



COMPLIANCE ALERT - SCHOOLS & UNIVERSITIES August 2007

Court Rulings Require Training Updates For School Personnel On HIPAA Compliance Needs

Recent Cases Highlight Potential Exposure

A series of court rulings has clarified and emphasized the need for school districts to reevaluate the direction of actions that they take related to compliance with the Health Insurance Portability and Accountability Act.



Many school administrators and risk managers have primarily focused on the effects of HIPAA Privacy and Security rules as they applied to employee benefits and group health plans, based on a belief that most student records that contain health information are covered by FERPA (Family Educational Records Privacy Act) and that HIPAA very narrowly impacted only employee records and health plan information.

Court rulings, along with recent updates to Federal and state regulations reveal that, in fact, HIPAA has a broad reach in relation to health information associated with students and FERPA's impact is narrow in many situations according to the US Supreme Court ruling in **Owasso Independent School District v. Falvo**.

Districts that casually address privacy and security of student records containing health information may be unknowingly walking in a minefield of potential litigation. Three instances of court rulings that follow below show the importance of staying up to date on the ways that the HIPAA regulations are being applied by courts.

In a 2006 court ruling, (*Gloria Gaines-Hanna v. Farmington Public Schools*, 2006 WL 932074 (E.D.Mich.), April 7, 2006) HIPAA and FERPA were both addressed and an appellate court clearly ruled that HIPAA does apply to school districts and minor students within schools.

In another ruling, (*Harris v. Portland*, 2006 WL 1317125 (M.D.Pa.), May 3, 2006), a Federal District Court applied both HIPAA and FERPA to Penn State

University, concluding that both statutes apply to athletic trainers.

FERPA was used to protect the "grade point averages" of the students, and HIPAA was applied to their medical information. The court required the execution of a confidentiality agreement in order for the information to be used according to these federal requirements.

The court stated: *"the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and the Health Insurance Portability and Accountability Act, Pub.L. No. 104-191, 110 Stat.1936 (1996), shall not preclude the production by defendants of the following . . ."*

The court outlined the medical information protected under HIPAA as follows: *"all documents relating to team practices, games, strength training, conditioning, and voluntary athletically-related activities by team members for the years 2003-2004 and 2004-2005 including, without limitation, all visual and audio recordings."*

In addition, the information protected under FERPA was specified as follows: *"defendant the Pennsylvania State University shall produce a verified table or chart setting forth the grade point average of each team member for each semester during the period 2000 to the present, ranked from highest-to-lowest overall grade point average. The names of the team members shall be redacted."*

Special education was specifically addressed in another case (**John A. v. Board of Education for Howard County**) involving the parents of a disabled child who brought a due process complaint under the *"Individuals with Disabilities Education Act ("IDEA") and its State counterpart, seeking an administrative order requiring public school to abide by physician's medical directives and administer prescribed medication to child during the school day."* (2007 WL 2162517 (Md.))

In summary, an Appellate Court removed the medical privacy issue from the IDEA statutes, and consideration under that specific legal scheme, essentially separating the HIPAA privacy issues from special education issues and consideration under IDEA regulations and laws.

The court stated as follows *"the IDEA does not intend to address claims such as these, even had the ALJ concluded that the administration of medication inferentially was provided for as a "related service" in A.A.'s IEP. The dispute in this case involves a medical treatment issue, not a special education one. As a result, the controversy resides outside of the expertise and training of an ALJ who adjudicates disputes regarding the IDEA. Allowing parties to use the IDEA as the mechanism for trying such disputes would open the doors to lawsuits under the IDEA for a multitude of matters unrelated to the proper scope of special education."* (2007 WL 2162517 (Md.))

As stated above, the court mentioned the fact that this was a HIPAA and a "statutory or common law medical information privacy, or privilege issue." not an IDEA, or specifically a FERPA issue. Obviously, the Appellate Court is separating out the medical privacy issues from the special education issues, indicating that these issues should be handled separately from special education legal regulations.

