



## Eaton RESA FERPA - HIPAA Information Sharing Parameters

*This document is intended to clarify the proper legal parameters for sharing information with individuals who have vested interest in the safety and protection for students, staff, and families. Any instances where individuals are unclear of their responsibilities should contact their direct supervisor.*

FERPA generally governs student education records maintained by a school, including health information or documentation. Schools are generally not considered “covered entities” as defined by and subject to HIPAA. Moreover, while HIPAA may apply in limited circumstances, federal regulations explicitly exclude “educational records” from HIPAA’s privacy mandate. **Therefore, medical information in the possession of a school is generally subject to FERPA, not HIPAA, and is disclosable without prior written consent in certain circumstances as allowed under FERPA.**

Even in the “limited circumstances” where HIPAA applies to a school, disclosure of health information is permitted to prevent a serious and imminent threat. **Such disclosures may be made to individuals who are reasonably able to prevent or lessen the threat**, such as law enforcement, parents, and/or school administrators.

As provided by joint guidance from the U.S. Department of Health and Human Services and Department of Education, a school that provides health care to students in the normal course of business, such as through its health clinic, is also a “health care provider” under HIPAA. However, many schools that meet the definition of a HIPAA covered entity **do not** have to comply with the requirements of the HIPAA Rules because the school’s only health records are considered “education records” or “treatment records” under FERPA. The HIPAA Privacy Rule specifically excludes from its coverage those records that are protected by FERPA by excluding such records from the definition of “protected health information.”

Example: The medical information and records such as mental health reports and threat assessments, are “education records” under FERPA, despite the medical information contained within them. Therefore, in most circumstances, Eaton RESA and local school districts are governed by FERPA’s regulations and privacy protections when handling student health information and records.

As provided for by FERPA, medical records and other personally identifiable information can be disclosed to teachers and other school officials in the school without prior written consent if the school officials have a **“legitimate educational interest.”** 34 CFR §§ 99.7(a)(3)(iii) and 99.31(a)(1)(i)(A). Not all school officials can review all records for



all students. Rather, a school official has a “legitimate educational interest” if he or she needs to review the record to fulfill his or her professional responsibilities.

FERPA’s health and safety emergency exemption permits disclosure “in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.” 34 CFR § 99.31(a)(10); 34 § CFR 99.36. Such disclosures can be made to “appropriate parties,” which includes the student’s parents, as well as teachers and school officials who “have legitimate educational interests in the behavior of the student.” 34 CFR § 99.36(b).

When determining whether to disclose information, school officials may “take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals.” 34 CFR § 99.36(c). **If there is an “articulable and significant threat,” school officials may disclose the information from education records to “any person” whose knowledge of the information is necessary to protect the health and safety of the student or others.**

Eaton RESA and/or local district staff continuously collect information related to students’ mental health and behavioral needs that can be and should be shared among other staff members who have “legitimate educational interest”. This is particularly true when dealing with severities such as students with suicidal ideology or students attempting self-harm. This health and safety exemption is similarly reflected in HIPAA. Thus, even in the “limited circumstances” where HIPAA applies, disclosure of health information is permitted to prevent a serious and imminent threat. For information collected by Eaton RESA and/or local districts, HIPAA permits such disclosures to individuals who are reasonably able to prevent or lessen the threat, such school administrators.