

The Intersection of HIPAA, FERPA and Vaccine Hesitancy

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HIPAA and FERPA and the Voice Studio

- ▶ HIPAA and FERPA are often terms thrown about indiscriminately
- ▶ Overused
- ▶ Misapplied
- ▶ The problem with blanket statements

HIPAA and FERPA and the Voice Studio

- ▶ *Health Insurance Portability and Accountability Act* of 1996 (HIPAA)
- ▶ Created to protect sensitive patient health information from being disclosed without the patient's consent or knowledge.
- ▶ The *HIPAA Privacy Rule* addresses several issues, including the use and disclosure of individuals' health information (known as "protected health information") by entities subject to the Privacy Rule. According to the CDC "A major goal of the Privacy Rule is to ensure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well-being. The Privacy Rule strikes a balance that permits important uses of information while protecting the privacy of people who seek care and healing."
<https://www.cdc.gov/phlp/publications/topic/hipaa.html>

HIPAA and FERPA and the Voice Studio

- ▶ HIPAA cannot be applied to you as a voice teacher in the studio because:
HIPAA only applies to specific health care entities such as insurance providers, health-care clearinghouses, health-care providers and their business associates.
- ▶ If you are a voice professional and work in a health care environment as part of a voice care team HIPAA would apply to you for the work you do in that setting.
- ▶ HIPAA is not a justification to prevent a voice teacher from discussing vaccine hesitancy or status with voice students. It is not a deterrent to independent studio owners setting appropriate policies for their business.

HIPAA and FERPA and the Voice Studio

- ▶ The Federal Educational Rights and Privacy Act (FERPA):
 - protects the privacy of student education records, and applies to all schools that receive funds from the U.S. Department of Education.
- ▶ FERPA only applies to educational **records** maintained by an institution.
 - Can an institution that does not even require vaccination or track COVID vaccination status as part of student records use FERPA concerns as a justification? Hmmm (on campus clinic records would be subject)
- ▶ Learning of a student's vaccination status as part of casual conversation or through social media is not a FERPA violation, nor is sharing that information.
- ▶ FERPA does not apply to independent studio businesses

HIPAA and FERPA and the Voice Studio

- ▶ FERPA health or safety emergency exception
- ▶ “Under the FERPA health or safety emergency exception, an educational agency or institution is responsible for making a determination, on a **case-by-case basis**, whether to disclose PII from education records, and it may take into account the **totality of the circumstances** pertaining to the threat. See 34 C.F.R. § 99.36(c). If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of the student **or another individual** and that certain parties need the PII from education records, to protect the health or safety of the student or another individual, **it may disclose that information to such parties without consent.**”

https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20and%20Coronavirus%20Frequently%20Asked%20Questions.pdf

HIPAA and FERPA and the Voice Studio

- ▶ Independent Studios
 - ▶ HIPAA and FERPA do not apply
 - ▶ Establish Policies based on your settings and personal risk profile
 - ▶ Be aware of the current age limits for vaccination and adjust your policies accordingly
 - ▶ Communicate Effectively to all clients/students
 - ▶ Monitor and Enforce your policies when necessary

HIPAA and FERPA and the Voice Studio

- ▶ Institutions with vaccination requirement
 - ▶ Best scenario because nearly everyone should be vaccinated
 - ▶ FERPA definitely applies but you will not have to worry about it because the institution is requiring all to be vaccinated
 - ▶ But...what about those who have health related exceptions? Religious exemption?
 - ▶ Faculty should seek accommodation through HR or appropriate avenue
 - ▶ Advocate through the FERPA Emergency Exception to know if any voice students are unvaccinated and set appropriate accommodations for safety.

HIPAA and FERPA and the Voice Studio

- ▶ Institutions without a vaccination requirement
 - ▶ Chances are many already know whether most students they teach are vaccinated
 - ▶ Continue promoting vaccination using your institution's advocacy messaging
- ▶ Unvaccinated/Compromised Teachers Should:
 - ▶ Contact HR to seek and negotiate accommodation
 - ▶ Make a case, possibly using emergency exception, to:
 - ▶ Know vaccination status of all students you teach
 - ▶ Ensure safest possible work environment (room size, ventilation, masking, length of lessons, CO2 monitoring)
 - ▶ Establish protocols for scenarios based on each student's status
- ▶ Vaccinated Teachers Should:
 - ▶ Realize they are significantly protected by being vaccinated
 - ▶ Due to a unique one-on-one teaching setting in smaller spaces, make a case that in order to provide a safe environment in these unique spaces it is important to know vaccination status.
 - ▶ Provide a customized solution for each category of student circumstance (Vaccinated, unvaccinated, compromised)

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THANK YOU!

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