



**National Association  
of State Directors  
of Pupil Transportation Services**

## **Information Report**

### **Sharing Student Health and Medical Information with School Transporters Revised, October 2014**

**by Peggy A. Burns, Esq.**

#### **Background**

This Information Report is not intended to be an exhaustive discussion of student records disclosure and confidentiality provisions, since there are multiple situations in which school transporters require student information in order to safely and efficiently carry out their responsibilities. Rather, it focuses on communicating to school transporters and special education directors the necessity -- and legitimacy -- of disclosure of student health and medical information. Included in the category of “school transporters” are transportation administrators, drivers, and other appropriate school transportation staff members, as well as bus contractors hired by school districts and educational units to transport students to and from school and school activities. School transporters and special education directors are urged to seek legal advice regarding specific applications of this information.

It is critical that school transporters have relevant health and medical information about the students who ride their buses, and in some cases it is legally mandated. Even where there is not a statutory or regulatory mandate to provide this information to school transporters, any reasonable risk management analysis readily leads to the conclusion that the potential harm from failure to share this information far outweighs any risk that a school district or contractor could incur as a result of transporters having this information.

It has long been true that, with parental permission, school administrators can share student information – including health and medical information – with school bus personnel. But obtaining prior permission from parents can be difficult and time-consuming, and laws and regulations recognize that educators and service providers may sometimes need to have access to student information without parental permission.

Despite these facts, however, special education administrators and other school personnel are often reluctant to share student health and medical information with school transporters. Many are adamant about their “inability” to provide information about students’ conditions and needs which may impact travel on the school bus. The reason: misinformation about and/or misunderstanding of the law’s confidentiality requirements.

## Questions.

- Can school transporters legally receive health and medical information about students who ride their buses?
- What factors should be considered in determining whether transportation personnel, special education personnel, medical personnel and parents should collaborate to accomplish this sharing of information?
- What are the prerequisites to the sharing of student health information with school transporters?
- How can compliance with these prerequisites be achieved

## Discussion

### ***Application of relevant statutory and regulatory information.***

Several clear guiding principles emerge from an understanding of applicable law, especially the Regulations implementing Part B of the Individuals with Disabilities Education Act (hereafter, "IDEA"), and the Family Educational Rights and Privacy Act of 1974 (hereafter, "FERPA.")

### **Principle 1 -- Rationale for Disclosure**

School transportation professionals need operational information about the way in which a student's special needs impact the ride, and necessary accommodations and modifications that the transportation department must implement. Knowing a child's diagnosis or "label" isn't enough and, in fact, is of limited actual value. Instead, school transportation professionals need to know "the what" and "the how" of *this* child's disability-related transportation needs, 34 CFR 300.323(d).

Federal agencies have begun to recognize the strong rationale for disclosure of student information to pupil transportation professionals. In a document setting forth "Questions and Answers on Serving Children with Disabilities Eligible for Transportation" released on November 9, 2009, the Office of Special Education and Rehabilitative Services (OSERS) reiterated a statement by the Office of Special Education Programs (OSEP) in its August 22, 2003 *Memorandum to State Directors of Special Education* (<https://www2.ed.gov/policy/speced/guid/idea/letters/2003-3/leeds082203relsvcs3q2003.pdf>) recognizing that, "Transportation providers play an integral role in the school lives of many children, including children with disabilities." OSERS marked the "essential" need for "effective communication between school and transportation providers."

When transportation is provided as a related service to a special education student -- that is, because transportation is necessary for the child to access Individualized Education Program (IEP) services -- then transporters are related service providers. [See IDEA Regulations (hereafter "Regs"), Section 300.24.] Under such circumstances, the school district *must* provide necessary information to school transporters. That information includes setting forth the role of transportation personnel in meeting the unique needs of the child as identified in his/her IEP, and those "accommodations, modifications, and supports" identified in the child's IEP which relate in any way to the transportation environment. [See Regs., Section 300.342(b) (2) and (3).]

