



PRIVACY AND COMPLIANCE IN SCHOOL-BASED BEHAVIORAL HEALTH SERVICES:

Navigating FERPA, HIPAA, and Nevada Law

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EXECUTIVE SUMMARY

In March 2025, the Guinn Center published a study titled [School-Based Behavioral Health Services: An Analysis of Policies, Practices, and Funding Strategies to Enhance Implementation in Nevada](#). While interviewing Nevada stakeholders, the research team found that the confidentiality requirements in two key federal laws are causing significant concern and confusion among school staff, parents, and community health providers. Furthermore, those concerns seem to inhibit the full development of school-based behavioral health (SBBH) services.



The two federal laws causing concern are the Federal Education Rights and Privacy Act, commonly referred to as FERPA, and the Health Insurance Portability and Accountability Act, commonly referred to as HIPAA. This brief explores the nexus between FERPA and HIPAA, as it arises in the context of SBBH records.



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KEY FINDINGS

- Personally Identifiable Information (PII) contained in educational records, maintained by an educational institution or a person acting on its behalf, is deemed confidential and subject to FERPA disclosure laws.
- Protected Health Information (PHI) transmitted by a covered health provider is protected and subject to HIPAA disclosure laws.
- The determination of whether HIPAA or FERPA prevails over SBBH records, where both educational records and health records coexist, is situation-dependent. Important considerations in making this determination include:
 - Where did the records originate?
 - Who maintains the records?
 - Who is seeking to obtain the records, and under what circumstances?
- When records are confidential under FERPA or HIPAA, disclosure may occur where proper consent is given.

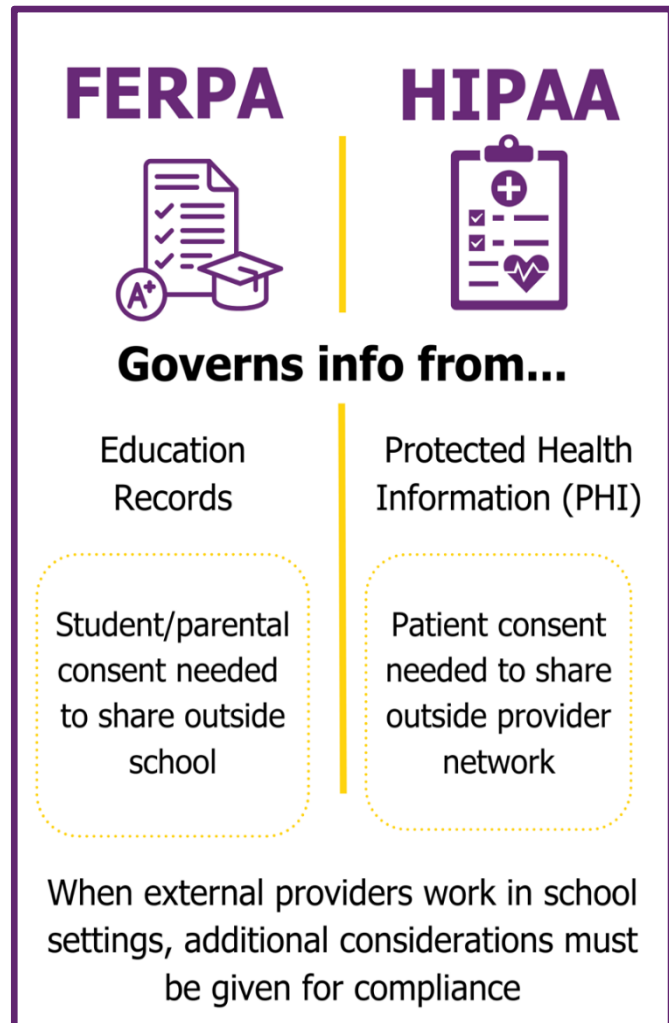
INTRODUCTION

Congress enacted the Federal Education Rights and Privacy Act (FERPA) in 1974. It provides specific rights to parents regarding the privacy of their children's education records. The law also gives rights to students aged 18 years or older, allowing them to access and request corrections to their records and to control who can access their information. Moreover, FERPA applies to all educational agencies and institutions receiving U.S. Department of Education funding, including higher education institutions. In Nevada, state law further applies FERPA to all public schools, regardless of federal funding.

