

LEGAL TOPICS FOR SCHOOL NURSES

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BEFORE WE DIVE IN....

- ▶ Hot off the presses! An updated version of 105 CMR 210 went into effect on August 15, 2025
- ▶ Updated regulations: [105 CMR 210.00](#)
- ▶ Changes include, but are not limited to:
 - ▶ Self-administration regulation now refers to “self administration and self-carry”
 - ▶ New and/or updated definitions for *Caregiver, Controlled Substance, Delegation, Emergency Rescue Medication, Medical Device, Regular School Activities, Self-Carry, Unlicensed School Personnel*
 - ▶ Sections added on: (1) administering emergency rescue opioid antagonist; (2) waiver of medication admin. requirements; (3) inspection; and (4) severability.
- ▶ When determining how the new regulations apply to a unique or challenging case, think about the student’s individual needs (on a case-by-case basis). Consult with counsel if needed

STUDENT VOICE AND CHOICE

SCENARIO

- ▶ Lisa, a high school nurse, is in her office when an 11th grader walks in stating that he has a severe headache. The student recently turned 18 and asks Lisa for some Tylenol. Lisa states that she wants to place a quick call to notify his parent. The student becomes agitated, insisting that as an 18-year-old, he can make this decision without parent input.
 - ▶ What are Lisa's obligations?
 - ▶ What should Lisa do next?

STUDENTS WHO HAVE REACHED THE AGE OF MAJORITY

- ▶ In Massachusetts, the “Age of Majority” is 18 years old (M.G.L. c. 4, § 7)
- ▶ In practice, this means that our students retain the right to make their own decisions about medical care and treatment on their 18th birthday
- ▶ At times, parents and families need support and reminders that the student’s right to make decisions turns on like a switch!
- ▶ In special education, students are educated on their right to sign IEPs and IEP related documents one year before reaching the age of majority, when they are 17 years old
- ▶ Turn and Talk: What are the pros/cons to implementing a similar process related to age of majority and medical decisions?

STUDENTS WHO ARE 18+ AND UNDER GUARDIANSHIP

- ▶ When a student is over 18 but has been appointed a guardian through the court, it is important for the nurse to know the type of guardianship:
 - ▶ Full Guardianship: Guardian can make all life decisions for the student, which will include medical care and medical treatment
 - ▶ Limited Guardianship: Guardian can make decisions for the student only in the areas where the student needs help, which may or may not include medical care and medical treatment
- ▶ In Massachusetts, we also have what is called a Rogers Guardianship:
 - ▶ Grants the guardian permission to agree to extraordinary medical treatment for the student (ex., antipsychotic medication, sterilization, electroshock therapy). Requires annual review

MATURE MINOR RULE

- ▶ Under M.G.L. c. 112 § 12F:
 - ▶ Health providers not liable for treating without parental consent if the minor:
 - ▶ Needs emergency treatment that will endanger life, limb, mental well being
 - ▶ Is getting treatment for prevention of HIV
- ▶ Minors can consent to care if they are:
 - ▶ Married, widowed or divorced
 - ▶ Parent of a child (in which case can also consent to child's care)
 - ▶ Member of armed forces
 - ▶ Pregnant or believes to be pregnant (except decisions about abortion or sterilization)
 - ▶ Living separate from legal guardian and managing financial affairs
 - ▶ Reasonably believed to be at risk of exposure due to sexual activity to a dangerous disease defined in section 6 or c. 111
- ▶ ****Remember that the first “go-to” strategy for treating minors under c. 112 § 12F is to educate the student on the benefits of the nurse sharing information with the minor's parents. (try to get buy-in)****

GENERAL TIPS RELATED TO STUDENT AUTONOMY

- ▶ Remember the overarching FERPA concept of “Needs to Know”
- ▶ Sometimes, classroom teachers do need to know medical information and sometimes they do not
- ▶ Except for the Mature Minor provisions (which are limited), and instances where a 51A is required, it is important to remember that Parents of students under age 18 maintain rights to have access to information obtained by the school
- ▶ The goal (particularly in instances when mature minor is not implicated) should be to work with the student to agree with a piece of information that he or she is willing to share with his or her parents
- ▶ Collaborate with colleagues to develop strategies for balancing the rights of students who have reached age of majority with the reality that these students are still residing with Parents (student buy-in goes a long way!)

