Safeguarding Student Privacy and Data During a Pandemic

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Sources of Data

- Student Health Records
- Online Learning/EdTech

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Student Health Records

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Family Education Rights Privacy Act (FERPA)

Prevents the disclosure of **personally identifiable information (PII)** in a student's **education record** without the consent of a parent or eligible student (aged 18 or older) unless an **exception** to the law's general consent requirement applies.

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Health Insurance Portability and Accountability Act (HIPAA)

Prohibits covered entities from disclosing **protected health information (PHI)** to any third parties, unless the individual who is the subject of the information (or the individual's personal representative) authorizes it in writing or the rule otherwise permits the disclosure.

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Which applies?

Family Education Rights Privacy Act (FERPA)

Health Insurance Portability and Accountability Act (HIPAA)

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FERPA Exceptions

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Consent

- The parent or eligible student shall provide a signed and dated written consent.
- The written consent must:
  - Specify the records that may be disclosed
  - State the purpose of the disclosure
  - Identify the party or class of parties to whom the disclosure is made.

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Health and safety emergency

- FERPA permits schools to disclose, without prior written consent, PII from student education records to **appropriate parties** in connection with an **emergency**, if knowledge of that information is **necessary to protect** the health or safety of a student or other individuals.
- The district should document when they release PII under this exception.

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School Official

- FERPA permits schools to disclose, without prior written consent, PII from student education records to another **school official** whom the district has determined have **legitimate educational interests**.
- Can extend to contractors, consultants, other third parties if:
  - Performs an institutional service/function for which the district would otherwise use employees
  - Under the direct control of the district with respect to the use/maintenance of records
  - Uses PII only for the purpose for which the disclosure was made
  - Meets the criteria specified in the annual notification for being a school official with a legitimate educational interest

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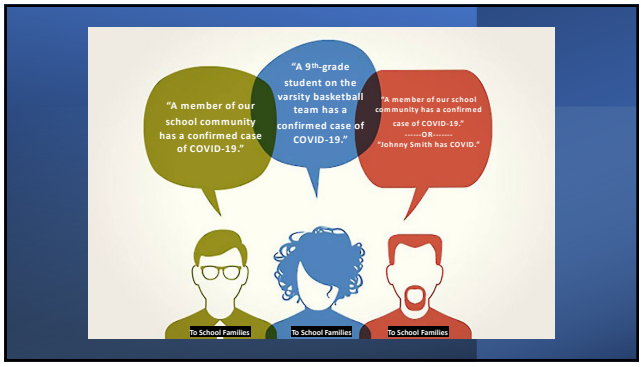

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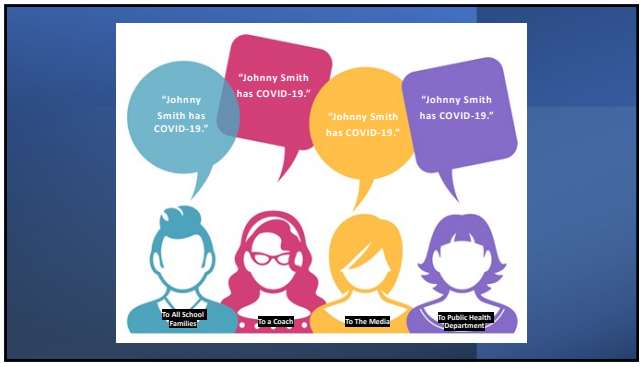

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Safeguarding the data

- Do you need a data sharing agreement or MOU?
- Consider:
  - What is the purpose of the data request? What do you want to do with the data?
  - What data do you need to accomplish your goal?
  - How much data do you need to accomplish your goal? Will de-identified information or a limited data set serve the purpose?
  - Under what terms and conditions, if any, was this information provided to you?
  - How will the information be transferred, shared, and stored?
  - What privacy and security measures are in place to protect information during transfer, storage, use and disposal?
  - Retention, reuse, further sharing, disposal of data?

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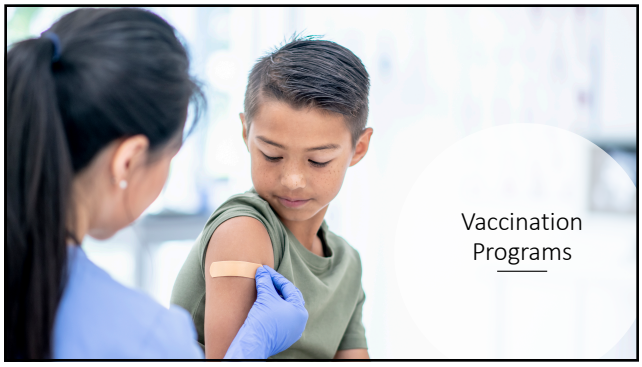

Vaccination Programs

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Vaccination Programs

- Who is administering the vaccines?
- Can the district disclose information on the vaccinations, in personally identifiable form, to the health department without parental consent?
- If a student is immunized by personal physician and brings the immunization record to school, does that become part of the student's education record?

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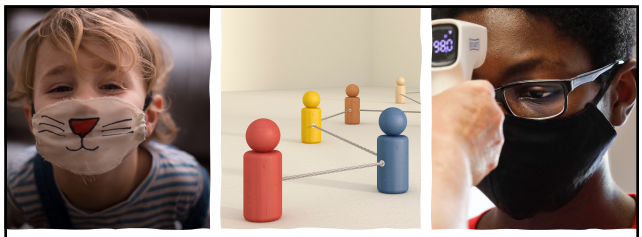

What other student data?

- Mask exemption requests
- Quarantine status
- Contact tracing information
- Test results
- Symptom screening tool results

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Directory Information

- FERPA permits schools to disclose, without prior written consent, **directory information**.
- Public notice and opt out requirements.

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Safeguarding the data

- What data is collected and why?
- Who has access and for what purpose?
- What are the security protocols?
- How can the school access the data to respond to a request from a parent?
- What happens to the data when the agreement ends?

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Questions?

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