

## HIPAA and FERPA

Health Insurance Portability and Accountability Act (HIPAA) is a federal law that protects the privacy of personally identifiable health information in records of clients maintained by health care providers. As noted above, the Center for Health & Counseling (CHC) is considered a “covered entity” under HIPAA as it transmits health information in electronic form. HIPAA (both the Privacy Rule and Security Rule) requires covered entities to protect clients’ health records and other identifiable health information by requiring appropriate safeguards to protect privacy, and setting limits and conditions on the uses and disclosures that may be made of such information without client authorization. The rule also gives patients rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections. More information and guidance about the application of HIPAA and FERPA to student records can be found in the DOE and HHS document *Joint Guidance on the Application of the FERPA and HIPAA Student Health Records* (November 2008).

The Family Education Rights and Privacy Act (FERPA) governs disclosure of student educational records and information contained in those records and establishes when such records and information may be disclosed. Education records protected by FERPA are broadly defined as: records, files, documents and other materials that 1) contain information directly related to a student, and 2) are maintained by an educational institution. FERPA allows students to inspect and review their education records for accuracy, and prevents personally identifiable information from being disclosed to third parties without consent. Education records exclude “treatment records” such as medical records kept on students at the CHC. Treatment records are defined as records that are 1) directly related to a student who is 18 years of age or older, 2) maintained by a physician, psychiatrist, psychologist, or other recognized professional acting in their professional capacity, and 3) disclosed only to those involved in providing the treatment.

Several exceptions exist that allow personally identifiable information to be disclosed from a student’s treatment and education record, without the student’s consent. Such disclosure allowed under FERPA is permissive, rather than mandatory. When institutions choose to disclose information from education records, including treatment records, without consent, they should always take care to consider the impact of such sharing, and should only disclose the minimum amount of information necessary for the intended purpose. If a school discloses information from a student’s treatment record for purposes other than treatment, the treatment records are no longer excluded from the definition of “education records” and are subject to all other FERPA requirements.

The main exceptions allowing disclosure without a student’s consent include 1) when a “school official” has a “legitimate educational interest” in the student’s record and needs information from the record in order to fulfill his or her professional responsibility, 2) in case of an emergency where a student poses an articulable and significant threat to the health or safety of themselves or others, and 3) when an institution is a litigant in a case against a student and wants to disclose information to the court to defend itself (with or without a court order or subpoena in place). More information and guidance about these specific exceptions under FERPA can be found in the DOE’s *Dear Colleague Letter to School Officials at Institutions of Higher Education* (August 24, 2016).

Finally, FERPA allows the release of directory information from a student’s educational record without their consent. At SLCC, this information has been defined as a student’s name, date of birth, major field of study, dates of attendance, enrollment status, degrees and awards received, most recent previous school

attended, participation in activities and sports, and email address. Address and telephone number are considered information that it is not advisable to disclose and should be kept private.

Revised and posted 6/12/2024.