FERPA AND HIPAA

SCENARIO

- ▶ Judy is a school nurse in a middle school. She receives a letter from Boston Children's Hospital for one of her students. The letter describes in detail the results of the student's recent endoscopy and provides recommended accommodations for a 504 Plan. Judy knows that the 504 recommendations need to go to the assistant principal, but she redacts the section that outlines the endoscopy results before giving the assistant principal the letter. The principal asks for a copy of the complete (unredacted) letter.
 - ▶ What are Judy's obligations?
 - ▶ What should Judy do next?

FERPA BASICS

- ▶ FERPA (Family Educational Rights and Privacy Act) protects the privacy of students' education records, which are “records that are: (1) [d]irectly related to a student; and (2) [m]aintained by an educational agency or institution or by a party acting for the agency or institution.” 34 CFR Part 99
- ▶ U.S. DOE issued Guidance for School Officials on Student Health Records (April 12, 2023):
 - ▶ The status of Students' health records maintained by the school varies based on the student's age:
 - ▶ If the student is less than 18 years old, health records qualify as education records under FERPA.
 - ▶ If the student is over 18 years old, health records that qualify as “treatment records” are excluded from FERPA's educational record definition.
- ▶ Health records that are education records under FERPA may only be disclosed to a third party if there is written consent by parent or student (18+) OR one of FERPA's permissive exceptions to general consent applies.

FERPA EXCEPTIONS TO GENERAL CONSENT

- ▶ Districts may disclose personally identifiable information from an education record of a student without parental consent if the disclosure is:
 - ▶ to other school officials within the agency whom the agency has determined to have legitimate educational interests.
 - ▶ subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if for purposes related to the student's enrollment or transfer.
 - ▶ To a contractor/consultant/volunteer/other party to whom an agency has outsourced institutional services or functions, provided that the outside party:
 - ▶ Performs an institutional service or function for which the agency or institution would otherwise use employees;
 - ▶ Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and
 - ▶ Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

HIPAA vs. FERPA

- ▶ Determining whether a health record falls under FERPA or HIPAA:
 - ▶ Was health record completed by a school nurse or school physician? - **FERPA**
 - ▶ Was the health record for a student UNDER the age of 18 and created by an outside medical provider and then received by a school nurse (or any other school staff member)? - **FERPA**
 - ▶ Was the health record for a student OVER the age of 18 and a “treatment record” in that it was: (1) made or maintained by a physician or other recognized professional acting in that capacity; (2) made, maintained, or used only in connection with treatment of the student; and (3) disclosed only to individuals providing the treatment? - **HIPAA**
 - ▶ Was the health record for a student OVER the age of 18 and created by an outside medical provider and then received by a staff member, and the record is NOT a “treatment record”? - **FERPA**

GENERAL TIPS RELATED TO FERPA

- ▶ Keep your paper records secure
- ▶ If you have electronic records open, close them before you walk away from your computer
- ▶ When considering disclosure of information, ask the question, “Who needs to know this?”
- ▶ Remember, medical information of any type received by any school staff member is subject to the FERPA *Legitimate Educational Interest* standard, with very limited exceptions for some of our 18+ students
- ▶ Remember the two forms of PII (Personally Identifiable Information)
 - ▶ Direct
 - ▶ Indirect

STUDENTS IN THE LGBTQIA+ COMMUNITY

SCENARIO

- ▶ Suzie is an elementary school nurse. She receives an email from the parent of a second grader. The parent indicates that her child, assigned male at birth, is transitioning to a female and would like to be called Victoria (chosen name) moving forward. Suzie is concerned about calling the student Victoria, as all the student's records (including med orders), identify the student as Aidan (birth name).
 - ▶ What are Suzie's obligations?
 - ▶ What should Suzie do next?

