

Key U.S. Department of Education Guidance 2008-2014

(ED) HIPAA and FERPA FAQs on student records

November 2008

Joint guidance from U.S. Department of Health and Human Services (HHS) and U.S. Department of Education (ED) on the application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to student health records.

<http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hippa-guidance.pdf>

(ED) Graduation rates and NCLB

December 2008

Non-regulatory guidance on ED's then-recently published regulations regarding the "other academic indicators" states use in defining "adequate yearly progress" (AYP) under No Child Left Behind Act (NCLB).

<http://www2.ed.gov/policy/elsec/guid/hsgguidance.pdf>

(ED) Federal stimulus funds for schools

March 2009

Guidance to state education commissioners and school district superintendents urging them to "[s]pend funds quickly to save and create jobs." It also urges educators to use the money in the stimulus package, known as the American Recovery and Reinvestment Act (ARRA), in ways that "improve school achievement through school improvement and reform." It warns school officials to keep records of expenditures, and admonishes educators to spend the stimulus money, which is temporary, in ways that would minimize the dislocation that could follow when it runs out in two years.

<http://www2.ed.gov/policy/gen/leg/recovery/implementation.html>

(ED) McKinney-Vento Homeless Children and Youth Program Funds under ARRA

April 2009

Guidance issued by ED announcing an additional \$108.8 million available to states under the federal American Recovery and Reinvestment Act (ARRA) of 2009. \$69.2 million is for 52 Homeless Children and Youth grants to help states and school districts meet the educational and related needs of homeless students, as required by the federal McKinney-Vento Homeless Assistance Act.

<http://www2.ed.gov/policy/gen/leg/recovery/guidance/homeless.pdf>

(ED) Individuals with Disabilities Education Act

June 2009

Guidance in the form of FAQs regarding key aspects of the Individuals with Disabilities Education Act (IDEA):

[Discipline](#) - provides guidance on discipline policies enacted for school-age students to personnel in state educational agencies (SEAs) and local educational agencies (LEAs), and families.

[Disproportionality](#) - provides information regarding the IDEA requirements relating to disproportionality determinations.

[Procedural Safeguards](#) - lists questions and answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities issued in January 2007.

[Technical Assistance and Enforcement](#) - provides information on IDEA requirements relating to monitoring, technical assistance, and enforcement.

[Secondary Transition](#) - lists questions and answers regarding transition services for special education students.

(ED) Title I, Part A Waivers

July 2009

Comprehensive information on how to request a waiver of specific statutory and regulatory provisions of Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA).

<http://gm6-nsba.syscomservices.com/SchoolLaw/Issues/NCLB/NCLB-Non-Regulatory-Guidance-NCLB-Waivers.pdf>

(ED) Flexibility and waivers for SEAs, LEAs, postsecondary institutions, and other grantee and program participants in responding to pandemic influenza (H1N1 Virus)

September 2009

Guidance discussing waivers from federal education requirements that may provide state or local educational institutions with the operational flexibility necessary to efficiently close schools and otherwise respond to the administrative challenges presented by a potential H1N1 outbreak such as: prolonged school closures, excessive absenteeism, or other disruptions in the regular delivery of educational services to students for a prolonged period of time.

<http://www.edweek.org/media/swineguidance.pdf>

(ED) Family Educational Rights and Privacy Act (FERPA) and H1N1 Influenza

October 2009

Guidance addressing concerns that school officials may have about disclosing personally identifiable information about students in the event of an outbreak of H1N1 influenza in their schools.

<http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-h1n1.pdf>

(ED) Stricter enforcement of Title IX in women's athletics

April 2010

Guidance reversing a 2005 policy allowing schools to use only a survey to prove a lack of interest in starting a new women's sport and encouraging schools to consider a non-response to the survey as disinterest. The guidance requires schools and colleges to provide stronger evidence that they offer equal opportunities for athletic participation under Title IX. Schools have three ways to comply with Title IX: match the proportion of female athletes to the proportion of women on campus; show a history of increasing sports offerings for women; or prove that the school has met the interest and ability of women to participate in athletics. Before 2005, the third option required districts and colleges to use multiple indicators to assess athletic interests and abilities. This guidance informs institutions that survey results alone cannot justify an imbalance in women's sports.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.pdf>

(ED) Bullying and harassment

October 2010

“Dear Colleague” letter issued by ED’s Office for Civil Rights (“OCR”) in the midst of a campaign by the Obama administration to prevent anti-gay bullying and other harassment at school. It clarifies the applicability of Title IX to harassment based on actual or perceived sexual orientation. The letter states that a school district is “responsible for addressing harassment incidents about which is *knows or reasonably should have known*,” and “Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive or *persistent* so as to *interfere with or limit* a student’s ability to participate in or benefit from the services, activities, or opportunities offered by the school.” (Emphasis added.)