Furthermore, related services providers must receive information about relevant IEP changes when the changes are made without the direct involvement of those providers. Specifically, when an IEP has been revised – and there are times this can occur without an IEP meeting – the Analysis states that “it is important that the personnel responsible for implementing the revised IEP be notified and informed of the changes with respect to their particular responsibilities.” That means, for example, that if a behavior intervention plan is added to an IEP in response to behavior which a student displays both in the classroom and on the school bus, the child’s driver and attendant should be notified of any responsibilities under the plan.

While the IDEA Regulations impose a mandatory duty on school districts when transportation is a related service, FERPA gives broader permission to disclose information about a child under two situations:

- (1) when a parent consents to the disclosure; or
- (2) to “school officials” with a “legitimate educational interest” even when the district has not obtained such prior consent.

### ***Who is a school official with a legitimate educational interest?***

When FERPA was modified in 1996, a “Model Notification of Rights Under FERPA for Elementary and Secondary Institutions” was included in Appendix B. That Model Notification clearly demonstrates Congressional intent as to who might reasonably be entitled to receive student information:

**“A school official is a person employed by the District as an administrator, supervisor, instructor or support staff member. . .; a person serving on the School Board; a person or company with whom the District has contracted to perform a special task. . .”**

And, a school official has “a **legitimate educational interest** if the official needs to review an education record in order to fulfill his or her professional responsibility.”

It is clear that school transporters meet this standard when having and understanding student health and medical information is necessary to enable the safe and efficient transport of a student.

### **Principle 2 -- Publication of Criteria for Disclosure.**

Under FERPA, school districts and contractors must annually publish a notification to parents that includes the district’s criteria for disclosing student information to school officials without parental permission, 34 CFR 99.7. The Official Commentary to the FERPA regulations states, “At the discretion of a school [district], school officials may include school transportation officials (including bus drivers. . .” among those entitled to have information necessary to enable them to do their jobs, and, therefore, privy to student information without parental permission.

The 2006 Amendments to the IDEA regulations underscore the need for service providers who work directly with students with disabilities to have access to necessary information. Each related service provider must have access to the child’s IEP and be informed of his or her specific responsibilities related to implementing the IEP, and of the “specific accommodations, modifications, and supports that must be provided to the child in accordance with the IEP, 34 CFR 300.323(d). How this information is conveyed is left up to individual school districts.

These combined requirements are easily met by including in student/parent handbooks a statement like the

following suggested in Appendix B to FERPA:

“Federal law permits the school district to disclose personally identifiable information in the student’s education records to ‘school officials with legitimate educational interests.’ School officials include persons employed by the district as an administrator, supervisor, teacher, or support staff member (including but not limited to, . . . transportation personnel. . .); . . . a person, agency, or company with whom the District has contracted, or otherwise arranged to perform a special task or service. . . Such individuals have a legitimate educational interest if s/he needs to review an education record in order to fulfill his or her professional and/or official responsibility. A legitimate educational interest also exists where the staff member or other individual works directly with students and needs to review education records to increase his/her awareness of steps necessary for the safety and welfare of students and staff members.”

### **Principle 3 – Confidentiality.**

The IDEA Regulations recognize that confidentiality requirements apply to the provision of necessary student information to school district employees and school transportation contractors. These requirements do not prohibit disclosure, but merely impose on “agency or institution that collects, maintains or uses personally identifiable information, or from which information is obtained” the duty to protect the confidentiality of such information “at collection, storage, disclosure and destruction stages.” [See Regs., Sec. 300.572 (a).] This duty is further defined by the FERPA requirement that a school district share personally identifiable information from an education record only on the condition that the recipient of the information will not disclose the information to any other party without the prior consent of the parent or eligible student.

School bus companies must be under the “direct control” of the district regarding the use and maintenance of education records. This requirement may be fulfilled by including allocation of responsibilities and mutual understandings in the contract between the parties.

In addition, transportation departments and school bus companies must make reasonable efforts to protect the student information they receive, whether they use physical means, like keeping the information under lock; or administrative means, through the use of training and policies prohibiting all disclosure other than sharing with another school official who has a legitimate educational interest; or key technological means like providing it on computers only when password-protected. Protocols concerning student information security should be codified in a policy that is widely distributed, implemented, and monitored. The federal Privacy Technical Assistance Center (PTAC) has developed a body of best practice resources to help education stakeholders in this sometimes complicated arena. The PTAC “toolkit” includes case studies, webinars, checklists and other information related to (1) data sharing, (2) disclosure avoidance, (3) security best practices, (4) data governance, and (5) legal references. Please see: <http://ptac.ed.gov/toolkit>.

