



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE

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FERPA.Comments@ed.gov

Ms. Kathleen M. Styles
Chief Privacy Officer
United States Department of Education

RE: Request for Input on Protecting Students Medical Records

Dear Ms. Styles:

The New York City Department of Health and Mental Hygiene (“Department”) has reviewed the draft “Dear Colleague Letter to School Officials at Institutions of Higher Education”. We appreciate the opportunity to comment on this draft guidance, specifically with regard to the health or safety exception of FERPA (not limited to higher education setting).

Pursuant to existing FERPA regulations, an educational institution may disclose personally identifiable information from an education record without consent if the disclosure is in connection with a health or safety emergency [34 CFR §99.31(a)(10)]. If an educational institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals [34 CFR §99.36(c)]. Finally, the regulations provide that an educational agency must record the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure and the parties to whom the institution disclosed the information.” [34 CFR §99.32(a)(5)].

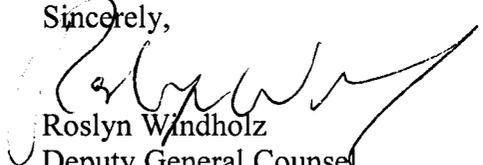
The Department believes it is essential that FERPA recognize the need for routine (non-emergency) disclosures to a public health authority in furtherance of public health. For example, childhood immunization data which may be in an educational record is information which should be routinely releasable to health departments charged with specific responsibilities in the area of immunizations. We know that schools have in their records immunizations for children which immunization registries do not have, either for children who moved into the jurisdiction from other locations in the U.S. or abroad or because providers failed to appropriately report to the applicable registry. As a result, registries have incomplete immunization records on these children which affects a health department’s ability to accurately assess population-based immunization coverage, target interventions and make complete records available for purposes of response to an outbreak of disease.

It is important that public health authorities, particularly one charged as is the New York City Department of Health and Mental Hygiene, with responsibility for providing health services to school children, to be afforded the clear authority to routinely access information such as addresses and telephone numbers of students in order to contact parents for reasons such as illness and to be able follow-up on matters such as vision screening abnormalities. Educational institutions should be allowed to share student information with a public health authority for public health surveillance purposes to track, monitor and target public health school based initiatives for school aged children.

The Announcement regarding the proposed guidance states that the Department of Education believes that HIPAA provides a helpful guide and that FERPA's exceptions should be construed to offer protections that are similar to HIPAA's. The Department of Health and Mental Hygiene completely agrees. We believe that FERPA similar to the HIPAA should authorize disclosures without consent that are otherwise required by state or local law, rule or regulation (even if non emergent in nature). Similarly FERPA should specifically allow as does HIPAA, for disclosures to public health authorities, authorized by law, rule or regulation to collect or receive information for the purpose of preventing disease and the conduct of public health interventions..

Thank you for the opportunity to provide our comments. We would welcome the opportunity to discuss further at your convenience.

Sincerely,



Roslyn Windholz
Deputy General Counsel