



Michigan for Vaccine Choice

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September 12th, 2018

Dear School Official:

I am writing you on behalf of several thousand Michigan families who have grave concerns about current FERPA privacy violations related to their child's school immunization records. You may not be aware that policies put forth by the Michigan Department of Health and Human Services (MDHHS) have forced schools to violate federal FERPA laws for **decades**, by requiring the unfettered transfer of private student health and immunization data to the state/local health departments, **without** parental consent. **This state-wide violation puts Michigan schools, including yours, at risk of losing close to 2 billion dollars in annual federal education support.** MDHHS and the Michigan Department of Education (MDE) are fully aware of these violations. Unfortunately, they have chosen not to comply with the law, but to instead try and find a way around it.

This email is to help you understand 1) What the violations are 2) Why the attempted fix does not comply with FERPA and 3) Why you as the school administrator must take action.

The FERPA Violations

According to federal FERPA privacy law, [a child's immunization records](#) and waiver/exemption statements are part of their education record. As a result, they are subject to FERPA protection and cannot be released to third parties such as the local and state health departments **without explicit, affirmative, parental consent**. This requirement has been [consistently reaffirmed](#) by the US Department of Education. Unfortunately, it has been completely ignored by MDE and MDHHS. There is no legal basis for allowing MDHHS to have personally identifiable information on Michigan students. You can read more about these issues in the [legal analysis](#) conducted by a Michigan law firm.

The following school administrator activities, if conducted without the parent's explicit, affirmative consent, violate FERPA:

- Entering any immunization and waiver/exemption data **into** a third-party system, specifically the MDHHS vaccine tracking system (MCIR/SIRS). You



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cannot share the information with the health department (state or local) without parental consent, therefore entering the data into their computer system, without consent, is not compliant with FERPA.

- Creating any kind of roster, tied to your school, within the health department's MCIR/SIRS system.
- Transmitting immunization compliancy reports to the local or state health department that include student information such as name, date of birth, and immunization information.
- Faxing, mailing, emailing, sending or discussing a specific student's immunization record/waiver with health department staff.
- Completing IP-100 forms and sending them to the health department.
- Allowing the health department to audit immunization records that are part of the education record.
- Forcing or mandating that a parent provide their consent or wording the consent form in a coercive way. Parents should know that providing consent is voluntary – here is an [example](#) of a proper consent form.
- Not documenting in writing any disclosures made without the parent's consent, to whom they were provided, and what information was disclosed as required by FERPA law.

FERPA Violations not Remedied by MDHHS Recommendations

Unfortunately, even though MDE and MDHHS have officially known about these violations for years, their attempt at fixing them, after Michigan for Vaccine Choice brought them to light, **fails to result in compliance with the law.**

- **The MCIR system, and thus MCIR/SIRS, is owned and operated by the health department, a third party.** You CANNOT enter ANY information into that system without the parent's consent without violating FERPA. Entry of data into that system should be completely voluntary, and thus, the MCIR/SIRS system **cannot** be used as the method to determine school compliancy with immunization record requirements as those that do not provide consent cannot be entered into the system.
- Even if you could use the MCIR/SIRS system, **which you cannot**, they propose a 'check-box' option be used when parent's DO NOT consent. This requirement makes the immunization 'sharing' an OPT OUT process because the default is an unchecked box. A parent's consent must be in the affirmative



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and comply with FERPA mandated [requirements of consent forms](#).

Nevertheless, **Schools must not use the MCIR/SIRS system, as being instructed, if they wish to be in compliance with FERPA.**

- The safest way to protect the privacy of the student record is to never enter student data into the system **unless there is consent to do so**. This does not seem like a difficult concept, as most other states make it very clear that the state vaccine tracking system is a system for voluntary entry of immunization information, with the consent of the parent. For example, Ohio uses a very nice reporting system that only includes information in aggregate - <http://schoolreporting.odh.ohio.gov>. This is a system completely separate from the state vaccine tracking system that provides the ability for schools to report aggregate immunization information to the state health department, while protecting privacy rights of students and parents. [Minnesota's health department](#), among others, publicly acknowledges that the state vaccine tracking system is a completely voluntary system. [New Hampshire's Department of Education](#) has an informative FAQ on this exact issue.
- Though MDHHS implies that local health department staff were 'disconnected' from the MCIR/SIRS system, this does not mean state health department employees or anyone else with MCIR access cannot view the information. The system **belongs** to the state health department and data from the education record cannot be entered into this system without parental consent.

Why does this matter?

School officials, **by law**, are responsible for abiding by FERPA and therefore **must** protect the rights of students and parents who do not wish to have any medical information, which is part of the education record, shared with outside entities, including the health department. There are consequences for not complying with FERPA, **which include losing federal education funding**. You should also have grave concerns that your leadership is attempting to do a "work around" that does not comply with the law, instead of recognizing the need to fully comply as other states in the region have done.

It should also be noted that the [State School Aid Act](#) requires reporting of immunization status of pupils to the health department, but this law **in no way** indicates personally identifiable information is required – aggregate numbers **are acceptable** per the law. This means that MDHHS has a CHOICE in how it implements



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this part, **and their leadership has chosen a way that continues to force you to violate FERPA**, when other options of aggregate reporting are available. A penalty in state funding is applied if schools do not report on at least 95% of students in the checkpoint years. However, it is our opinion that Michigan schools deserve the right to abide by FERPA and report student data in a way that both complies with Michigan law and FERPA law, and that it is possible when numbers are reported in aggregate. Schools should not be punished for attempting to comply with the law and MDHHS should not inflict punitive measures on schools, when legitimate measures in harmony with both state and federal law exist.

The health department bullies parents, and the health department continues to bully you, as a school official. The health departments have known about these FERPA violations since at least 2007. The National Association of County and City Health Officials, of which every health department in Michigan is a member, has an [official policy](#) on this very issue which clearly opines that FERPA is a legal barrier to getting their hands on our children's private health and immunization information.

Lastly, we should make you aware that because of the efforts of a number of concerned legislators, **the federal FERPA office at the US Department of Education is looking closely at Michigan statutes, regulations and practices**. They are watching how Michigan handles this issue, and clearly MDE, with directives from MDHHS, have chosen to attempt to get around FERPA. **These agencies would rather risk close to 2 billion dollars in annual federal education support than make the changes required to comply with FERPA.**

We are asking YOU to take a stand for your students and their parents. **Quit being bullied by the MDHHS**. We all want our children to flourish in your schools. Please help us by being part of a proper solution that complies with the laws of our state and our country.

We encourage you not to participate in this violation of student privacy. We suggest you consult with your legal counsel on the FERPA issues raised in this letter. Additionally, please contact the Attorney General and/or the Family Policy Compliance Office within the US Department of Education to discuss your concerns, in order to get their assistance, and create a path forward that complies with state and federal law.



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We welcome any school officials who wish to work with us on solving this issue.
Please do not hesitate to reach out to me.

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