



The Department of Education Issues Guidance on Releasing Student Information During an H1N1 Flu Outbreak

The U.S. Department of Education (“Department”) recently issued guidance concerning the Family Educational Rights and Privacy Act (“FERPA”) and H1N1. This guidance answers questions that school officials may have concerning the disclosure of personally identifiable information from students' education records to outside entities in connection with an H1N1 flu outbreak and includes a model parental consent disclosure form. This information and form are available at <http://www.ed.gov/admins/lead/safety/emergencyplan/pandemic/index.html>.

FERPA generally prohibits educational institutions, such as school districts and community college districts, from releasing personally identifiable information regarding students without parental consent or consent from a student who is over the age of eighteen or attends a postsecondary institution at any age (an “eligible student”). However, FERPA permits school officials to disclose, without consent, education records, or personally identifiable information from education records, to “appropriate parties” in connection with a “health or safety emergency.”

In order for the “health and safety emergency” exception to apply, a district or school must determine that there is an “articulable and significant threat to the health or safety of the student or other individuals and that certain parties need personally identifiable information from education records to protect the health or safety of the student or other individuals.” The Department defers to school administrators in determining whether a “health or safety emergency” exists. A “health or safety emergency” can exist without a designation of emergency by a public health authority. However, an emergency does not include the “threat of a *possible* or *eventual* emergency for which the likelihood of occurrence is unknown, such as would be addressed in general emergency preparedness activities.”

Typically, “appropriate parties” under this emergency exception include public health and law enforcement officials and trained medical personnel. Media is generally not considered an “appropriate party.” Within a reasonable period of time after the disclosure is made under this emergency exception, a school must record in the student’s records the articulable and significant threat that formed the basis for the disclosure and the parties to whom the information was disclosed.

The guidance discusses other situations in which student information may be shared in connection with an H1N1 outbreak. For example, another FERPA exception permits the disclosure of personally identifiable information from students' education records to a health department in order to comply with a lawfully issued subpoena if the district makes a reasonable effort to notify the parents or eligible student before complying. Additionally, this guidance addresses tracking absences, what to do if a parent refuses to consent to a disclosure, vaccine campaigns and whether a school may identify a particular child as having H1N1.

This guidance will assist school districts and community college districts in preparing for and responding to an H1N1 flu outbreak. Additionally, we suggest that you frequently check the following websites for the latest H1N1 information:

<http://www.cdc.gov/h1n1flu/>;

<http://www.ed.gov/admins/lead/safety/emergencyplan/pandemic/index.html>; and

<http://www.cde.ca.gov/ls/he/hn/fluinfo.asp>

We also recommend that you review the Office of Special Education and Rehabilitative Services recent question and answer document that outlines a school district's responsibilities to children with disabilities. This document can be found at <http://www.ed.gov/policy/speced/guid/idea/h1n1-idea-qa.doc>.

Should you have any questions regarding the H1N1's impact on your district, please contact one of our four offices.

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