

Indicator #37: Are you using or helping to develop communication mechanisms to ensure that information is appropriately shared and that student and family confidentiality is protected?



# Background

- Students and their families have a right to expect that a student's personal information, except in a few special cases, will be kept confidential and that only information necessary to provide appropriate health and educational services will be shared.
- However, professionals working in schools often are required to balance the demands of parents' and teachers' requests for information with students' rights to privacy. In addition, they also need to consider the importance of providing coordinated and strategic treatment within the larger system of care.



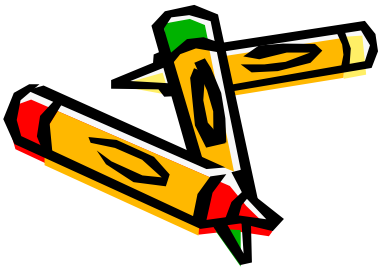
# Family and Educational Rights and Privacy Act (FERPA)

- FERPA requires schools that receive federal funding keep a student's education record confidential.
  - School professionals may share information internally if it is of "legitimate educational interest".
  - Parents have access to all of their child's school records.
  - Parents have the right to challenge those records.



# Health Insurance Portability and Accountability Act (HIPAA)

- HIPAA mandates confidentiality requirements of individually identifiable information.
  - HIPAA rules are more restrictive than FERPA.
  - HIPAA applies to ESMH programs if they are run by an entity other than the school.



# HIPAA Mandates

- Parents are the representatives of their children.
- Parents can access and control information about their minor children.
- Under certain state laws, minors can authorize services and are entitled to their privacy right.
- Privacy rights extend to all forms of communication (oral, written, electronic).
- Access to computers that contain personal information must be restricted.



# Exceptions to Confidentiality

- Information may be disclosed with appropriate consent.
- Information may be disclosed to the client.
- Disclosure to payers
- Disclosure to families of minor children
- Disclosure to protect safety of self and others



# Menu of Suggested Activities

- Make sure you know the federal and state legal guidelines pertaining to privacy and the ethical guidelines of your profession.
- Adapt your current program's policies and procedures to be more protective of student privacy.
- Ensure that your consent forms meet current standards and develop a release form to allow for the general exchange of relevant information with teachers, administrators, and other important school staff as needed.



# Menu of Suggested Activities

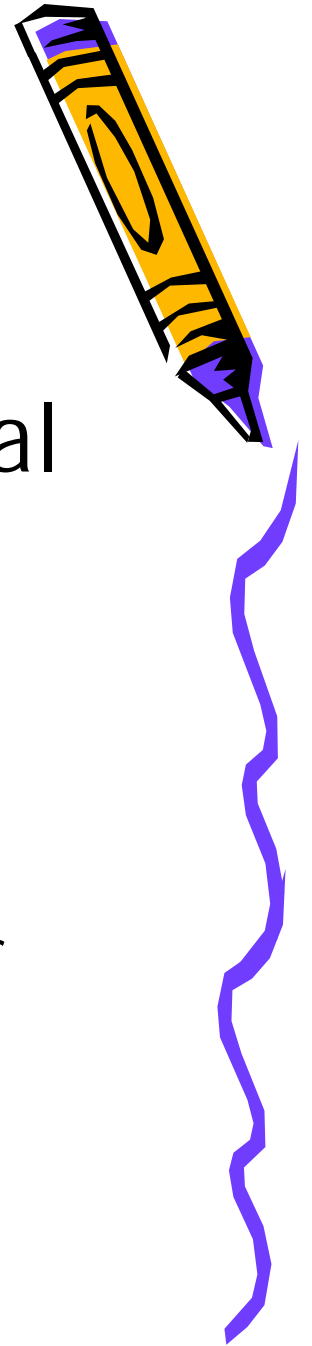
- Attend a training that focuses on ethics and legal issues.
- Discuss limits of confidentiality with the student and the student's family at the onset of services.
- Brainstorm as a group about how to better protect confidentiality within your program. Consider how to find the balance between being a team player with school hired colleagues and protecting a family's privacy.





# HELPFUL HINTS

- Make sure you know the federal and state legal guidelines pertaining to privacy
  - Review FERPA guidelines.
  - Review HIPAA guidelines.
  - Check for other guidelines from your state legislature.