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>

Fact sheet October 26, 2010

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201010.html>

Letter from Duncan to state officials and examples of provisions in state anti-bullying laws December 16, 2010

<http://www2.ed.gov/policy/gen/guid/secletter/101215.html>

NSBA December 2010 letter asking for clarification of OCR’s October 2010 DCL

<http://www.nsba.org/sites/default/files/reports/NSBA%20Response%20to%20OCR%20Guidance%20December%202010.pdf>

OCR response to NSBA’s December 2010 letter seeking clarification of OCR’s October 2010 DCL

http://www.nsba.org/sites/default/files/reports/ED_Response_-_NSBA_Bullying_Letter_2011.pdf

(ED) Sexual harassment, including sexual violence

April 2011

“Dear Colleague” letter, Fact Sheet and “Know Your Rights” document issued by OCR stating that sexual harassment interferes with students’ rights to receive an education free from discrimination, and in the case of sexual violence, is a crime. “If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment,” said OCR, “Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.” OCR states that schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school’s education program or activity. A school must investigate all reported incidents of sexual harassment, regardless of where they occurred, OCR says, and, the nature of the off-campus conduct may inform a district’s evaluation of the situation in school.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

(ED) Enrollment practices (ARCHIVED)

May 2011

“Dear Colleague” letter, fact sheet, and question and answer document on school district enrollment practices cautioning against practices that may discourage undocumented students or parents from enrolling students in school.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.pdf>

(ED) E-readers accessibility for students with disabilities

May 2011

FAQ stating that schools have a legal obligation under both Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act to provide visually impaired students with comparable technology that affords “substantially equivalent ease of use.” This same level of “ease of use” must also be provided to students with disabilities other than visual impairment that makes them unable to process printed information.

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-ebook-faq-201105.html>

(ED) Treatment of LGBT student groups (GSA) under Equal Access Act

June 2011

“Dear Colleague” letter emphasizing that schools must treat all student-initiated groups equally pursuant to the Equal Access Act. The guidance’s thrust is to warn school officials against taking steps to ban students from forming gay-straight alliances and similar support groups in their schools. It is accompanied by the legal guidelines issued by the Education Department’s (ED) General Counsel Charles P. Rose. Duncan’s warning follows up ED’s October 2010 letter to districts about how bullying, in particular of students who are lesbian, gay, bisexual, and transgender, may violate students’ civil rights.

<http://www2.ed.gov/policy/elsec/guid/secletter/110607.html>

(ED/DOJ) Voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools

December 2011

Guidelines replacing a 2008 document that essentially warned colleges and universities against considering race at all. Here, ED and DOJ issue parallel guidelines to the nation's 17,000 public school districts, explaining what government lawyers consider to be acceptable ways that educators can seek to reduce racial segregation, which has been increasing nationwide. The guidelines are designed to give educators a clear interpretation of three high court cases that, since 2003, have limited the use of race in admissions, zoning and other school policies.

<http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.html>

(ED) Schools' responsibilities under ADA and Rehabilitation Act

January 2012

"Dear Colleague" letter and Frequently Asked Questions document on the requirements of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) in elementary and secondary schools, given the changes to those laws made by the ADA Amendments Act. The Act, effective January 1, 2009, "broadened the meaning of disability and, in most cases, shifts the inquiry away from the question of whether a student has a disability as defined by the ADA and Section 504, and toward school districts' actions and obligations to ensure equal education opportunities."

DCL: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.html>

FAQs: <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>

OCR January 2013 DCL disabled students participation in extracurricular activities \

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>

NSBA May 2013 letter asking for clarification of OCR's January 2013 DCL

<http://www.nsba.org/sites/default/files/reports/Letter%20to%20Hon%20Seth%20Galanter%20%28Re-DCL-1-125-13%29May%202013.pdf>

OCR December 2013 response to NSBA's May 2013 letter seeking clarification

<http://www.nsba.org/sites/default/files/reports/OCR%20Dec.%2016%20%20Letter%20-%20RE%20-%20NSBA%20May%202013%20Letter.pdf>

(ED) Schools' responsibilities to pregnant and parenting students under Title IX

June 2013

Pamphlet providing background on school retention problems associated with young parents and the requirements related to these issues contained in the Department's regulation implementing Title IX."