Enacted by Congress in 1996, the Health Insurance Portability and Accountability Act (HIPAA) protects the privacy and security of health information. While it mainly regulates covered entities such as healthcare providers, health plans, and clearinghouses, HIPAA also applies to associated professionals and businesses who work with covered entities and handle protected health information (PHI). The law applies to all healthcare-related entities, including those providing services in school settings. The privacy rule in HIPAA governs the use and disclosure of PHI, while the security rule ensures that electronic PHI (ePHI) is safeguarded through appropriate administrative, physical, and technical measures.

The protections provided by these laws are linked to their distinct systems—FERPA to the education system and HIPAA to the medical system. However, the advent of SBBH services has caused the intersection of these laws in a single setting and resulted in policy paralysis in some instances. Additionally, Nevada has state-level privacy laws to complicate matters further. This brief explores the related issues and offers state policymakers some perspective—though not legal advice—on navigating the complex privacy compliance landscape.

Figure 1: FERPA and HIPAA Regulation



PRIVACY PROTECTION LAWS

Key Provisions

Personally Identifiable Information (PII) is defined in FERPA as any information that could be used to ascertain a student's identity, either directly or indirectly. This includes direct identifiers, like a name or identification number, and other data that could be combined to identify a student, like their birth date and classroom details. If a recipient of information knows a student's identity, all information in that student's record is protected. The law grants parents, guardians, and adult students the right to inspect and review educational records, request corrections, and control the disclosure of personal information.

Schools may only release information without consent in certain limited circumstances. These circumstances include releasing information to school officials with a legitimate educational interest, to other schools where the student intends to enroll, and during certain health or safety emergencies. Schools may also release information for the purpose of providing directory information, but a parent must be given the opportunity to opt out of having the student's information published in such a directory. Once students reach the age of 18, they become responsible for their records in their entirety.

FERPA Applicability in SBBH

Under FERPA, covered education records contain information directly related to a student and are maintained by an educational institution or a person acting on its behalf. In the context of SBBH services, FERPA would cover:

- Behavioral health records maintained by school counselors, psychologists, or other school-employed professionals, including but not limited to:
 - A primary diagnosis, testing results including a risk assessment, treatment goals and plans, a brief session summary, and start/end times for services.
- Reports on and assessments of student behavior or mental health that are part of their education records, including but not limited to:
 - A school's intervention plan for a student at risk of truancy, which includes behavioral health interventions; or
 - A record of a student's participation in a social-emotional learning program offered by the school.
- Referrals made by school staff for external services (though this can intersect with HIPAA if the external service is healthcare-related).

HIPAA

Key Provisions

Protected Health Information is defined by HIPAA as any health information linked to an individual, including their medical histories, treatment information, billing and payment records, or notes related to their diagnosis, treatment, and health status. Any healthcare provider who transmits PHI electronically in connection with a HIPAA-covered transaction, such as a therapist or social worker, is bound by HIPAA's privacy and security requirements.

Healthcare providers can only disclose PHI with the written consent of the patient or their legal guardian. Disclosures can only be made to other providers for treatment, payment, healthcare operations, or public health purposes, such as reporting communicable diseases.

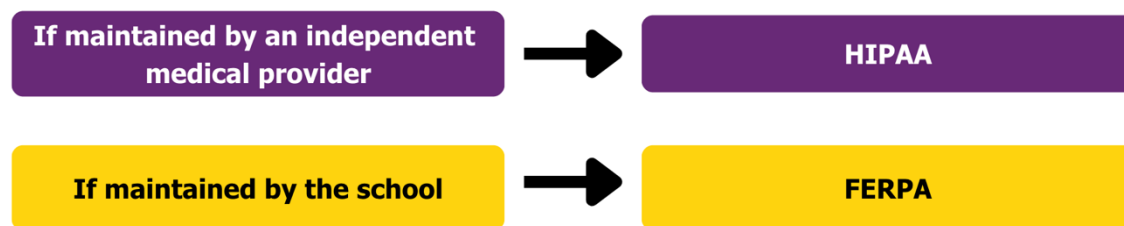
HIPAA Applicability in SBBH

In the delivery of SBBH services, HIPAA applies to healthcare records maintained by a non-school healthcare provider, such as a community mental health professional, who delivers services to students in a school setting. These professionals must follow HIPAA's strict privacy rules when handling PHI. The law protects any documentation a covered provider creates regarding diagnosis, treatment plans, and progress notes. Providers must use HIPAA-compliant systems for maintaining and transmitting PHI, and schools working with external healthcare providers may share PHI via these systems when proper consent is obtained.