RELEVANT LAWS AND GUIDANCE RELATED TO GENDER IDENTITY

- ▶ M.G.L. c. 76 Section 5: No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, gender identity, religion, national origin or sexual orientation.
- ▶ DESE Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment (last updated October 28, 2021):
 - ▶ Responsibility for determining a student's gender identity rests with the student or, in the case of young students not yet able to advocate for themselves, with the parent
 - ▶ Information about a student's assigned birth sex . . . is part of the individual's student record . . . is confidential, and must be kept private and secure
 - ▶ Principal should be clear with the student (and parent) that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity . . . Transgender students who are uncomfortable using a sex-segregated restroom should be provided with safe and adequate alternative
 - ▶ Transgender and gender nonconforming students may decide to discuss and express their gender identity openly and may decide when, with whom, and how much to share private information. A student who is 14 years of age or older, or who has entered the ninth grade, may consent to disclosure of information from his or her student record. If a student is under 14 and is not yet in the ninth grade, the student's parent (alone) has the authority to decide on disclosures and other student record matters

MAHMOUD V. TAYLOR - U.S. SUPREME COURT DECISION

- ▶ Maryland public school district used LGBTQ+ themed books in the elementary curriculum.
- ▶ School policy did not allow the parents to opt-out of the lessons.
- ▶ Parents argued that the school policy not allowing opt-outs violated their First Amendment right to free exercise of their religion.
- ▶ Supreme Court found in favor of the parents.
- ▶ Supreme Court held that a Maryland public school district violated religious freedom when parents were not allowed to opt their elementary school children out of lessons that used LGBTQ+ themed storybooks.
- ▶ The case will have an impact on many aspects of the Massachusetts Curriculum Frameworks

MEDICAL RECORDS AND ORDERS FOR TRANSGENDER STUDENTS

► From DESE's Guidance:

- When determining which, if any, staff or students should be informed that a student's gender identity is different from the assigned birth sex, decisions should be made in consultation with the student, or in the case of a young student, the student's parent or guardian. The key question is whether and how sharing the information will benefit the student.

► Excerpts from NASN (updated June 2025):

- Students may use various terms to describe their gender identity or sexuality which can change over the course of their lives. It is important to address students using their self-identified name, pronoun, and expression as part of respectful and affirming practices (American Psychological Association, 2023; McGeough et al., 2023; Rioux et al., 2022).
- A 2021 National School Climate Survey found that 83% of GSD youth experienced discrimination in the forms of bullying, verbal and physical harassment, stigmatization, victimization, assault, or violence (Kosciw et al., 2022).
- Policies should be carefully and thoughtfully developed to address salient issues such as access to bathrooms, participation in athletic competitions, and managing documentation if a student's self-identified name doesn't match their legal name.
- School nursing expertise is also an important contributor to developmentally appropriate, inclusive student sexual health education curricula (Sellers, 2024). These policies and practices are critical for addressing the physical and mental health needs of GSD youth (Gunderson et al., 2021).

GENERAL TIPS FOR TREATING STUDENTS IN THE LGBTQIA+ COMMUNITY

- ▶ If you learn of a student's transition from a Parent who clearly supports the transition (regardless of the student's age), you need to immediately honor the student's/parents request to use alternate names/pronouns
- ▶ Remember that LGBTQIA+ students may experience more physical violence and/or drug/alcohol use. Assess students carefully for signs and symptoms
- ▶ Provide LGBTQIA+ students with education on depression prevention strategies, due to the substantial risk of depression due to rejection and stigma
- ▶ Remember that case law is evolving rapidly, so be mindful that DESE guidance may also evolve

QUESTIONS?

THANK YOU!

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