<http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>

(ED) Schools' responsibilities re: bullying of disabled students

August 2013

Guidance issued by ED's Office of Special Education and Rehabilitative Services (OSERS) on bullying of students with disabilities. According to ED, the "guidance provides an overview of school districts' responsibilities to ensure that students with disabilities who are subject to bullying continue to receive free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA)."

<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.pdf>

(ED/DOJ) Unlawful discriminatory practices in student discipline

January 2014

Guidance intended to "help public elementary and secondary schools administer student discipline in a manner that does not discriminate on the basis of race." While focused on race, the DCL also reminds schools, "Federal law also prohibits discriminatory discipline based on other factors, including disability, religion, and sex." The DCL refers to information obtained through the OCR's Civil Rights Data Collection (CRDC) to set the basis for its concerns and guidance. The CRDC data demonstrates "that students of certain racial or ethnic groups tend to be disciplined more than their peers."

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>

(ED) Privacy of student data shared with third-party providers of online services

February 2014

Guidance on legal requirements and best practices on the use, storage, and security of student data when schools use online educational resources, issued by ED's Privacy Technical Assistance Center (PTAC). The guidelines are ED's attempt to light the way through the rapidly evolving world of educational technology and student data privacy.

<http://blogs.edweek.org/edweek/DigitalEducation/Student%20Privacy%20and%20Online%20Educational%20Services%20%28February%202014%29.pdf>

(ED) Title IX and sexual violence

April 2014

Q&A document updating Title IX guidance clarifying that the civil rights law's protection extends to all students, regardless of sexual orientation or gender identity. ED's announcement of its interpretation of Title IX's applicability to sexual orientation and gender identity applies equally to public elementary and secondary schools.

<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

(ED) Disabled students, ELL, admissions, and discipline in charter schools

May 2014

“Dear Colleague” letter issued by OCR for charter schools related to student admissions, students with disabilities, English-language learners (ELL), and student discipline.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>

(ED) Transparency re: Use of student data

July 2014

Guidance for schools and districts on how to keep parents and students better informed about what student data is collected and how it is used. In the guidance issued by the Department’s Privacy Technical Assistance Center (PTAC), titled “Transparency Best Practices for Schools and Districts,” schools and districts are urged to be proactive in communicating how they use student data.

<http://ptac.ed.gov/sites/default/files/LEA%20Transparency%20Best%20Practices%20final.pdf>

(ED) Enterovirus and Ebola

Fall 2014

Information and resources for district leaders, schools, and educators on steps that can be taken to guard against the spread of disease.

<http://www.ed.gov/ebola-response>

ED’s “Dear Superintendent Letter” provides a list of resources for parents and school administrators regarding Ebola and enterovirus D68 (EV-D68). Relevant suggestions for schools include: creating a fact sheet on emergency procedures for parents and sending copies home with students; posting links to CDC information on the school website; and, working with local child care facilities and organizations to share information. Templates for parent letters and staff notices are also provided.

[http://rems.ed.gov/Docs/Dear%20Superintendents%20Letter%20Enterovirus%20and%20Ebola%20\(Udated\).docx](http://rems.ed.gov/Docs/Dear%20Superintendents%20Letter%20Enterovirus%20and%20Ebola%20(Udated).docx)

“School Planning” at FLU.GOV

The school planning section of “Flu.gov” provides resources for school administrators in developing emergency preparedness plans and preventative measures.

<http://www.flu.gov/planning-preparedness/school/index.html>

Equity in Access to Educational Resources

October 2014

“Dear Colleague” Letter in which OCR notes “chronic and widespread racial disparities” for student access to educational resources, specifically:

- rigorous courses, academic programs, and extracurricular activities;
- stable workforces of effective teachers, leaders, and support staff;

- safe and appropriate school buildings and facilities; and
- modern technology and high-quality instructional materials.