Since student information is, increasingly, stored electronically on in-house or cloud-based servers, more needs to be said about this evolving area of information maintenance. Consider requiring those who claim a need to access student information via technology to fill out a specific request form, indicating, among other details, the specific business reason for the need, and a statement as to why the information is not available in another way. When student information is stored or communicated electronically, current best practices and applicable policies for electronic information security should be followed. It is wise to employ or contract for the services of professionals with expertise in this area who can serve as resources and provide guidance or training to prevent and, if necessary, address, a security breach.

For additional information on keeping student information secure, see the PTAC website, <http://ptac.ed.gov/>.

#### **Principle 4 – Training.**

In order to receive student information which is otherwise confidential, school transporters must receive training -- like all other personnel who receive this information in the course of their job duties.

All related services personnel must be “trained,” and the Official Commentary to Section 300.24 of the Regs specifically includes “bus drivers” among such personnel. The Regs further state that “all persons collecting or using personally identifiable information must receive training or instruction regarding” limitations imposed by IDEA and FERPA and state policies and procedures which implement the disclosure and confidentiality provisions of these federal laws. [See Regs., Section 300. 572 (c).]

#### **The Bottom Line: Why Should School Districts Ensure That Pupil Transportation Officials Have Access to Student Information?**

##### ***Participation in IEP Meetings.***

As indicated above, the duty to inform is mandatory under IDEA Regulations when school transportation is provided as a related service. School transporters are essential participants in the decision which must be made as to whether transportation is a related service for a particular child. Section 300.344 of the Regs provides that a local education agency may include related services personnel as appropriate at the IEP meeting. Appendix A of the IDEA Regulations include many useful questions and answers.

- The answer to Question 30 states: “. . . [I]t is appropriate for [related services personnel] to be included if a particular related service is to be discussed as part of the IEP meeting.”
- The answer to Question 33 states: “In determining whether to include transportation in a child’s IEP and whether the child needs to receive transportation as a related service, it would be appropriate to have at the IEP meeting a person with expertise in that area.” That expertise will be most evident -- and most valuable -- when members of the IEP team have necessary information about the needs of the student.

In its *Letter to Smith* (July 12, 1995), and in a number of letters and opinions since then, the Office of Special Education Programs (OSEP) of the U.S. Department of Education stated that the IEP must include more than a “yes” or “no” to the question “Is transportation a related service?” Rather, it must include accommodation, modifications, and supports which must be provided for the child in accordance with his/her unique needs. Transporters are likely to be more aware of the availability of assistive technology devices applicable to transportation than anyone else on the IEP team, and certainly will have the responsibility to properly use such devices in response to the child’s needs. Health and medical information is essential to this end. OSEP has specifically noted in *Letter to Smith*: “In all instances, each student’s need for transportation as a related service and the type of transportation to be provided are issues to be discussed and decided during the evaluation process and individualized education program (IEP) meeting, and the transportation arrangements agreed upon should be included in the disabled student’s IEP.”

“Transportation arrangements” are obvious components of the information transporters must receive. But remember, Section 300.342(b)(3) of the Regulations implementing Part B of the IDEA mandates that each related service provider know what s/he must do specifically to implement the IDEA. Consequently, other information such as behavior intervention plans or assistive technology details must be shared with transporters to comply with this provision.

Finally, in order to determine necessary components of training for transporters, it is critical to share student health and medical information with driver trainers, and the occupational therapists, physical therapists, nurses and others who will work with them. How else can drivers and bus attendants be aware of proper responses to the unique medical needs of students?

### **Are There Risks to School Districts if Information is shared with Transporters?**

Generally, a single mistake by a school district or contractor will not amount to a violation of FERPA. However, the Family Compliance Office of the U.S. Department of Education, which investigates, processes and reviews complaints and violations under FERPA, may take steps regarding individuals who improperly disclose information from education records. Section 99.33 of the Regulations implementing FERPA provides:

“If this Office determines that a third party improperly re-discloses personally identifiable information from education records in violation of [FERPA], the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.”

