**Zoom Transcript for Federal Health Privacy Laws:**

**Basics for School Professionals - Session 2**

Let's go ahead and get started. Welcome, everyone!

Thank you for joining us. This is a joint presentation, brought to you by the Mental Health Technology Transfer Center network and the Center of Excellence for Protected Health Information.

My name is Jessica Gonzalez, and I'm the associate director for the MHTTC Network Coordinating Office.

This is the second session of a two-part virtual learning series.

Session one was held on Tuesday, and was recorded for those who couldn't attend will be sending out the recording slide deck and a brief FAQ Document for both sessions, Tuesday’s session, and today's, to all registrants of the learning series within a week.

On the next slide here. Just want to cover a zoom feature and logistics reminder that everyone is muted cannot share video except for our panelists and subject matter experts that we have present today.

We also have closed captioning, available. You can look for that at the bottom of your zoom screen.

You have a question for the presenters. Please use the Q&A pod we're monitoring the Q.

And a pod throughout the session, and we ask that any question for the presenters is entered.

In that Q&A pod, so that our presenters can be alerted to those questions.

If you have an audio or tech issue, or any questions regarding logistics or relevant resources to share with other participants, please use the chat box.

We have the chat box enabled for you all to converse with each other throughout the session, and share any resources that you think may be relevant to today's content.

Again a reminder for those who just joined us. You will receive an email within a week from today's session and you'll get access to the session recording the slide deck and information about how to access your certificate of attendance we'll also be sharing with everyone part one of this series, the recording slide, deck and FAQ Document as well. So if you weren't able to join us on Tuesday, you'll be getting that information in a follow-up email within a week from today.

And just a few other pieces of important information on the next slide.

I just want to ask everyone to keep in mind that we are recording this session.

By joining the session, you automatically consent to the recording and to note-taking.

And also please note that this is a safe space, so feel free to openly share your opinions via the chat box. Ask any questions through the Q and A pod. We encourage you to participate. We want to hear from everyone.

Again the center of excellence for protected health information is bringing this session to you.

The CoE- PHI is funded by SAMHSA to assist people on organizations and understanding, and applying current Federal health, privacy, laws, and regulations on the job, and specific to their tasks or role, and also to assist patients and their loved ones and knowing what their privacy rights are when seeking and receiving treatment for substance, use and mental health resources, training and technical assistance provided by the CoE-PHI.

It does not constitute legal advice. Please also note that today's presentation will cover only the Federal health privacy laws, and there application to student records.

As it is not within the scope of the CoE-PHI to address individual state, privacy, laws.

And the Mhttc network is collaborating with the CoE-Phi to bring this series to you.

The Mhttc network is also funded by SAMHSA and includes 10 regional centers, a national American Indian and Alaska native center, a national Hispanic and Latinos Center, and a network coordinating office through our School Mental Health Initiative we bring awareness and disseminate information and

Provide technical assistance and training on the implementation of Mental health services and schools and school systems.

And it is through our school mental health initiative that we're able to bring this two-part learning series to you.

One of my colleagues will enter our Mhttc website and Coe Phi website links in the chat box.

In case you want to learn more about us.

And really quickly here before we officially get started. Reminder of our learning objectives, we AIM to describe how Federal health, privacy laws such as HIPAA/FERPAA applied to student mental health information.

We need to explain how student mental health information can be protected and shared in compliance with Federal health, privacy, laws.

Today we will discuss common scenarios involving student mental health information that arise in school settings through case study discussions that will be LED by our clinical and legal experts, and we'll also AIM to demonstrate how relevant resources and technical assistance can be accessed through

the Mhttc network and the center of excellence for protected health information.

I also want to let everyone know we have right now about 700 attendees, and while that is very exciting, it's also going to mean that we might get a lot of questions in today in the Q&A pod.

And so we won't be able to answer all of the questions due to our time constraints, and the large number of attendees.

