



## Privacy of Substance Use Disorder Treatment Records for Minor Students in School-Based Part 2 Programs

### WHAT YOU NEED TO KNOW

Many minor students receive substance use disorder (SUD) treatment and services at school and at community-based providers through school referrals. This requires communication between students, schools, providers, and families. Multiple federal and state privacy laws may apply to students' SUD information, including the Family Educational Rights and Privacy Act (FERPA).<sup>1</sup> Some school-based SUD treatment programs are also subject to the federal law and regulations for substance use disorder treatment records. Referred to collectively as "Part 2," 42 USC § 290dd-2 and 42 CFR Part 2 protect the privacy and security of records created by certain federally assisted programs for SUD treatment.<sup>2</sup> School-based SUD treatment providers subject to both FERPA and Part 2 should understand how both laws impact the confidentiality of minor students' SUD treatment records.

This resource describes the key privacy considerations for minor students' SUD treatment records when receiving services from a school-based program covered by Part 2.

**For more information about the Part 2 privacy protections in school-based treatment settings, [see this webinar on school-based Part 2 programs.](#)**

## A CLOSER LOOK:

### KEY POINT 1

A school-based Part 2 program must obtain the minor's written consent to disclose SUD treatment records to third parties, including parents, school officials, and insurance companies.<sup>3</sup>

Part 2 places patients at the center of the decision to authorize disclosure to others, even when the patient is a minor.<sup>4</sup> Parents and legal guardians do not have a right to access Part 2 records unless the minor patient has signed a written consent form authorizing the disclosure to the parent.<sup>5</sup>

A *minor*, as used in the Part 2 regulations, means an individual who has not reached the age of majority under the applicable state law.<sup>6</sup> If the state law does not specify the age of majority, then a minor is an individual who has not reached the age of 18 years.

Whether a parent or legal guardian's signature is required on a Part 2 consent form depends on whether state law required parent or legal guardian consent for the minor to receive treatment ("consent to treat"). If the minor consented to their own treatment, then no parent or guardian signature is required on the Part 2 consent form. But if a parent or guardian's consent was required to enter treatment, then you will also need the parent or guardian signature on the Part 2 consent forms.

### EXAMPLE

Principal Petey called Cindy Counselor about a student's attendance records in the school-based Part 2 program. Cindy may share this information with the principal only if the minor had provided written consent (and parental consent if required by state law) authorizing the program to share attendance information with the principal.

### PRACTICE TIP

School-based Part 2 programs frequently ask all students to sign an initial consent form authorizing minimum disclosures to school administration so that the program can share basic information about the students' attendance and whereabouts.

There are some exceptions to this general rule that permit Part 2 programs to disclose records without the patient's written consent. Two exceptions that commonly come up when providing services to minors include mandated reports of child abuse and neglect (#2) and certain disclosures about minor *applicants* when there is a substantial threat to someone's life or physical well-being (#3).

### KEY POINT 2

When a school-based Part 2 program has a duty under state law to report alleged child abuse or neglect, Part 2 records can be shared without obtaining the minor's written consent.

Part 2 permits a mandated reporter to share protected information in order to comply with a state's mandated reporting law for child abuse or neglect.<sup>8</sup>

Disclosure should be as narrow as possible to protect the minor’s privacy and should not include SUD treatment information unless it is relevant to the report. Further, Part 2 only allows disclosures under this exception when the counselor makes the initial report of abuse or neglect. Any subsequent disclosures of Part 2 records must be authorized with written patient consent.

## EXAMPLE

After several weeks of treatment for alcohol use disorder in her school’s on-campus SUD clinic, Susie Student (16 years old) confides in Cindy Counselor about her home life. Susie tells Cindy that her mother regularly screams obscenities at her, calls her worthless, and on occasion hits her. Cindy is a mandated reporter and makes a call to Child Protective Services (CPS). She only tells CPS that she works as a “counselor” at Susie’s school and learned the information after Susie told her – she does not share any information about Susie’s alcohol use disorder or treatment.

## KEY POINT 3

In very limited circumstances, the program director of a school-based Part 2 program may share information to prevent a substantial threat to the life or physical well-being of the student or anyone else.<sup>9</sup>

At the time that a minor student *applies* for SUD services at a school-based Part 2 program, the program director may notify a minor’s parent in order to reduce a substantial threat to the life or physical well-being of the student or anyone else. The program director must first determine that the minor lacks capacity to make a rational decision about whether to consent to the disclosure to their parent.<sup>10</sup> Once the student begins receiving services from the Part 2 program or is no longer a minor, this exception no longer applies.

## EXAMPLE

Jimmy Junior went to Cindy Counselor’s office and asked for help getting SUD treatment. Cindy began conducting an initial intake, and Jimmy mentioned several past suicide attempts and current suicidal ideation. Cindy told Jimmy that she was worried about their safety and Jimmy abruptly ran out of the office. Concerned that there was a substantial threat to their life and that they lacked the capacity to make a rational decision about informing their parents, Cindy consulted with her program’s director, who determined that it was appropriate to call Jimmy’s parents and inform them of the risk to Jimmy’s safety.

Other exceptions to the consent requirement (e.g., a court order) may also apply. School-based SUD providers who are not covered by Part 2 may still need to follow Part 2’s privacy rule if they obtain records from community-based Part 2 programs.<sup>11</sup> School-based SUD providers must continue to protect the privacy of these records, even if their own SUD records are not covered by Part 2.



## For More Information

### Resources

This resource is one of many that are available within the Center of Excellence for Protected Health Information's resource library, which can be found at [coephi.org](https://coephi.org).

### Request Technical Assistance

You can request brief, individualized technical assistance and join our mailing list for updates, including news about the publication of new resources and training opportunities, [here](#).



### Disclaimer

Resources, training, technical assistance, and any other information provided through the Center of Excellence for Protected Health Information do not constitute legal advice. For legal advice, including legal advice on other applicable state and federal laws, please seek out local counsel.

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## References

1. Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232(g); 34 CFR Part 99. For more information on FERPA and Part 2, see <https://coephi.org/sites/default/files/Privacy%20Protections%20at%20School.pdf>
2. Part 2 only applies to SUD treatment records from school-based providers if they meet the definition of a "Part 2 program." 42 CFR § 2.11. To determine whether Part 2 applies to your school-based SUD program, consult with local counsel. For more information about how to determine whether Part 2 applies, see [https://coephi.org/sites/default/files/31741026\\_i\\_provide\\_sud\\_services\\_in\\_an\\_fqhc.pdf](https://coephi.org/sites/default/files/31741026_i_provide_sud_services_in_an_fqhc.pdf)
3. See 42 CFR §§ 2.14, 2.31.
4. See 42 CFR § 2.14.
5. See *id.*
6. See 42 CFR § 2.11 (definition of "minor").
7. See 42 CFR § 2.12(c)(6).
8. See *id.* Note, however, there is no similar exception for other types of state-mandated reports, including elder abuse or neglect. To make another type of state-mandated report, the Part 2 program must obtain patient consent, a court order, or identify another applicable exception in the law.
9. See 42 CFR § 2.14(c).
10. See 42 CFR § 2.14(c)(1).
11. See 42 CFR § 2.12 (definition of a "lawful holder").