The implications of this section are significant. Since a school district makes a commitment when sharing information with a bus driver that the driver will not inappropriately “re-disclose” the information to a third party, there can be strong sanctions if that condition is not met. Since a driver needs certain information in order to do his/her job, a restriction which prevents access to necessary information for at least five years means that the driver cannot do his or her job. That situation would most likely result in termination. Even absent federal agency determination of a breach of confidentiality, or a privately brought action based on invasion of privacy or inaccuracy of the information, a school district might well consider this a sufficiently serious rule violation to impose consequences up to and including termination.

A school district violates FERPA if it has a policy of denying access to records to parents, or it has a policy of wrongly disclosing information to third parties. A parent or student over the age of 18 may file a complaint giving specifics about why that person thinks a school district has violated FERPA. The complaint must be submitted within 180 days of the alleged violation or of the date that the complainant knew of or reasonably should have known of the alleged violation. Following an agency investigation in which it is determined that a violation has occurred; the Family Compliance Office may take a number of steps:

- It will give the school district a reasonable period of time to comply with specific steps set out by the Office; and
- If the school district does not comply within that period, the Office may withhold federal monies, and/or issue an order to compel compliance.

Before the extreme sanction of loss of eligibility for federal funds is applied, a school district must not only have a policy of violation, but also refuse to take steps to comply with FERPA within a reasonable period of

time. Therefore, the school district which shares necessary information with drivers risks little. That is especially true in comparison with the potential risks to the safety and welfare of the student if important information is not shared. On the other hand, the driver who does not take that responsibility seriously risks losing his or her job.

***What about the Health Insurance Portability and Accountability Act of 1996 (HIPAA; final Privacy Rule at 45 CFR 160 and 164)***

The relationship between HIPAA and FERPA has, apparently, been a source of confusion that has led well-meaning school administrators to refuse to share student medical and health information with school transportation professionals on grounds that such sharing would constitute a violation of HIPAA. But see the joint guidance document from the Department of Education and the Department of Health and Human Services (<http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>) first published in 2008, that helps to sort out the relationship between FERPA and HIPAA. An invaluable resource for educators and school transportation professionals, it includes an overview of FERPA, an overview of HIPAA, a discussion of places the two laws may intersect, and FAQ's. In general, the HIPAA Privacy Rule does not apply to an elementary or secondary school: they are typically not HIPAA covered entities. Rather, student health and medical records held by schools are subject to FERPA, as described above, and HIPAA in no way prevents disclosure of necessary information to school transporters.

**Conclusion**

School transporters can legally receive information about students' health and medical conditions when these conditions may impact transportation planning and implementation. Factors to be considered in setting conditions for such disclosure include: the determination of legitimate educational interest; compliance with FERPA requirements of notice; requiring confidentiality of the transporters to whom the information is disclosed, and, training. It is clear that once transporters are trained regarding the requirement of confidentiality, school district and medical personnel are well-advised to share this information.

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**BIOGRAPHICAL INFORMATION: PEGGY A. BURNS, ESQ.**

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**Peggy Burns** served as in-house legal counsel for a large suburban school district in Colorado for twenty years. She now consults full-time as the founder and president of Education Compliance Group, an organization committed to addressing compliance issues in education. A former high school English and forensics teacher, and licensed attorney for more than thirty years, Peggy has devoted the past twenty-seven years specifically to legal issues affecting public education.

Peggy is sought after as a presenter at state, regional, and national conferences, focusing most often on legal issues related to school transportation and special education. She works with school districts and

bus companies to avoid risk, solve problems, and enhance policy and training. Peggy serves as a Tenured Faculty Member for the National Board of Advisors of the National Conference and Exhibition on Transporting Students with Disabilities. She is editor of **Legal Routes**, and a frequent contributor to other industry publications. She demonstrates her commitment to the pupil transportation industry with her accessibility and willingness to support school transportation professionals everywhere.

Peggy is the author, with Lisa J. Hudson, of the book **Defensible Decisions about Transporting Students with Special Needs: Lessons Learned from Legal Disputes**. She is also the author of four training video programs for school bus drivers. Peggy is also the co-author of a Risk Management Manual for Utica National Insurance Company.