However, all of the questions submitted by our attendees will be reviewed, and we will use those questions to assist us with learning more about what your specific needs are, so that we can develop and disseminate additional helpful resources for you going forward.

And now, without further ado, I want to again introduce our presenters for today's session.

Today, we have Dr. Steven Adolshe from the Mhttc.

Network and Stanford University. We also have amber black, who is our health privacy, associate for the center of excellence from protected health information.

Last, but not least, we have Abigail, English, who is a legal consultant for the Coe Ph I. And Mhttc.

Network. I'll go ahead and hand it off to Dr.

Otto Sheim. Thank you for being here with us.

Thanks so much, Jessica. It's great to be here so I wanna introduce myself a little bit more detail.

I'm Steve battletime. I'm a child psychiatrist by training.

I use. He him pronouns, and today am I?

I'm on the unseated lands of the I'm really excited to be able to share some perspectives as a clinician within the context of our discussion.

Today we'll be presenting 2 cases and then having our our legal concerns give us recommendations and guide us through this process.

Did we go to the next slide? Please.

Okay, well, I wanted to make a few key points to follow up from our last session by way of introduction, as well.

So there are a couple things that I that I would like, you know that we shared at the end of the last session, that I would also like to raise again just as we get started.

So, as we spoke in our last session, so one of the things we're really not talking about today are our State laws as they relate?

And as we look at the chat and see where everybody's coming from, you know we're all coming from different places, not only across the United States, but I see people joining us from Canada and other countries as well and we're really talking about Federal laws today so one of the things that's

going to be very important for you is to be able to know your State laws as they relate to informed consent, as they relate to confidentiality, so that you know the different age limitations for the conversations you're having at what point young people are able to give their own consent from

mental health care for mental health conversations for substance, abuse, treatment, as well.

So all of those things become key and very important. It's important to be able to think about the Federal laws, and I will share with you that you know before I came to Stanford I was in New Mexico for 28 years, and spent many of those years working as a child

psychiatrist in school-based Health centers for the University of New Mexico, and when I was doing that work I was in a situation where I was a community provider working in a school setting.

The school did not pay for any of our time, providing service in that school, but we were actually funded through the State through the Health Department to provide care, and as a result, you know, it was clear that our records fell under hipaa.

Our services were provided through our own university system. And so, as you think about our discussion today, think about which hat you're wearing or even if you're a community provider who may be stationed in a school you know, it's complicated.

And so for us. When I was at we were, you know, working in these school settings, but we weren't funded by this school, and we were pretty clear that everything we did was part of a health record and we were pretty clear that everything we did was part of a health record and fell under our state laws regarding informed consent

confidentiality. There were also times where I did special education consultation as a contract with the school district, and you know, in New Mexico I couldn't be licensed in the educational system.

As a child, psychiatrist. So they licensed me as a school psychologist for purposes of doing contracts directly with the school district, and in those cases all of my rewards were part of the school records and part of the records that would fall generally under Fpa.

Related kinds of records, and now it, as I work at Stanford, we have contracts to do, child psychiatry consultations directly with school districts, and we will sometimes see students who will refer to us by the school district we will work get permission from the parents to have those

evaluations take place, work with the students, work with the families, give a record of a note back to the school district from our assessment with the family's permission in terms of what's in the note, and then actually keep a portion of our own note in our own system, and so it's

very complicated, and so all of this display, even if one is a community mental health provider working in a school who you work for, where your funding comes from the nature of your contracts will all potentially influence the degree to which your records ball under Fpa fall under hipaa all of this to say

it's complicated. And that's why we're not gonna be able to give you the exact answers here.

We're gonna ask you to check with your local consultants your own attorneys within your systems, to sort things out.

And then many of you. I know our school health and mental health professionals, and you know, for the most part your records are all gonna fall under ferp on the school, and then the question becomes, you know what goes into that written record and what information in your conversations with your students are you keeping as your own

notes, what's going in the educational record? And those are things you're all gonna obviously be sorting out within your own school and with your own administration and with your own policies within your own school district.

