



Member Alert

INTERNAL SHARING OF MEDICAL INFORMATION

Students may face a variety of medical challenges during the school day. Whether the challenges are physical (epilepsy, diabetes, allergies, etc.) or emotional/psychological (anxiety, depression, etc.), Members may have a duty to provide assistive or emergency care or treatment. In meeting these legal obligations, while protecting the District's interests against potential claims of negligence, questions have arisen regarding the proper sharing of a student's confidential "medical" or "medication" information between District employees. This Member Alert provides important standards and guidelines for **legally** sharing such information.

I. GENERAL STANDARDS

A. General Issues Regarding Pupil Records.

The Family Educational Rights and Privacy Act ("FERPA," 20 U.S.C. § 1232g; 34 CFR Part 99) and California student record privacy laws (*Ed. Code Section 49060*, et seq.) impose strict and important confidentiality obligations of Members and their employees with respect to "pupil records." Under California law, "pupil records" include traditional educational records **as well as** student health records. *Ed. Code Section 49062*.

As part of Members' confidentiality obligations, "pupil records" must be safely maintained (locked cabinets) and supervised by the site administrator and/or the site's designated certificated "custodian of records." Pupil Records must not be available for general inspection, and only authorized District employees (never students or volunteers) must be used to file, update, or otherwise have general access to such documents or their contents. **If an adopted Board policy** allows records to be maintained outside of the school site's central file (i.e., a locked file cabinet in a nurse's office), by law, the central file must note where the other records can be found and the District employee responsible for the records at the alternate location. *5 CCR § 433*. The District's adopted policy should also identify any special additional measures that should be taken to ensure that the externally maintained records will be protected in the same manner as the centrally located files.

B. Accessing/Disclosing Contents of Pupil Records.

Even with the best of intentions, District employees are not automatically entitled to "access" or share "pupil record" information with other District employees. By legal definition, "access" includes physical review of the records, copying of the records, or oral descriptions or communications describing the contents of the records. *Ed. Code § 49061*. As relevant to the issues discussed in this Alert, governing privacy laws create no exception to the requirement that "access" be documented in the required privacy log, which requires identification of the party receiving the information and a written explanation for the "legitimate educational purpose" for the access. *Section 49076; 5 CCR 431*. Notably, under these same laws and regulations, in the absence of a medical emergency, the definition of "legitimate educational purpose" does not expressly include **health-related information**.

While an argument can be made that students' health issues likely to impact their ability to learn or participate in district-sponsored programs should be considered a "legitimate educational purpose," state and federal privacy laws are generally intended to prevent disclosures of medical information absent parental consent, exceptional/emergency situations, or student consent (for certain types of information). The fact that no law, regulation, or known Board Policy has included health-related information within the definition of "legitimate educational purpose," and with California having adopted the Confidentiality of Medical Information Act (Civil Code Section 56.10) (which the Attorney General has applied to school districts, *Opn. of California Attorney General, 08-509 (12/29/2011)*) and other medical privacy laws, Members should take steps to ensure that all school district employees and contractors comply with the recommendations and best practice standards below.

II. MEETING DISTRICT OBLIGATIONS

Against the applicable legal background and standards, three key issues exist: (1) how can student medical information be legally shared, (2) with whom can/should the information be shared; and (3) in what format (written, verbal, etc.) should the information be shared. **The easiest answer is usually the best answer.**

In almost all of the situations in which these issues will arise, the student will have (and/or will need) a Medication Assistance form (updated 1/2013) or an IEP/504 Plan in place. Such documents contain (or should contain) all of the relevant waivers/releases of information such that when they are signed by the parent/legal guardian, the privacy law requirements for authorization have been met and the information can be shared with those employees and trained volunteers whose jobs/duties are related to the supervision or care of the student. **To further ensure legal compliance, upon such authorized disclosures, the pupil records file should contain a brief description of the disclosures and the District employees/trained volunteers who received the information.**

In those rare instances where none of these situations apply, a nurse or other District employee can simply contact the parents/legal guardians and obtain a brief written authorization allowing such information to be shared with identified District employees and trained volunteers. Something short will work, such as: **“I am the parent of _____ . The school [nurse] can share with Robbie’s teachers, playground supervisors, lunch room employees, and other volunteers who will be directly supervising Robbie the fact that he has a severe peanut allergy and cannot be within ___ feet of peanuts. This authorization will remain in force as long as Robbie is at this school. Printed Name/Signature/Date.”** Such an authorization, tailored to a particular student’s situation, should then be placed in the central file and in any remote [nurse’s] file.

These approaches also comport with real-world considerations, namely that we cannot overload teachers, food service workers, and others with general health information (general hay fever/allergies, etc.). They have too many students, and too many other issues they must address on a daily basis, such that “information overload” may be of no practical benefit. In addition, “over sharing” of health information can create unexpected legal exposures. An employee might “treat” a student with a minor allergy as having a “disability,” when neither the student nor his/her parents otherwise consider him/her to be disabled, which can lead to exposures under state and federal disability rights laws. Also, once such information is shared, the “knowledge” of such generalized conditions may create heightened or special duties that the District and its employees may not be able to meet on a daily basis.

Regarding the “**form**” in which legally shareable information can be internally communicated, a primary concern is distribution of written or electronic information in violation of governing policies/laws regarding the location and maintenance of confidential information. “Pupil record” privacy laws apply when identifying student information (name, student number, picture) is matched with protected information (health information, etc.). Thus, internal sharing is best done privately and verbally, and only after the party receiving the information has been trained in privacy laws to ensure that they understand their obligations not to maintain or further disclose that information.

As to the issue of **when** information should be shared after appropriate waivers/releases are obtained: (1) potentially “significant” health issues should be addressed at the outset of the year or as soon as reasonably possible after they have been identified; and (2) “less significant” health issues should be shared at the request of a parent/legal guardian (who should be asked to sign the written waiver) as soon as reasonably possible after they are identified. Of course, in an emergency/urgent case situation, the disclosures occur immediately.

III. CONCLUSION

While the health and safety of students are primary concerns, there are important legal constraints applicable to confidential student health information. Even with good intentions, District employees are not automatically entitled to knowledge of such information, and improperly accessing or sharing such information can have significant legal consequences. Nevertheless, there are several relatively easy methods that can be used to obtain required waivers and releases that will provide legal protection to all involved.