Examples of HIPAA-covered records in SBBH include:

- The summary notes of a therapist not employed by a school regarding a student's diagnosis, treatment plan, and progress in counseling sessions;
- A referral to a community mental health center, including the student's behavioral health history, diagnosis, and treatment details; or
- Billing information from external service providers related to health services rendered at school.

It is important to note that a practitioner's detailed notes during a session are protected under a stricter level of confidentiality than FERPA or HIPAA.



NEVADA LAW

The Nevada Legislature has also enacted laws on the privacy of educational and medical records. These laws do not appear to be a significant complicating factor in providing SBBH services, but they must also be considered when planning a process for records management and sharing.

Education Privacy	Health Privacy
• Nevada Revised Statutes (NRS) 392.029 incorporates FERPA into state law and broadens its application to all Nevada public schools, whether or not they receive federal funding. • Nevada Administrative Code 392.350 requires school districts to protect the confidentiality of personally identifiable information (PII) in student records. Districts and schools must take specific measures, including appointing a single individual responsible for managing confidentiality, training staff who collect or use PII about privacy, maintaining a list of employees with access to records, and informing parents and guardians when their student's PII is no longer needed.	• Nevada law, in NRS 629.061, addresses confidential health care records, outlines circumstances under which they can be shared, and details procedures for protecting the records during disclosure. It also protects patient confidentiality if a public hearing becomes necessary and grants immunity from civil lawsuits when disclosures are made according to the statute. • Pursuant to NRS 439.590, PHI cannot be disclosed to a parent or guardian without first obtaining the consent of a minor patient, if the health information concerns services received by a minor based on minor consent.

COMPLIANCE CONSIDERATIONS

In practice, a record containing student information in a school's possession is usually governed by FERPA or HIPAA, but not both. It is helpful that the HIPAA privacy rule specifically excludes from its coverage records protected by FERPA. However, delivering school-based health services, especially by outside professionals, often involves navigating the overlap and friction between these laws. In 2019, the U.S. Departments of Education and Health and Human Services issued a [joint guidance document](#) to help schools wrestling with the intersection of FERPA and HIPAA related to student health records (U.S. Departments of Education and Health, 2019).

Would HIPAA or FERPA apply?

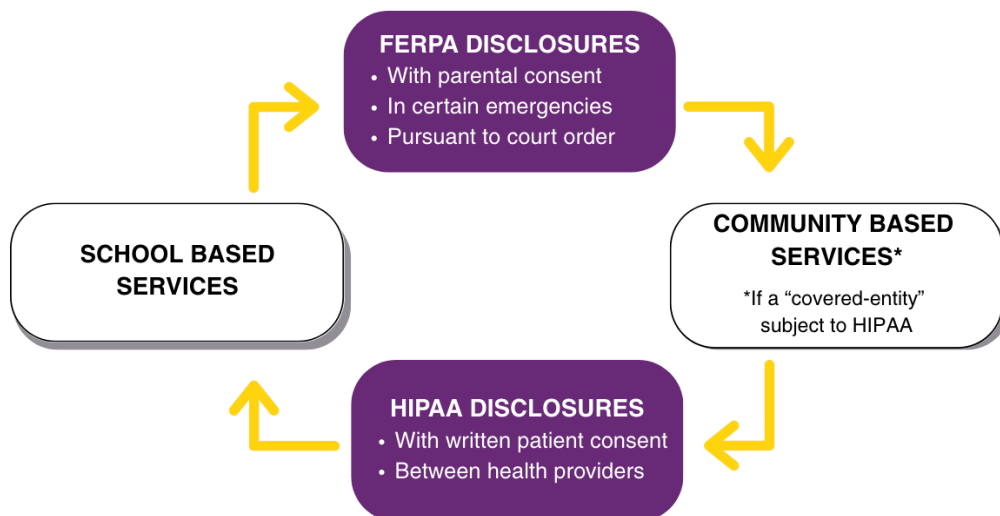
- A student receives counseling services from a licensed mental health professional contracted by the school. These sessions take place at the school.
- A teacher trained in social-emotional learning conducts a group counseling session with several students involved in a bullying incident. The teacher takes notes on what was discussed and shares a summary with the school counselor and principal.
- A student has a panic attack at school. Emergency responders treat the student and transport them to the hospital. School officials follow up with the hospital to gather health details to support the student's return.