And so, you know, as we go through these cases, it's important to think about, you know which hat you're wearing and who you're working for.

And at the same time it's important for you to have a sense of that.

So your students know as well because they need to understand when they're sitting down with you, what information you know they're sharing is necessarily going to become part of a school record or not.

What's going to their parents? What maybe isn't, what rights do they have in terms of the confidentiality, the communication they're having with you.

And as we mentioned the other day, this is potentially someone's first interface with a mental health system.

And we really wanted to be a positive one, so that in case that young person might need to go back for mental health supports down the road, they've had a good first experience.

They can trust their interface with their provider at school, and then be able to have a trusting and caring relationship.

So it's important for us to know this well, so we can. You know.

Be sure that we can inform the student correctly. We can let them know upfront what information we need to share and what we don't, and then, so that we have a good sense of what we're passing on to our colleagues at school to the students family what we're

passing on to our colleagues at school to the students family. What's you know?

What we're obligated to share, and what we think is important to share, and what we think is important to share, and how we're following both our State and Federal laws.

So with that sort of overall context, let's move into our first case, knowing that both these cases are complicated and have no easy answers.

So let's go on to the first slide. So I'm gonna go in a little bit more detail than you see on this slide.

And remember, I'm sharing this from the perspective as a community mental health provider working on site in a school with no financial relationship with the school district.

At this point. So I've been meeting with Jasmine for the past month about her anxiety and depression, which is affecting her grades.

And also she's talking about her struggles with her own parents.

Since Jasmine is 14 and I'm in a state where young people, at the age of 14 are allowed to give their own informed consent to mental health services.

I have so far kept the visits confidential as much as I've been recommending to Jasmine that I might really help her situation improve if I could meet with her with at least one of her parents to discuss the challenges at home, and how Jazmine is doing overall however.

jasmine does not want to include a parents yet, and think they just won't understand.

She's also afraid to tell them about the fact that a grades have been dropping, but she knows they will learn in this situation soon enough if she can't bring them up quickly.

Okay, let's go to. Let's see the next slide.

Okay, perfect. So as my last client leaves the office, Bill, what are the school counselors comes to my door and as if he could speak with me, and Bill tells me he's received a call today from the father of one of the middle school students named Jasmine, who and the father was asking

bill about her graves, and whether or not she was seeing accounts or his school Jasmine's father has told Bill that the parent of another student told him that Jasmine was seeing a counselor with my name at the school, and now Jasmine Stan wants to know what's going

on. They'll ask me if I've been meeting with Jasmine, and as if so, what I'm talking about with her, because the school needs to know immediately to address any educational of grave related issues that might be of concern to this point so we go to the next slide.

Okay. So the next thing we're gonna do is ask you, what would you do in this case?

Would you pull building your office in debrief? I'm on what's going on with your treatment history.

Would you call Jasmine's father to address his concerns, which is schedule?

A meeting with Jasmine family. Well, would you first go to Jasmine to talk with her about the communication that's been happening?

Alright. We have responses so far from 300. 400.

Okay, we're about half of everybody at this point, and we're certainly getting a trend. So what?

When I'm seeing here. Is that about 85% of you would reach out directly to Jasmine, that 10% would schedule a meeting with Jasmine's father, mother, and Jasmine.

4% will call Jasmine's father immediately.

3% will pull Bill in and tell them what's been going on.

Okay, thank you. Appreciate that. So let's go to the next slide.

So, I'm gonna speak to. I think what I would do we're in the hat that I'm wearing, and you know, and I think my sense is fairly consistent with most of you.

In terms of how you answered the poll. I really see, Jasmine as my client, and I wanna be sure that I am supporting her mental health, wellbeing, and safety.

First, while I'm also following all the legal guidelines on how to handle this situation.

My assumption really is in my first steps. There is a community mental health provider stationed at the school.

I'm following hipaa in terms of her care and my records fall under that.

