

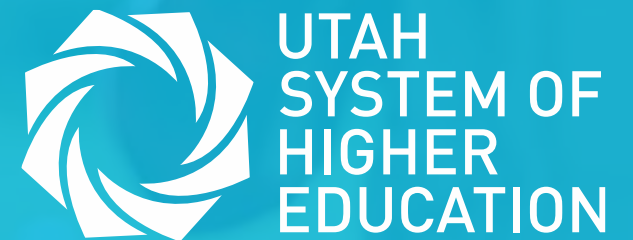


# USHE Privacy Protections for Treatment Records

Presentation to the  
Utah Personal Privacy Oversight Commission  
November 8, 2023

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SYSTEM OF  
HIGHER  
EDUCATION

**Student treatment records at USHE institutions enjoy protections comparable to medical records generally through FERPA's restrictions on disclosure, state law, and current institutional and professional practice.**

# Education Records under FERPA

## Definition

Those records that are:

(1) Directly related to a student;

**and**

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

## Exclusions

The term does not include:

- Sole Possession
- Law Enforcement Unit
- Non-Student Employment
- Persons not in attendance
- Alumni
- Peer-Graded Papers
- **Treatment Records**

# Family Educational Rights and Privacy

## Rights

- Access to education records for inspection and review
- Request amendment of education records that are inaccurate, misleading, or in violation of the student's rights of privacy

**AND**

## Privacy

Protects parents and students from disclosure of education records that would “generally be considered harmful or an invasion of privacy if disclosed.”

# Family Educational Rights

## Rights

- Access to education records for inspection and review
- Request amendment of education records that are inaccurate, misleading, or in violation of the student's rights of privacy

**BUT**

## Exclusions

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- Sole Possession
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  - Peer-Graded Papers
  - **Treatment Records**

# Family Educational Rights

## Privacy

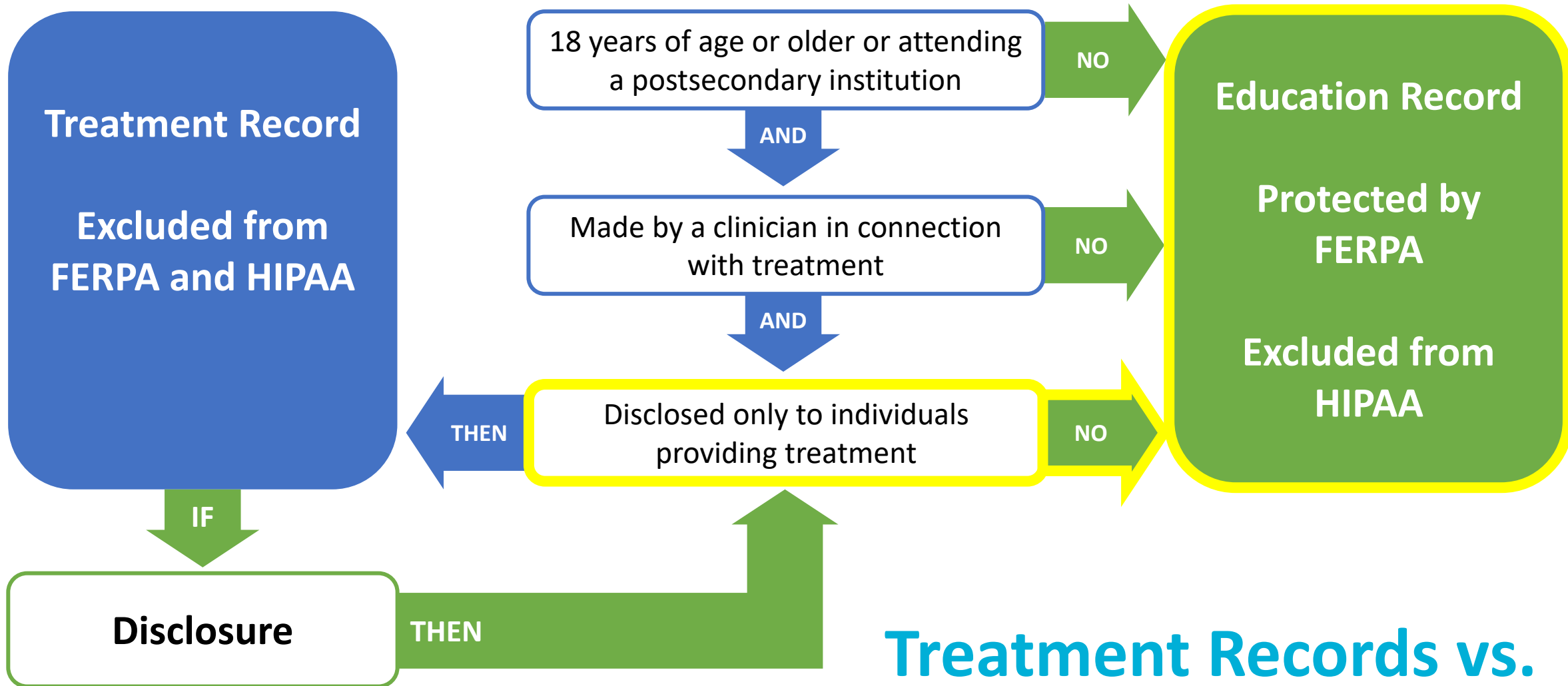
Protects parents and students from disclosure of education records that would “generally be considered harmful or an invasion of privacy if disclosed.”