In deciding which law applies when SBBH services are provided, the determining factor is typically who maintains the record and in what capacity. For example, if a health or counseling record is maintained by a school or someone acting on behalf of the school—such as a school nurse, counselor, or a contracted mental health provider under the school’s direct control—that record is an education record under FERPA, even if it contains health information.

If a non-school entity, that is not acting on behalf of or controlled by the school, provides services to students and keeps its own records, those records are not education records under FERPA. For example, suppose a community mental health clinic or public health department clinician visits a campus to treat students but is not under contract or direct control of the school. In that case, the records they create are not FERPA records. They are the health records of an external provider, and assuming the provider bills electronically or otherwise meets HIPAA’s criteria, they would be protected as PHI. (Office for Civil Rights, 2015)

Though not common in K-12 education, it is possible for an entity to be subject to both laws in different capacities. For example, if a public high school employs a healthcare provider and bills Medicaid electronically for services required for a student with disabilities, the school would be considered a HIPAA-covered entity. The district must comply with HIPAA transactions, code sets, and identifier rules concerning the related billing. However, because most school districts maintain a student’s health information in an “education record” covered by FERPA, HIPAA’s privacy rule would exclude such information from HIPAA’s coverage (Dinsmore & Shohl LLP, 2011). In practice, most elementary and secondary schools are not HIPAA-covered entities; if they are, they fall under HIPAA’s FERPA exclusion for their records. Figure 2 shows the progression of how disclosures are handled when SBBH services involve both school-based and community-based providers.

Figure 2: FERPA and HIPAA Disclosures Under School and Community-Based Services



Specific SBBH Considerations

Even though a given health or student record almost always falls under the governance of one law or the other, school-based behavioral health programs often involve collaboration between FERPA-governed entities (schools) and HIPAA-governed entities (medical providers). If one of these entities needs protected information possessed by the other, risks of illegal disclosure arise. Two potential areas of conflict or confusion are minor consent rights and information sharing rules.

Minor Consent Rights

Some states, including Nevada, have laws that give minors the right to seek or receive certain health services independently under specific circumstances. For example:

- [Nevada Revised Statutes 129.050](#) permits the authorization of substance use treatment;
- Nevada law, in [NRS 129.060](#), allows for the examination and treatment of sexually transmitted diseases; and
- [Nevada Revised Statutes 129.080](#) allows a minor to petition a juvenile court for a decree of emancipation under certain circumstances.

These state-level student consent rights can intersect with the rights of parents and guardians in federal law. Under FERPA, parents and guardians have robust rights to access and give consent for the release of their minor child's education records. Unlike Nevada's minor consent laws, FERPA does not provide an exception for minors to assert their privacy rights for sensitive services offered by the school. Any information maintained by the school is accessible to a parent or guardian, despite any privacy granted by Nevada's minor consent laws. In short, FERPA generally gives parents and guardians the final say over a minor student's records. (The Network for Public Health Law, 2020).

In contrast, HIPAA has more nuanced rules regarding the privacy rights of minors. Under HIPAA, parents are generally considered the personal representatives for their children. This means a parent can access a child's medical records and consent to disclosures, except in certain situations. However, HIPAA defers to Nevada's minor consent laws when a student seeks healthcare services without parental knowledge. So, it is possible a parent may not have access to such a record unless it is granted under state law or authorized by the child (FERPA, 1974).

These differences between FERPA and HIPAA have significant implications. For example, if a 16-year-old receives counseling from a school-employed social worker, their parent can ask to see the counselor's notes, which are FERPA records. If that same student visits a community clinician covered by HIPAA, their parent would not automatically be given access to the records, if the student sought services under the circumstances outlined in Chapter 129 of the NRS. Service providers operating under FERPA must not mislead students about confidentiality; if the provider is subject to FERPA, they cannot guarantee a minor's confidentiality will not be disclosed to the minor's parents (The Network for Public Health Law, 2020).