Help umbrella rather than under Fpa.

And then my records are not educational records. I'm also in a state that allows you 14 and over to give their own consent.

So I need to check in with Jasmine first.

If I'm following both my State laws and my hippopotis, the additional information I need is to no what Jasmine wants to do.

Once I let her know what's happening to talk with her about how to respond.

Continuing potentially to encourage her to bring her family into the discussion.

Let her know that people of the school have now been pulled into the situation.

Let her know that people of the school have now been pulled into the situation from her father, and then see how that conversation goes.

So together we can navigate, you know what some of the next steps are, and I think when I need to say to Bill is Bill, I need to kinda look into the situation, and I'll get back with you as soon as I possibly can.

And I need you to give me the time to do that.

Okay, let's go to the next slide. Let me hand things off to our our legal consultants and advocate.

You want to jump in here around from a legal perspective, what needs to happen?

Yes, thank you so much, Steve, for that absolutely fabulous job you did, and sort of setting the scene for us here Jasmine's case raises a number of important legal, ethical, and clinical questions, and Steve has just explained some of the important Clinical issues.

That he would consider in working with Jasmine and responding to Bill, the school counselor.

Now we're going to take a look at a few of the legal questions.

So some of the legal questions that need to be considered in deciding how to proceed, include which Federal privacy laws apply ferpa, the hipaa privacy rule, or the part 2 substance use disorder, confidentiality, rules, whether any of the applicable laws either require you to share the information or permit you to

share the information who may access the information in your records without Jasmine's consent, and then specific answers to these questions will vary, based on many different factors related to what state you work in.

As Steve has already alluded to the particular contractual arrangements that govern your situation, and a lot of other factors, the answers would also vary for you as a community health provider working in a school setting and for bill as a school counselor this case scenario focused on your

obligations, and your situation as a community, mental health provider.

But if the case had been framed slightly, differently, and Jasmine had been talking to Bill as a school counselor, then the answers to the legal questions would vary as well well.

It's beyond the scope of this training to provide specific answers to these legal questions because of the State by State variations, and because of the contractual and other variations, or to give legal advice.

We can, and we will discuss some of the considerations that it's important to keep in mind in deciding how to proceed in Jasmine's situation.

Next slide, please. So which Federal privacy, laws, or law or laws apply or applies.

In this situation, the 3 main ones, we wanna consider are Ferpa, the hipaa privacy rule, and whether part 2, possibly the part 2.

Side-use, disorder, confidentiality rules in determining whether Fpa.

Might apply, and Steve has already explained that in his situation where he was working in New Mexico, he would have assumed that hipaa applied.

But we need to sort of broaden the consideration out.

And just think about how you would determine whether for Apa might apply first.

You need to be sure that the school is an educational institution under Fpa.

And almost all public schools and public school districts do receive Federal funds, and are required to comply with Verpa.

The case. Scenario says you're a community mental health workers.

So it would be important to know exactly what the relationship is between the agency that employs you.

And Jasmine school district. It's especially important whether any of the information Jasmine shares with you is placed somehow into an education record, as we saw in the first session on Tuesday.

Education records may contain health and mental health information. So if you communicate information to Bill and Bill places, and of that information into Jasmine school records, it would like be subject to Ferpa.

Then, turning to Hipaa in determining whether the hipaa privacy rule applies one of the most important questions is whether the information is protected.

Health Information Protected health information includes information that is individually identifiable and is created or received by a covered entity, that is individually identifiable, and is created or received by a covered entity, such as a health care provider which might include agencies and often would include agencies

employing community mental health workers. So, for example, if you are employed by a community mental health center or a school-based health center located at or linked to a school, your information might very well be ph, I.

That is, governed by the hipaa privacy rule.

If the information is in an education record, then it is covered by Ferpa, and is excluded from the definition of Phi under the hipaa primacy rule.