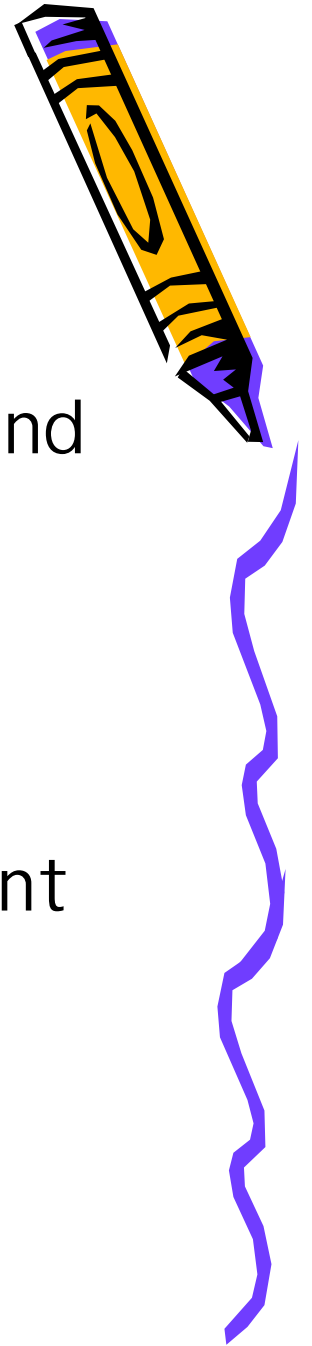
# HELPFUL HINTS

- Know the ethical guidelines of your profession.
  - Check with your national organization and licensing board and make sure you have and understand the most recent guidelines.



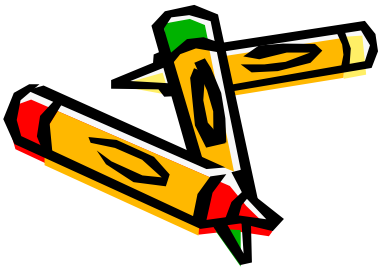
# HELPFUL HINTS

- Adapt your current program's policies and procedures to be more protective of student's privacy.
  - Are all computers secure?
  - Are all files kept locked?
  - Have all staff been trained on relevant policies and procedures related to student privacy?



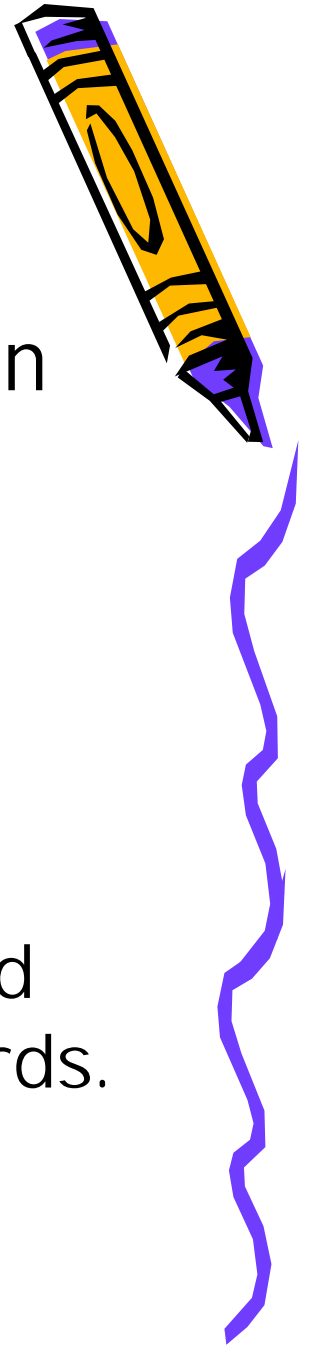
# HELPFUL HINTS

- Ensure that your consent forms meet current standards.
  - Develop and use written guidelines for sharing confidential information with third parties.
  - Maintain a log of when and with whom confidential information was shared (e.g., protective services, juvenile justice).