Scenario	Law Governing	Who has access?
School counselor record	FERPA	Parent
Community provider (w/minor consent)	HIPAA + NV Law	Possibly only student

INFORMATION SHARING RULES

WITHIN THE SCHOOL

A student's records, including health information in those records, can be shared among school personnel without parental consent if there is a legitimate educational interest in sharing the information. This means a school nurse or counselor can disclose information from a student's record to teachers, principals, or other school officials if they need it to perform their professional duties. This "school official" exception in FERPA can even extend to outside contractors performing institutional services for a school. For example, a school could designate a contracted therapist in an on-campus clinic as a school official in its FERPA policy. This would permit sharing student information with that therapist as if the therapist were school staff, so long as they are under the school's direct control and the information is used for educational purposes (Under What Conditions Is Prior Consent Not Required to Disclose Information, 2011).

Generally, when education records are shared with outside providers, consent is necessary.

FROM THE HEALTHCARE SETTING TO THE SCHOOL

Disclosures of personal health information to non-healthcare personnel tend to be restricted by HIPAA. For example, a community-based doctor or therapist operating under HIPAA cannot freely share PHI with school personnel who are not also healthcare providers. A school teacher or principal is not part of the patient's healthcare team, so a HIPAA-covered provider typically needs a signed authorization to disclose health information to them. However, HIPAA allows information sharing between health providers for treatment purposes, without patient authorization (Definitions, 2013). For example, a child's pediatrician can communicate with a psychiatrist or a school nurse about the child's medical needs under the HIPAA treatment exception. In a school context, an outside counselor could confer with the school nurse or a school-employed psychologist to coordinate treatment without written consent, a helpful allowance for care coordination. However, any PHI shared by the outside provider would, once received by the school health provider, become part of an education record under FERPA—and accessible by parents.

Conversely, a HIPAA-covered provider wanting to inform the school about a student, such as to confirm their attendance at a therapy session or to share recommended intervention strategies, will typically need a student's or parent's authorization. This is because the school is not a HIPAA-covered entity. Thus, information sharing from outside health providers to schools is allowed when directed to a school's health professionals for treatment. Still, authorization is required if directed to other school officials or for any other purpose (U.S. Departments of Education and Health, 2019).

FROM THE SCHOOL TO THE HEALTHCARE SETTING

If a school wants to share information with a community-based health provider, FERPA usually requires parental consent because the outside entity is not a school official. Some exceptions, such as an emergency or a court order, could permit sharing without consent. Thus, schools must obtain a FERPA-compliant authorization before sharing information with a student's community-based health professional (U.S. Departments of Education and Health, 2019).

Generally, within the school, records are treated as education records, and therefore FERPA applies.

COMPLIANCE STRATEGIES

Given the various compliance considerations and complicating factors detailed above, what strategies might a district or school consider to maximize the value of its SBBH services while ensuring compliance with FERPA, HIPAA, and state privacy laws? The following are approaches for a district or school to consider, with the input of legal counsel, while also considering the specific circumstances of the school and its students and the services to be provided.

Option 1: Keep SBBH services and school activities as administratively separate functions that do not share records

Under this arrangement, the SBBH providers would all be independent and not under the school's direction or control. Neither the school nor the providers would share any student information with the other. This option locates behavioral health services in the school, with communication between the school and health providers focused on general coordination but not related to individual students. Choosing this option allows health professionals and school staff to continue operating as they always have regarding records privacy and disclosure.

This approach presents a complication in that, by not communicating with one another about individual students, health professionals and school staff will not fully realize the benefits of coordinating their efforts to help specific students. They will also need to manage all information

gathering directly with each family. This is more of an administrative burden, but would be supportive of straightforward legal compliance.

Option 2: Deliver all SBBH services under the auspices and control of the school

This arrangement would require all behavioral health providers to be employed by, under contract with, or otherwise acting on behalf of the school. This may not be practical for many schools, particularly if service costs are paid by a student's health insurance plan, which would require providers to bill insurance. However, a school may offer a limited scope of SBBH services that operate exclusively with school funding and direction. It is also conceivable that a special school of some type—perhaps one that is isolated geographically, provides boarding for its students, or serves a very targeted demographic—may find this structure workable and beneficial.

The administrative benefit of this structure is that all SBBH records would be student records under FERPA, and information sharing would be relatively seamless, subject to FERPA's "legitimate educational interest" sharing limitations.

Option 3: Adopt a hybrid approach with the school and outside SBBH providers working in coordination

This seems to be the most beneficial arrangement from the perspective of simply delivering SBBH services on a school campus. Unlike option 1, it enables coordination between the school and providers to optimize the benefits and impacts of SBBH services. Unlike option 2, it allows a school to quickly ramp services up or down, depending on the need, by inviting private or government providers to serve students on campus.

