

MEDICAL AND MENTAL HEALTH RECOMMENDATIONS WHAT SCHOOL EMPLOYEES CAN AND CANNOT DO

53A-11-605, Effective March 2, 2007

School personnel MAY:

- Provide information and observations to a student's parent about the student, including observations and concerns about the following:
 - Progress
 - Health and wellness
 - Social interactions
 - Behavior
 - Situations which exist that "present a serious threat to the well being of a student" (Section 53A-13-302(6))
- Communicate information/observations between school personnel about a child.
- Refer students to appropriate school personnel/agents, consistent with local school board/charter school policy, including to a school counselor or other mental health professionals within the school system
- Consult or use appropriate health care and mental health care professionals in emergency situations while students are at school, consistent with student emergency information provided at student enrollment
- Complete a behavioral health evaluation form if requested by a student's parent to provide information to a physician

School personnel SHALL:

- Report suspected child abuse consistent with state law
- Comply with state and local health department laws, rules and policies
- Conduct student evaluations/assessments consistent with IDEA

School personnel MAY NOT:

- Require that a student take/continue to take psychotropic medication
- Recommend that parents seek or use a psychiatric/psychological treatment for a child
- Conduct psychiatric/behavioral health evaluation or mental health screening, test, evaluation, assessment of an individual child except where specifically required by IDEA
- Make a report of suspected child abuse only because a parent refuses to allow a psychiatric, psychological, behavioral treatment for a child UNLESS not doing so would "present serious, imminent risk to a child's safety or the safety of others.

School counselors and school psychologists MAY:

- Recommend, but not require, psychiatric/behavioral health evaluation or treatment of a child
- Recommend, but not require, psychological treatment of a child
- Conduct a child psychiatric/ behavioral health evaluation or mental health screening, test, evaluation, assessment consistent with 53A-13-302

- Provide to parents, upon specific request, a list of three or more health care professionals/providers

FERPA AND HIPAA

FERPA is the Family Education Rights and Privacy Act. The Ed.gov website states the following, “The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education *records*. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education” (italics added).

It is important to note that FERPA applies only to records. It is not a violation of FERPA to discuss specific students in a consultation relationship so long as records are not shared. The US Department of Education provides the following guidelines for “Education Records”:

- (a) The term means those records that are:
 - (1) Directly related to a student; and
 - (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.
- (b) The term does not include:
 - (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
 - (2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8.

HIPAA is the Health Insurance Portability and Accountability Act of 1996. It applies to health plans, health care providers and health care clearinghouses. HIPAA prescribes the conditions under which medical and psychiatric/psychological information can be shared. It states that without written permission health and mental health care professionals cannot provide any “individually identifiable health information”.

RECOMMENDATIONS FOR COLLABORATION BETWEEN SCHOOLS AND MENTAL HEALTH AGENCIES

1. Educate school staff and faculty about mental health and mental illness
 - Including prevalence rates and prognoses
2. Conduct class-wide mental/behavioral health screening (this can be done without parent permission as long as it is a class-wide screening)
3. Obtain parent permission to further evaluate students flagged for mental health concerns
4. Conduct further evaluations under the direction of school mental health personnel
5. Consult with mental health professionals regarding treatment options for students in need of mental health services
6. Allow mental health professionals to make recommendations to parents regarding treatment options

7. Have parents sign a release of information allowing school personnel and mental health personnel to communicate about pertinent aspects of a student's treatment and school performance