

# Implementing Expanded School Mental Health Services

*Subject: Guidelines regarding parent notification and involvement, consent and student privacy*

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**Introduction:** Addressing the psychosocial needs of students is critical for their academic success. Schools, however, cannot be expected to meet all of these needs. Collaboration with community service agencies to provide services in schools is an opportunity to make the most of existing resources and more effectively and efficiently meet the needs of students and families. It is critical, however, that agencies and schools understand and adhere to sometimes very complex laws regarding notification and involvement of parents, consent to treatment and the parent's and minor's right to confidential services.

To assist schools and community agencies in implementing expanded school mental health services, the following guidelines and supporting documents were produced by the steering team for the Expanded School Mental Health Initiative (see [www.schoolmentalhealthwv.org](http://www.schoolmentalhealthwv.org)) which includes representatives from the West Virginia Department of Education; the West Virginia Department of Health and Human Resources, Bureau for Behavioral Health; local school systems, and local public and community mental health agencies.

The guidelines were reviewed for accuracy and consistency by the Education Law Group of Bowles Rice McDavid Graff & Love, LLP through a contract with the West Virginia School Health Technical Assistance and Evaluation Center at Marshall University. However, **nothing in these documents should be considered as legal advice or a legal opinion.** School districts and non-school agencies/service providers should obtain a legal review if there is any question about the legality of a particular practice or policy.

**Purposes:** 1) To provide recommendations regarding parent consent/involvement, confidentiality and sharing of student medical records when using non-school providers for mental health services for students; and 2) to provide a guide and training tool for community mental health providers, school staff, including paraprofessional staff, and parents to prevent inappropriate disclosure or withholding of student information needed for effective implementation of school-based mental health services.

**Background:** Laws regarding minors, schools, consent for treatment for health and mental health services, and privacy are especially complicated when organizations collaborate on services. For example, when non-school agencies provide services in the public schools. (See Attachment A: Summary of State Laws). One of the more difficult issues for non-school agencies/service providers and schools is balancing the parent's right to know with the student's right to privacy. Federal and State laws are often interpreted differently by different authorities, and may even conflict. HIPAA (the Health Information Portability and Accountability Act) and its Privacy Rule, FERPA (the Family Educational Rights and Privacy Act) and a large number of

other state and other federal laws all govern consent for services and confidentiality and may differ based on extenuating factors such as the age of student, the type of information, and the degree of risk involved. For these reasons, a school mental health services program using outside non-school agencies should be very clear about its policies and procedures.

## **Recommended Practices: Parent Notification**

1. **School personnel may see students in an emergency or crisis situation without parent consent...**Where exigent circumstances, including emergencies, require immediate action in order to act in the best interest of the student, parental consent shall not be required prior to providing necessary mental health services. However, if the non-school agency/service provider determines that a more thorough evaluation or ongoing counseling/treatment is necessary, then the provider shall acquire prior parental consent.
2. **All parents should be notified of the availability of services provided by outside agencies.** This can be accomplished by including information in the student handbook (Attachment E)), an informational letter (Attachment C) and a brochure (Attachment D). This information should be sent home at the beginning of each school year and should include:
  - a) Non-school agency/service provider name, a description of services provided and who to contact for more information.
  - b) An explanation of the rights of parents and the procedure for students to receive services. As a rule, the non-school agency/service provider will require written parental consent for any student under the age of eighteen to receive counseling services. All services shall comply with state and federal laws. Parental involvement in the student's care and education is encouraged and students will be encouraged to involve their parents/guardians.( Attachment G)
  - c) an explanation of the billing policies and procedures for payment
  - d) An explanation of how students may be referred for services.

## **Recommended Practices: Student Confidentiality**

1. Agencies and school districts should establish written policies and procedures for disclosure and sharing of student information and protecting the confidentiality of students and families in accordance with federal and state codes. (See recommendations in (Attachment B))
2. Policies and procedures should be monitored and reviewed regularly for adherence.
3. Faculty, staff and collaborating non-school agency/service provider personnel should receive training and updates on confidentiality procedures annually and as part of new employee orientation. Responsibility for implementing such training and its content should be determined and assigned by the county Superintendent of Schools or his/her designee.
4. When school teams (the group of persons engaged in the student's treatment/counseling process) meet to discuss the student's treatment/counseling, all team members shall be

required to sign an agreement affirming that he/she will not disclose any confidential student information obtained during or in connection with the team meeting. If team members include providers from different agencies, appropriate parent and student consent must be acquired prior to the sharing of any information by and among the different agencies.(Attachment F)

5. Confidential information sent to or received from an outside agency, (including the non-school agency/service provider and/or other school-based health/mental health program) about a particular student can only be shared upon written informed consent of the parent for students under 18 years or of the student if 18 or older. However, at the provider's discretion, verbal consent that is documented on the student medical record will suffice.
6. Confidential information, including the fact that a student is receiving services, should not be shared with any school or non-school agency/services provider personnel who do not have a need to know. Persons with a "need to know" would include: a) those school employees and non-school agency/service provider employees serving on a school team for a student or who otherwise perform a role in delivering, monitoring or assisting with the mental health program/treatment/services for the student; and/or b) those school employees who require the confidential information in order to perform one or more of the essential functions of their job (e.g., a school attendance officer who must determine whether a student is absent from class for an excused or unexcused reason; a school employee who, by law, must report suspicions of abuse or neglect of a child).

## **Recommended Policies and Practices: Student Medical Records**

1. All student medical records containing information about services being provided to the student that, by law, are protected from parental access where the student objects to such parental access (e.g., reproductive health visits, prenatal care, sexually transmitted diseases, substance abuse etc.) shall be marked "CONFIDENTIAL" and/or kept in a confidential section of a student's chart. Such confidential information shall ordinarily be charted on a separate sheet. If an insurance company or other payor requests student medical records, only that information necessary to secure payment for the services rendered shall be provided.
2. Student medical records maintained in connection with the provision of the services contemplated by this policy shall be made available to school staff only on a need-to-know basis. Persons with a "need to know" would include: a) those school employees and non-school agency/service provider employees serving on a school team for a student or who otherwise perform a role in delivering, monitoring or assisting with the mental health program/treatment/services for the student; and/or b) those school employees who require the confidential information in order to perform one or more of the essential functions of their job (e.g., a school attendance officer who must determine whether a student is absent from class for an excused or unexcused reason; a school employee who, by law, must report suspicions of abuse or neglect of a child). Information will only be shared with other school personnel (including counselors, special education staff and administrators) or third parties, when the student and/or parent consent to the release of specific information in writing, or

the provider has received such verbal consent and has documented this consent on the progress note of the student medical record.

3. Nothing in this policy shall be interpreted to contradict state and federal privacy laws relating to the confidentiality of health care records.

## **Attachments**

- A. Summary of State and Federal Laws Regarding Privacy, Confidentiality and Release of Information
- B. Recommended Confidentiality /Consent Policies and Procedures
- C. Sample Letter from Principal
- D. Sample Brochure
- E. Sample Information for Student Handbook
- F. Sample School Team Confidentiality Agreement
- G. Sample 1 Consent for Treatment
- H. Sample 2 Consent for Treatment
- I. Sample HIPAA/FERPA Consent to Release Information
- J. Balancing Student Privacy and School Safety: A Guide to FERPA Guide for Schools
- K. A Parents' Guide to FERPA