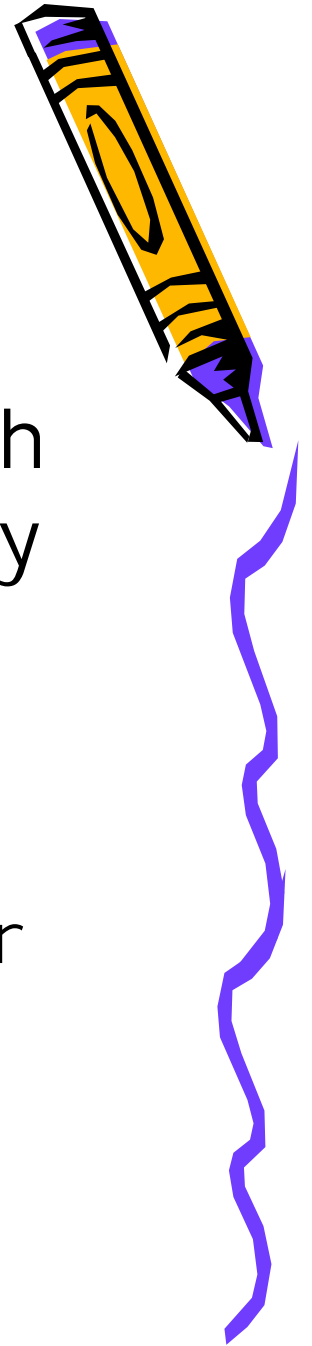
# HELPFUL HINTS

- Attend a training that focuses on ethics and legal issues.
  - Attend a workshop or conference that specifically considers factors related to working in schools.
  - Take a web-based course.
  - Make sure all staff are well trained and are following the same standards.



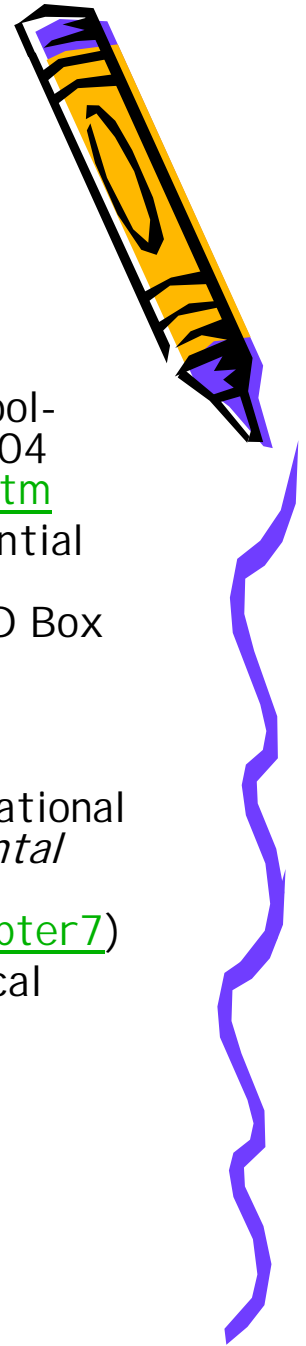
# HELPFUL HINTS

- Discuss limits of confidentiality with the student and the student's family at the onset of services.
  - Distribute script to clinicians.
  - Include discussion of limits of confidentiality in procedure manual for first visit.



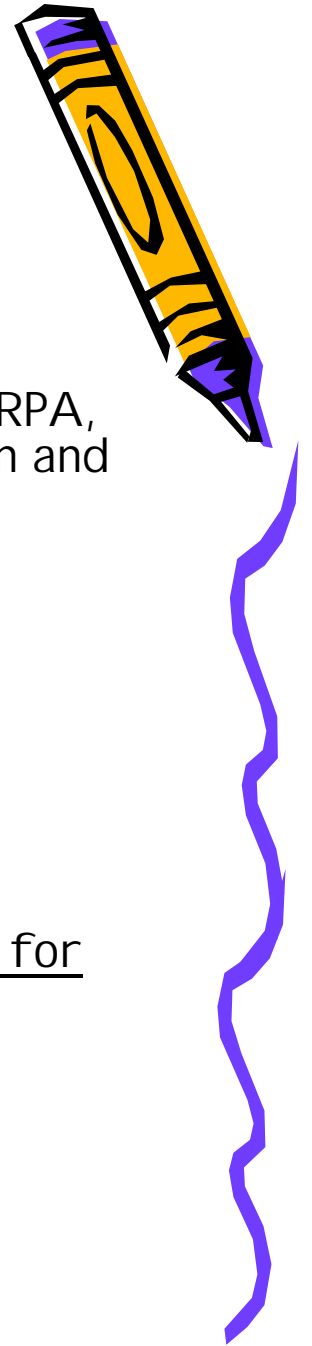
# Web Resources

- Advocates for Youth (1998). Legal issues and school-based and school-linked health centers: Commonly asked questions. Retrieved May, 2004 from <http://www.advocatesforyouth.org/publications/iag/sbhcslhc.htm>
- American School Health Association, National Task Force on Confidential Student Health Information, *Guidelines for Protecting Confidential Student Health Information*. (2000) ASHA 7263 State Route 43/PO Box 708 Kent, OH 44240.
- The Center for Health and Health Care in Schools (<http://www.gwis.circ.gwu.edu/~mtg>)
- Center for Mental Health Services, National Institutes of Health, National Institute of Mental Health, 1999. *Chapter 7: Confidentiality of Mental Health Information: Ethical, Legal, and Policy Issues*. (<http://www.surgeongeneral.gov/library/mentalhealth/toc.html#chapter7>)
- Center for School Mental Health Analysis and Action, Legal and ethical issues in the practice of school mental health. (<http://csmha.umaryland.edu/cim.html>)



