

## ATTACHMENT B: CONFIDENTIALITY, PRIVACY & SHARING INFORMATION

Source: National Assembly on School Based Health Care, Mental Health Program Evaluation Tool, downloaded July, 2010: <http://ww2.nasbhc.org/RoadMap/MHPET/confidentiality.pdf>

### DESCRIPTION

School mental health services must have structures and procedures in place to share and store information appropriately in order to protect student and family confidentiality. This includes sharing information both with school personnel and those outside of the school.

### RATIONALE

All exchanges between the mental health provider and the student is considered privileged and confidential in accordance with state and federal statutes and regulations<sup>1</sup> as well as legal and professional privacy guidelines. Confidentiality and privacy are essential elements for establishing therapeutic alliance and ensuring safety for the student. As such, mental health and substance abuse service providers are required to have safeguards to prevent unauthorized access to student medical records.

### RECOMMENDATIONS

*The following recommendations offer schools, stakeholders, and mental health providers guidelines on developing effective confidentiality policies and practices.*

#### Confidentiality Policies

1. Develop a confidentiality policy in accordance with state and local mandates that specifies procedures for informing staff, discussing the nature of a visit, handling information requests, following up on referrals, and obtaining parental consent.
2. Post the confidentiality policy in a conspicuous location.
3. Discuss the limits of confidentiality with the student and the student's family at the onset of services. Inform students during their first visit of the specific conditions in which mental health staff will notify parents and guardians, school staff, or other professionals of information relating to their treatment. If the student does not want certain staff persons informed of their care, this must be documented on the student's chart/record.
4. Ensure that all staff are aware of policies regarding with whom and what student medical record information can and cannot be shared per state and local mandates.
5. Ensure that all consent forms are updated to allow for the general exchange of relevant information with teachers, administrators, and other important school staff as needed.
6. Become familiar with state laws that establish the rights of children in receiving mental health services.
7. Become familiar with exceptions to the confidentiality of student medical records and exceptions thereto, such as: with appropriate consent, to the student, to payers/insurers, to families of minor children, and/or to protect the safety of the student and others.
8. Use discretion in deciding whether to inform parents when a report is made to Child Protective Services (CPS) under cases of suspected parental abuse or neglect, as

<sup>1</sup> Both the Family and Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects the privacy of student records. HIPAA mandates strict adherence to the Privacy Rule, requiring confidentiality in all forms- oral, written or electronic - around individually identifiable information or health status. FERPA mandates that all schools receiving federal funding are required to keep a student's education record confidential. For specific parameters on HIPAA, go to <http://www.hhs.gov/ocr/hipaa/>. For FERPA, go to <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

doing so may increase risk of harm to the student in some instances. Also, be sure to document clearly and carefully in the chart all contacts made with law enforcement and child protective services agencies, such as CPS.

9. Maintain a log of when and with whom confidential information is shared (e.g., protective services, juvenile justice).

### **Confidential Space**

1. Provide rooms enclosed with sound proof walls.
2. Avoid windows facing passing student traffic. If unavoidable, utilize adequate blinds and/or drapes.
3. Consider sound transmission between spaces when laying out furniture.
4. Use white noise machines or other effective audio devices to enhance privacy.
5. Do not display behavioral charts or other therapeutic materials with students' names on them in the presence of those without consent to view the same
6. Ask permission before displaying clients' drawings or school pictures, and remind students that permitting the same may diminish privacy.
7. Establish a dedicated phone line that does not interfere with other phone lines in the school.
8. Do not carry on conversations regarding student treatment/health care information in public areas or within hearing range of public areas.
9. Secure voicemail and answering machine messages so that confidential messages cannot be overheard by unauthorized personnel.

### **Storing Records**

1. Avoid sharing a storage space with other school departments.
2. Avoid leaving student files in any public area of the school or within the confidential space.
3. Lock file cabinets used to store all files or other materials with students' information.
4. Place all files face down when storing them in the locked file cabinet.
5. Turn files upside down when out of the locked file cabinet in order to cover any identification on the case record/chart.
6. Lock the work/office space when unattended.
7. Remove student charts/records and other secure information from the school mental health program office only when absolutely necessary. When removed, place secure information in an appropriate bag for transport. Note the temporary absence of the original record in the filing cabinet or other storage unit where stored and the anticipated return date for the file.
8. Ensure that computerized case records are stored on a secured server.
9. Ensure that all electronic medical records have a paper or electronic back-up system. This could include having files saved on disk or CD-ROM or off-site back-up in case of computer failure.

### **Secure Faxing and Email**

1. Place the fax machine and computer in a location where students and school personnel will not be able read content.
2. Confirm that the intended authorized recipient of fax is prepared to receive the same before faxing.
3. Include a typed confidentiality statement as the cover letter when documents must be faxed.
4. Include the following message when communicating student information through e-mail:  
*"This message is intended only for the use of the individual to whom it is addressed. It may contain information that is privileged,*
  - 1. *confidential, and exempt from disclosure under the law. If you receive this communication in error, please notify us immediately by telephone, return the original message to us at the above address, and delete the message from your system. Thank you."*

## REFERENCES

Bazelon Center for Mental Health Law. (2002). *New federal privacy regulations with regards to HIPAA*. Retrieved from <http://www.bazelon.org/issues/privacy/moreresources/index.htm>.

Gable, L., & Hodge, J., (2008) A CDC Review of School Laws and Policies Concerning Child and Adolescent Health. Mental Health and Social Services. *Journal of School Health: official Journal of the American School Health Association*. Volume 78, no. 2. February 2008: 97-99.

The University of Maryland's Center for School Mental Health (2008). *School Mental Health Quality Assessment Questionnaire (SMHQAQ) Quality Indicator Power points, Indicators 34, 37*. Retrieved from <http://www.schoolmentalhealth.org/Resources/Clin/QAIRsrc/QAQQP>.

York University (2008). *Information and Privacy Tool Kit, Tip sheet 2: confidential records*. Retrieved from <http://www.yorku.ca/secretariat/infoprivacy/infotoolkit/docs/TipSheet2ConfidentialRecords.pdf>.

## RESOURCES

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

US Department of Education site offers general information on FERPA (Family Educational Rights and Privacy Act)

<http://www.hhs.gov/ocr/hipaa/>

Information on HIPAA from the US Department of Health & Human Services

<http://www.hhs.gov/ocr/hipaa/HIPAAFERPAjointguide.pdf>

Department of Education (DOE) and Health and Human Services (HHS) provide joint guidance regarding how FERPA and HIPAA relate to one another and how they apply to the privacy of student records maintained by schools

<http://www.nasbhc.org/site/c.jsJPKWPFJrH/b.2564543/apps/s/content.asp?ct=3875729>

Information on what the HIPAA Privacy Rule means for school-based health centers

<http://www.cahl.org/consentpubs.htm>

CAHL (Center for Adolescent Health and Law) publications relating to consent and confidentiality

<http://dhs.wisconsin.gov/medicaid/updates/2004/2004pdfs/2004-34.pdf>

Medical Record Documentation Requirements for Mental Health and Substance Abuse Services