree to release to service providers.

**New York—Uniform Consent Form for a Multiple-County Consortium**

Note that in contrast to the Washington and California forms, each agency that is party to the local information-sharing agreement is listed at the end of the form; the person providing consent can check off which agencies he or she consents to having access to his or her information. (An alternative approach is to presume consent unless the person withholds permission for an individual agency. In the latter case, the person would check only the agencies that he or she does not wish to disclose or to have access to information.) This consent form is unique in that both HIPAA and FERPA are addressed in the same document.

**Sample referral forms**

- **Helena, Montana—Referral Consent Flow Chart**
- **Albemarle, Virginia—School-Based Services Referral**
- **Albemarle, Virginia—Mental Health Services Referral**

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2 Ibid.
Navigating Information Sharing

3 Ibid.
16 In May 2011 the U.S. Department of Education released for public comments a number of proposed changes to FERPA. The Department is expected to review the comments submitted and publish the final revised rules by late 2011 or early 2012. The information in this guide will be updated once the revised regulations are published.
17 20 USC § 1232g
18 20 USC § 1232g(a)(4)(A)
19 20 USC § 1232g(a)(4)(B)
20 Ibid.
21 20 USC § 1232g(b)(1)
22 Ibid.
23 Ibid.
24 Ibid.
27 20 USC § 1232g(b)(1)
28 45 C.F.R. § 160.103