**BUT**

## Exclusions

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## Treatment Records vs. Education Records

## FERPA Consent Requirements

An institution can disclose education records, including treatment records being disclosed as education records with the expressed, specific, and voluntary consent of the student.

### **Expressed**

34 CFR §99.30(a)

### **Specific**

34 CFR §99.30(b)(3)

### **Voluntary**

Findings Letters and Notices



## Disclosure without Student Consent

See 34 CFR § 99.31

Exceptions to consent are limited to specific purposes and conditions and, except when disclosed directly to the student, are permissive, not required.

# Protected Personally Identifiable Information

PII includes  
“Information that, alone or in combination, is **linked or linkable** to a specific student”

Protected PII						
Student ID	Name	Address	Street	City	Zip	GPA
6IDP367	Dexter Lindsey	2685 N	2400 E	Loa	84747	3.184092329
1KLX612	Bryson Kramer	3540 W	4700 N	Bluebell	84007	3.139123724
2XTW905	Dakari Green	1322 W	4200 S	Paragonah	84760	3.21547484
6DUI814	Macy Mejia	124 W	2600 N	Summit	84772	3.200351214
1ILJ924	Navy Greene	4407 N	2800 E	Deweyville	84309	3.136779811
9CWS007	Macy Shaffer	1551 S	4500 W	Wales	84667	3.187327641
8ETK132	Kimora Black	4341 W	3700 S	Clarkston	84305	3.204742031
6PEL228	Beatrice Esquivel	4089 S	2900 E	Cleveland	84518	3.254918473
9DBB098	Mavis Hanson	3668 E	1600 N	Clarkston	84305	3.160066144
6TCI046	Morgan Burgess	1719 S	1700 W	Sterling	84665	3.195595069
3SIM144	Drake Liu	35 E	800 N	Paradise	84328	3.141922646

Unprotected Directory Information

Unprotected De-identified Information

When linked, these unprotected data sources become FERPA-protected PII.

# School Officials Permissive Exception



**SPECIFIC**

School  
Officials

who  
have

**SPECIFIC**

Legitimate  
Educational  
Interest

in

**SPECIFIC**

Education  
Records

of

**SPECIFIC**

Students

# School Officials Permissive Exception



“Attorneys representing institutions in legal proceedings generally function as school officials under FERPA. . . . Attorneys representing institutions in such litigation generally should not be determined to have a legitimate educational interest in accessing those [treatment] records, without a court order or the student's written consent, unless the litigation in question relates directly to the medical treatment itself or the payment for that treatment.”

US Department of Education,  
“Dear Colleague Letter to  
School Officials at Institutions  
of Higher Education,” August  
24, 2016

## Audit and Evaluation

## Studies

## Health and Safety Emergency

Not used by USHE institutions  
with regard to treatment records.

- Use limited to cases where the institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals.
- Disclosure limited to people “whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.”

- Use limited to audit or evaluation of federal or state supported education programs or enforcement of Federal legal requirements.
- Disclosure limited to authorized representatives the US Comptroller General, Attorney General, Secretary of Education, or state and local educational authorities.
- Authorized representative must protect PII from further disclosure and destroy data when the audit is completed.

- Use limited to studies for institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction.
- Written data sharing agreement required.
- Redisclosure generally prohibited.
- Researcher may not allow personal identification and must destroy data when the study is completed.

# Limited-Scope Permissive Exceptions

# Institutional Protections for Treatment Records

**USHE institutions that currently offer student  
medical and/or mental health services**

**11**

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**USHE institutions that reported limiting  
disclosure of treatment records would  
change current data protection practices**

**0**



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