However, information that is not part of an education record would include treatment records of a student age, 18 or older, that's used only in connection with treatment and also records that are solely in the possession of the person who made the record are used as a personal memory aid and are generally not revealed to any

other person, a third important Federal law to consider is the part 2.

Confidentiality rules for substance, use, Disorders.

Part 2 covers, information in a federally assisted Substance.

Use disorder treatment program that that is patient identifying information.

And on its face. This case scenario does not suggest that it involves part 2, but it's never the less important to know whether that is the case or not, and the second case scenario today.

That will be discussed will include more detailed consideration of the part.

2 questions. Finally, as we saw at the end of session, one on Tuesday, these and other Federal laws, interests.

So it's important to keep in mind the way they relate to each other in determining which ones apply.

Also at least 2 other very important considerations must be factored in any State laws that may apply, and any contractual relationships and agreements between Jasmine, school or school district, and the agency or entity that employs you as a community mental health worker next slide please so then briefly.

we're gonna talk about which state laws apply. And although a full consideration of how State laws applied to Jasmine's situation is really beyond today's training, it's important to remember that in addition to Federal laws, there are state laws that may apply as well, in particular every State that has laws that allow

minors to consent for their own health care in certain situations, or for certain services.

A majority of States about two-thirds allow minors to consent for at least some outpatient mental health services subject to specific limitations and particular criteria.

Also such as, for example, the number of sessions, or you know whether specific health considerations have to be taken to account.

Also some States are law minors who have a specific status or a specific living situation to consent for their own care.

In addition to these minor consent laws, every State has some privacy laws that apply to certain kinds of medical information and records.

These may be part of the minor consent laws, or they may be separate laws that address medical privacy in general, or specifics services such as mental health in particular, understanding what the relevant laws are in jasmine, state how they apply to services provided to students in school settings and how they

intersect, with the relevant Federal laws is essential.

Next slide, please. So big question is, are you required or permitted to share certain information, and in determining what information you're required or permitted to share with Bill, the school counselor, and indirectly with Jasmine's parent it is important to consider what legal professional or ethical

obligations would apply a full discussion of professional and ethical obligations is beyond the scope of this training, however, as I'm sure you know, health professionals including mental health providers, are generally sufficient to professional licenses or certification laws in their state and these laws, often contain

provisions related to protection of patient privacy and disclosure, of confidential information.

In addition, most professional societies have ethical guidelines and policies related to patient privacy and the withholding and disclosure of confidential patient information.

Finally, as we discussed in the previous slide which ever Federal and State privacy laws are applicable.

Will also determine whether information must be withheld or maybe withheld, and whether information must be disclosed or may be disclosed as we're all familiar with their main risks in withholding a student or patient's health or mental health information from others those risks include the potential for harm to

the student, including increased distress, self, harm, suicidality, or even suicide.

The risks also include the potential for harm to others, including other students.

School personnel, or the community and the public it's for these reasons that Federal and State privacy laws, including hipaa and Fpa, contain exceptions to rules that require explicit or written consent or authorization for disclosure.

It is also important to remember that disclosure is always permissible with the authorization of the individual who may legally provide it.

There are also significant risks in disclosing information without the patient's permission, and those include things like reduced trust that they may delay or avoid seeking care altogether, and that with and that they may withhold information health and mental health, information from the professionals who they do eventually

consult, next slide.

So finally, who can access the information you may have recorded, and access that without the patient's consent.

So this is really a very important question. When can information be accessed?

And by whom? When you do not have the patient's consent to disclose once again a full answer to this question, in Jasmine's case depends on a host of factors, we've already discussed in particular which Federal and State laws, apply if the hipaa privacy rule

applies. Parents may generally act their minor child's protected health information.

However, if the adolescent minor is legally allowed to consent, and does consent to the care in this case, mental health services, then, under the hipaa privacy rule, the miners, ie.

Jasmine's permission would be required for disclosure and access.

Except for treatment, payment or health care operations. If this is the situation hipaa flies and Jasmine has consented to the care.