The letter states that OCR will focus on the scope and severity of the resource disparities, and the district’s process for allocating resources to determine if it is exacerbating or eliminating such disparities. It recommends that schools proactively self-assess and monitor Title VI compliance. The letter also delineates remedies OCR could implement if a violation is discovered, including additional programs, training, and resources.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>

Bullying of Students with Disabilities

October 2014

“Dear Colleague” Letter issued by OCR stating that “[i]f a student with a disability is being bullied, federal law requires schools to take immediate and appropriate action to investigate the issue and, as necessary, take steps to stop the bullying and prevent it from recurring.” The letter notes that if a student with a disability is being bullied *for any reason*, it could result in a denial of FAPE.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>

Effective Communication for Students with Hearing, Vision, or Speech Disabilities

November 2014

“Dear Colleague Letter” and FAQ document issued by the U.S. Departments of Justice (Civil Rights Division) and Education (Office for Civil Rights and Office of Special Education and Rehabilitative Services). In the 2-page DCL and a 30-page FAQ, the Departments take the clear position that, for IDEA-eligible students with hearing, vision or speech disabilities, the ADA Title II effective communication requirement (28 C.F.R. §35.160) demands a separate and distinct analysis from IDEA’s Free Appropriate Public Education (FAPE) requirement. Although in many cases, an appropriate IEP developed pursuant to IDEA will also meet the effective communication regulations, in others, the school may have to provide auxiliary aides or services in addition to, or different from, those required to provide a FAPE under IDEA. The Departments recognize that the Title II regulations do not require a school to provide an aid or service if doing so would result in a fundamental alteration in the nature of the service, program, or activity, or an undue financial and administrative burden, but provides very little specific guidance on how to make this determination, noting “Compliance with the effective communication requirement would, in most cases, not result in undue financial and administrative burdens.” The guidance states that the school official making the fundamental alteration/undue burden determination must have budgetary and spending authority.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-effective-communication-201411.pdf>

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf>

Title VI Requirements in Programs funded by USDA

November, 2014

The US. Department of Agriculture has issued a finalized guidance document on the prohibition under Title VI against national origin discrimination of limited English proficient (LEP) persons by federal funds recipients, like public school districts, in the administration of programs funded by

USDA, such as school breakfast and lunch programs. The guidance clarifies USDA's position that, in order to avoid a finding of discrimination on the basis of national origin, recipients must take "reasonable steps" to ensure that LEP persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge. USDA also identifies a four-step balancing test that recipients can utilize, and outlines Safe Harbor provisions that are considered strong evidence of compliance with the recipient's written-translation obligation.

<http://www.gpo.gov/fdsys/pkg/FR-2014-11-28/pdf/2014-27960.pdf>

Title IX and Single Sex Elementary and Secondary Classes and Extracurricular Activities

December 1, 2014

Q&A document issued by OCR on Title IX and single-sex classes and extracurricular activities. In the document, OCR indicates that schools may offer single-sex classes and extracurricular activities under ED's Title IX regulations, but only under the circumstances expressly authorized by Title IX or the regulations. According to the guidance, the Department's Title IX regulations permit offering single-sex classes when there are contact sports in physical education classes; when classes or portions of classes in elementary or secondary schools deal primarily with human sexuality; and in nonvocational classes and extracurricular activities within an elementary or secondary school if certain criteria are met.

The Q&A lays out a two-part justification test requiring school districts to show that:

- each single-sex class is based on the school's "important objective" either to improve its students' educational achievement through its overall;
- the school has established policies to provide diverse educational opportunities (the diversity objective), or to meet the particular, identified educational needs of its students (the needs objective); and
- the single-sex nature of the class is "substantially related" to achieving that important objective.

In addition to establishing justification for offering a single-sex class, a school district must also:

- implement its objective in an evenhanded manner;
- ensure that student enrollment in the single-sex class is completely voluntary;
- provide a substantially equal coeducational class in the same subject; and
- conduct periodic evaluations to determine whether the class complies with Title IX, and if not, modify or discontinue the class to ensure compliance with Title IX.

The next five sections discuss each of these elements in detail. Section seven discusses whether teachers may be assigned to single-sex classes on the basis of gender. Section eight explores other federal protections provided to students in single-sex classes. The final section is devoted to additional topics, i.e., "[w]hich set of regulations governs a school within a school" and how to contact OCR for additional information or to file a complaint.

<http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>

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<http://www.gpo.gov/fdsys/pkg/FR-2014-11-28/pdf/2014-27960.pdf>