The complicating factor with this arrangement is the complexity of information sharing. To take full advantage of the benefits of SBBH, the providers and the school will need to communicate and coordinate, and, in the process, share confidential student information. If every family provided blanket consent to share information, coordination and communication would be relatively simple because it would be standardized across the school. However, it is unlikely that every family would provide consent or have the same level of consent. Thus, it is conceivable that a teacher and provider may be able to speak freely and comprehensively about student A, on a limited basis about student B, and not at all about student C. Navigating this would be challenging, and any mistakes in disclosure could have legal consequences.

Thus, option three would require involvement of legal counsel, a carefully designed consent process, detailed procedures for day-to-day compliance, robust staff training, and regular compliance audits. If such a system exists, it would be helpful to have a software system or application to filter all communication and information sharing.

STATE MODELS

The intersection of competing privacy laws in SBBH services has led many states to explore the challenges and develop solutions for providing effective services that comply with confidentiality requirements. Below are examples of states that have found effective measures to address the legal challenges.

- The California School Health Centers Association has created a [resource guide](#) for navigating the complex interactions of HIPAA and FERPA in California's school health programs. Particularly helpful, the guide includes templates for information-sharing consent forms that schools and providers can use to deliver compliant SBBH services. This guidance contains California state law, so portions are not directly adaptable in other states.
- New York has an extensive network of school-based health centers (SBHCs), often operated by hospitals or community health organizations. Many of these SBHCs use a one-time [universal consent form](#) covering treatment authorization and information sharing with the school; it also meets FERPA and HIPAA standards. The New York model provides clear lines of separation between the school and providers while enabling effective coordination.
- In response to mental health providers who were hesitant to share information with schools due to confidentiality laws, Indiana enacted a [state law](#) allowing mental health professionals to disclose certain health information to a school principal or leader with parental authorization. In turn, the law obligates the school official to keep the information confidential. This has helped smooth coordination for Indiana's school-based mental health referral programs by giving providers confidence that sharing under these conditions is permitted by state law. Indiana's approach shows how state law can support and reinforce federal law and provide clarity to providers and school officials.
- Michigan created the [Caring for Students](#) program in 2019 to increase school access to behavioral health services by leveraging Medicaid funding. As part of this program, the state's Medicaid agency and Department of Education have an interagency agreement to share data for program oversight and coordination, while adhering to FERPA and HIPAA. Michigan developed a consent form that doubles as a Medicaid billing authorization and an educational record release, so that schools can transmit necessary student information to the Medicaid agency or billing vendor without violating FERPA.

PLANNING TOOLS

The following information sources may be helpful to Nevada's policymakers and school leaders in planning for the provision of SBBH services.

- On behalf of the State of California, the National Center for Youth Law created a [report](#) titled "HIPAA or FERPA? A Primer on Sharing School Health Information in California." It offers a more in-depth look than this brief at the interplay between FERPA and HIPAA.
- The National Center for Education Statistics has created a comprehensive [data-sharing toolkit](#) focusing on the FERPA perspective.

- Similarly, the U.S. Department of Health and Human Services offers a [HIPAA for Professionals](#) website with more detailed and technical resources.
- The California School-Based Health Alliance has created a [frequently asked questions guide](#) for school behavioral health providers. A similar guide could be helpful in Nevada.
- Finally, Nevada itself has created a comprehensive and helpful guide for the planning and implementation of school-based health centers. For purposes of this brief, the [Nevada toolkit](#) is broadly focused on a continuum of health services, not just behavioral health. It does not comprehensively address the FERPA-HIPAA intersection and its many challenges. However, it is an excellent resource for all school-based health planners.

CONCLUSION

The effective delivery of school-based behavioral health services hinges on the availability of providers and resources and a transparent, well-managed approach to privacy compliance. The intersection of FERPA, HIPAA, and Nevada-specific privacy laws presents challenges for schools seeking to support student well-being. Still, these challenges can be addressed through strategies tailored to each school or district. While the distinctions between educational and health records are well-defined in law, their practical application in SBBH services requires careful planning.

Policymakers and education leaders must balance legal compliance with the imperative to provide coordinated, accessible, and confidential care to students. Regardless of the administrative model chosen, success depends on transparent policies, thoughtful consent practices, and strong partnerships among schools, providers, and families. By embracing and addressing this legal complexity, Nevada schools can build SBBH systems that protect student privacy while promoting student health.

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