Then access to the information by a school counselor or administrator for other than treatment purposes would depend on Jasmine's agreement.

But as to the question of whether parents would have access hipaa defers to State and other applicable Federal laws so whether Jasmine's parent would have access would depend on a careful analysis of these other laws, if Ferpa applies the access rules, would be different so, if the community mental

health worker has shared the information with Bill, the school counselor, and Bill has recorded the information in Jasmine's Education record.

Then Jasmine's parents would have access to the information.

It is also likely that other school counselors and administrators may have access depending on a careful analysis of school and school district policies, as well as any applicable State laws in wrapping up this discussion of the legal issues from the first case and before turning to the second case study it's important to

emphasize that the clinical perspective that Steve has spoken about is extremely important, providing students with services in a supportive and transparent way is essential, encouraging involvement of parents families and other supportive adults is appropriate and desirable and resolving issues.

Clinically rather than resorting to legal enforcement, is preferable.

And now I'll turn it back to Steve for a discussion of the next case.

Study.

Thanks, so much, Abigail, as we said, these are complicated situations, and the next case we wanna talk about adds the complication of substance use related issues, questions related to part 2 and and all of the issues that come up when one is supporting a young person who's dealing

with potential drug and outlaw issues. And as we think about this case again, you know, I'm gonna respond to it from the perspective of a community mental health provider working on site, add an educational setting with no financial relationship to the school district in any way and assuming that things fall under hipaa

privacy as well as the State laws that will mention in the case, for those of you that are working as a school health or mental health, professional or as an administrator.

You know with this case is also gonna raise for you is sort of the policy questions that you're sort of the policy questions that your school district around substance use substance, abuse legal aspects related to that.

And so part of the question becomes, how do you address those in the context of your role within your academic setting as a school district employee?

So let me go into a little bit more detail about the case of Daniel again.

I'm a therapist from a community mental health agency based on site at the nearby High School Mental Health Clinic.

Daniel a student I've never met before, knocks on my door, and asks if I have a minute.

Daniel tells me their friend said it'd be good to talk with me, Daniel says they're both concerned because they failed to of their ninth grade classes.

This past semester, Daniel's worry because they think the issue might be related to the fact that they are doing edibles or smoking weed.

Most days after lunch at school, so they're really having trouble focusing in the afternoon on their schoolwork.

Daniel also says they aren't sleeping well.

Daniel goes on to say that since their mother lost their job during Covid, they're doing a small amount of deing at school to help support their family.

So they find themselves getting hide more often than they want to.

Daniel is also worried. They might now be addicted to marijuana, and not show whether it had best get help.

The friend told them that I was the person to come to for support, and Daniel is of the age in my state to give their own informed consent to both mental health and substance.

Use treatment. So let's go to the poll on the next slide.

Okay, here's the question, what would you do in this particular case?

Would you notify the school administrators, Daniels using drugs on school grounds?

Would you schedule a meeting with Daniel and ask permission to involve his family?

Would you make an anonymous tip to the police that Daniel has sold drugs?

Would you refer Daniel right away to more intensive treatment for substance, use, disorder?

We're gonna give it a little bit of time for people to respond.

So far what I'm seeing is about 300 people of 800 responding.

So far at this point, and you know I need you for forgive us for raising these complex questions, but I think our hope is been that we could all be learning from trying to struggle through these issues together again, knowing there really is no one right answer so, if we look now at the Poll, but I can share with

you is that 66% of you suggest that a meeting is scheduled with Daniel and ask permission to involve his family and 21%.

Are suggesting, referring Daniel right away to more intensive treatment for substance, use, disorder, and 13% are suggesting, notifying the school administrators that Daniel is using drugs on school ground.

It looks like. Maybe one person suggested anonymous tip to the police that Daniel has sold drugs so thank you all very much for taking this poll.

So let's go on to the next slide. Then.

Okay, so how? From a clinical perspective, might I best think about, how to support Daniel?