# Web Resources

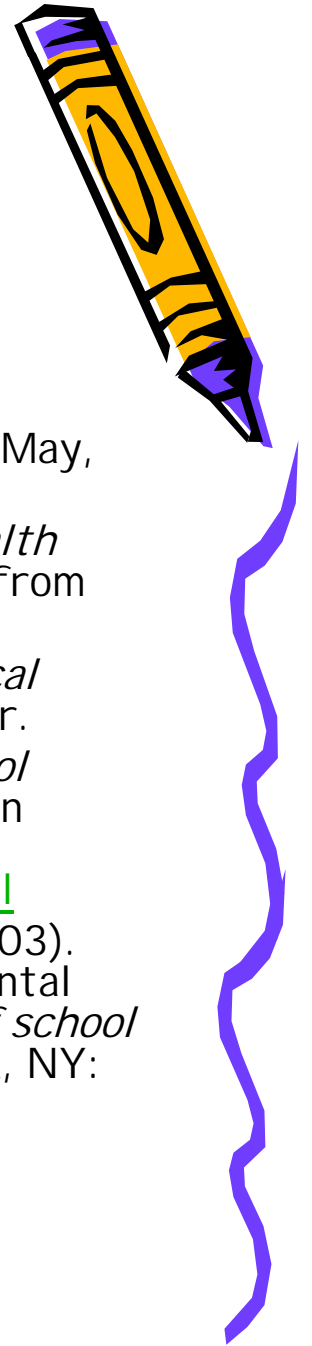
- National Assembly of School-Based Health Care, HIPAA, FERPA, IDEA AND SBHCs: The Alphabet Soup of Health Information and Privacy Protection.  
([http://www.nasbhc.org/TAT/About\\_HIPAA.htm](http://www.nasbhc.org/TAT/About_HIPAA.htm))
- Center for Mental Health in Schools, Introductory Packet on Confidentiality and Informed Consent.  
(<http://www.smhp.psych.ucla.edu/qf/confid.htm>)
- US Department of Education. Family Educational Rights and Privacy Act (FERPA)  
(<http://www.ed.gov/policy/gen/guid/fpc/ferpa/index.htm>)
- US Department of Health and Human Services, Fact sheet: Administrative simplification under HIPPA: National standards for transactions, privacy, and security.  
(<http://www.os.dhhs.gov/news/press/2002pres/hipaa.html>)





# Background References

- Center for Health and Healthcare in Schools (2002). *Safeguarding individual health privacy: A review of HIPAA Regulations*. Retrieved May, 2004 from <http://www.healthinschools.org/focus/2002/no4.htm>.
- Center for Health and Healthcare in Schools (2003). *The other health privacy law: What FERPA requires of schools*. Retrieved May, 2004 from <http://www.healthinschools.org/focus/2002/no4.htm>.
- Center for School Mental Health Assistance (1998). *Legal and ethical issues in the practice of school mental health*. Baltimore, MD: Author.
- Huey, W. C. & Remley, T. P. (1990). *Ethical and Legal Issues in School Counseling. Highlights: An ERIC/CAPS Digest*. ERIC Clearinghouse on Counseling and Personnel Services Ann Arbor MI. [http://www.ericfacility.net/databases/ERIC\\_Digests/ed315709.html](http://www.ericfacility.net/databases/ERIC_Digests/ed315709.html)
- Prodent, C.A., Sander, M.A., Grabill, C., Rubin, M., & Schwab, N. (2003). Addressing unique ethical and legal challenges in expanded school mental health. In M.D. Weist, S.W. Evans, & N.A. Lever (Eds.), *Handbook of school mental health programs: Advancing practice and research*. New York, NY: Kluwer Academic/Plenum Publishers.



# Background References

- Remley, T., Herman, M., & Huey, W.C. (2002). *Ethical and legal issues in school counseling (2nd Ed.)*. Alexandria, VA: American School Counselor Association.
- Taylor, L. & Adelman, H. S. (1998) Confidentiality: Competing principles, inevitable dilemmas. *Journal of Educational & Psychological Consultation*, 3, 267-275.
- U.S. Department of Health and Human Services. *Mental Health: A Report of the Surgeon General - Executive Summary*. Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration,
- Weist, M. D., Sander, M. A., Axelrod Lowie, J., & Christodulu, K. V. (2002). The expanded school mental health framework. *Childhood Education*, 269-273.