HIPAA does not exist in a static environment and compliance can be effected by court rulings and regulatory changes. Any school district that deals with **Special Education, Nursing, Athletic Trainers or Counselors** should carefully evaluate the ways that they address compliance requirements under HIPAA and make sure that all personnel are adequately trained on an ongoing basis about proper procedures and organizational processes involving protected information.

For More Information On FERPA & HIPAA

[HIPAA & FERPA Apply To Schools](#)

[HIPAA & Public Safety - Virginia Tech](#)

Mental Health Issues & Privacy - Virginia Tech Analysis



Since the horrible facts of the Virginia Tech massacre have been revealed, many questions have been asked about what kind of information a school district or university can disclose and whether the type of psychological information involved with the shooter in the VA Tech case can be released under HIPAA.

In sum, the answer is YES, this type of information can be disclosed under the HIPAA Privacy rule. Section 164.512 (j) (1) of the Privacy rule specifically addresses disclosures to prevent or avert serious threats to public safety. This section is entitled, "*Uses and disclosures to avert a serious threat to health or safety.*"

Specific disclosures are permitted under this portion of the Privacy rule. The rule states: "*a covered entity, [a school or university], may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:*

Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or . . ."

Although this section goes on in detail, obviously there is an exception to "avert a serious threat to health and safety," that may assist schools and universities in situations like this in the future.

In addition, there is a "good faith presumption," in the Privacy rule that specifically addresses this issue. This good faith presumption section directly relates to section (j) (1) cited directly above. It is entitled "Presumption of good faith belief;" and states as follows *"a covered entity that uses or discloses protected health information pursuant to paragraph (j)(1) of this section is presumed to have acted in good faith with regard to a belief described in paragraph (j)(1)(i) or (ii) of this section, if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority."*

The purposes of the HIPAA rules are to alter certain business practices to promote efficiency, reduce fraud, and protect health information. However, they may also educate healthcare staff in organizations subject to HIPAA on "business practice procedures" that, if implemented consistently, may cause educational staff to routinely report individuals that display "odd" or even "frightening behaviors," to prevent like tragedies in the future.

HIPAA SOLUTIONS OFFERS TRAINING FOR HIPAA COMPLIANCE IN SCHOOLS & GOVERNMENT

Compliance with the Federal Health Information Portability & Accountability Act (HIPAA) is required of many public entities, including school districts and other local government entities. HIPAA Solutions, LC provides customized training for specific job functions in schools and government entities. Contact us today to learn more about these quality training programs.



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HIPAA ComplyPAK[©] for ISD's



HIPAA Solutions, LC provides comprehensive, easy-to-implement and cost-effective resources for compliance targeted to specific requirements of the Health Insurance Portability and Accountability Act (HIPAA). The resources are contained in a suite of tools and software called the HIPAA ComplyPAK®.

ComplyPAK is based on a multi-faceted, reliable and comprehensive approach that allows organizations to "self-implement" solutions targeted to specific requirements of HIPAA while reducing costs and complexity of compliance. Basically, ComplyPAK "automates compliance". The PHI Locator® (PHIL) is a software component of ComplyPAK that allows an organization to efficiently locate and track the uses of Protected Health Information (PHI). Contact HIPAA Solutions, LC for a briefing or free webinar on ComplyPAK.

"BID COMPLIANT" STATUS MAKES PURCHASING COMPLYPAK EASY

HIPAA Solutions is pleased to announce that it is now a "Bid Compliant" contractor with [The Cooperative Purchasing Network \(TCPN\)](#). School districts and public organizations are now able to acquire HIPAA Solutions, LC products and services through TCPN. This significantly improves the ability of school districts to implement the HIPAA ComplyPAK as a resource to address compliance issues related to the Federal Privacy and Security regulations in HIPAA that impact schools & universities, healthcare providers, government entities and businesses.

[Contact HIPAA Solutions](#)

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