Obviously my concern initially is for Daniel safety and well-being.

I know he is of the age that can send to both mental health, care, and substance.

Abuse treatment are allowed in my state, and that is, I'm assuming that my record with him, since I don't work for the school, and I don't have a specific funded contract with school falls under hipaa and maybe under part 2 as well, and we'll get into that in more

detail. I feel like I need to talk with him as soon as possible about his issues with marijuana.

The impact on his health his well-being, his academics, his relationships, and see where he is in terms of this willingness to actually access treatment.

So my first steps would include really meeting with Daniel, assessing his treatment motivation encouraging him to bring his family into the discussion and try to support moving him to perhaps a higher level of intervention, with the hope that this treatment should we be able to create it for him would help address his use his

grades, and maybe stop is dealing at the same time.

The other information. I guess that I'm concerned about is, you know, one.

How do I help him find the treatment that he needs? And, as we all know, frankly finding substance, abuse treatment right now for adolescents in this country is is a struggle we're all trying to deal with you know what other questions I might have might be you know what are other substances maybe that

he's using. What else needs to be part of his substance.

Use related issues. And then is there a co-occurring disorder that needs to be addressed?

Is he dealing with anxiety? Is he dealing with depression over the financial situation?

His family is, and in the changes that have happened, or losses due to the Covid situation, could he be self medicating for some other mental health?

Related kind of issue, as well. So all of these questions are things that I would want to sort out with him, and then think about how to help him, and hopefully with the support of his family, you know, if he's willing, get him into some mortgage of support, and treatment, so let's go ahead to the next

slide, and then let me hand things back off to our legal experts.

Thanks, Dr. Alexine. So for this case study, we will again dive into legal considerations.

By outlining at first the questions to keep top of mind when doing this sort of analysis.

So first, we'd ask which Federal privacy laws apply.

Is it ferpa, or hipaa? And this part 2. Playroll.

Here again, part 2 may be a special relevant. Given Daniel's substance.

Use, then ask which State laws apply, and do any of these laws require you to share the information that Daniel has shared with you, or permit you to share the information outside of the relationship?

If you feel like it would be beneficial or necessary.

And, lastly, who can access the information in your records without Daniel's consent?

So first, when you're doing the Federal privacy law analysis, you wanna approach it definitionally.

So when taking Fpa, for example, you'd ask, Is the school an educational institution, as defined by Ferpa?

And is the clinic or counselor and employee, or agent of the school.

So remember, here we have a therapist at a community mental health agency that's on site at a high school mental health clinic.

We don't really have enough information to determine whether that is covered by verbal.

We don't know whether this school is public or private, or receives funding from the do. We?

But if you did have that information and we're able to determine that verba applies.

You, then ask, is the health information that Daniel has shared with you part of an education record?

If you determine that verbal did not apply, you'd like whether hipaa applies again.

Doing that same sort of analysis. So is the therapist, or the clinic on-site.

At the High School, a covered entity as defined by hipaa.

Again we discussed that in session one, you know, going through and deciding whether the counselor is a covered entity, whether they Bill, whether they do covered services, and you could use the Cms decision tool, for example, to make that determination.

But once you had you, then ask, is the health information in question part of a treatment record?

Is it then covered by hipaa?

And the same thing would be true. For part 2. You look at the definition is that therapist in question qualified as a federally assisted Sud treatment program as defined by Part 2, and then we don't have enough information to make that determination readily if part 2 did apply is the

health information in question, patient identifying information doesn't tend to identify Daniel as someone who is seeking or receiving services from a part.

2 program and remember, part 2 covers information that is, communicate verbally or electronically, or written down.

So that could have implications again, for the way that you share that information depending on whether the law applies next slide.

So once you've done the Federal analysis again, you ask which State laws apply.

First, again remember treatment, to consent is a matter of State law or consent to treatment, rather, as a matter of State law.

And here we know that Daniel is 13, and they are allowed to consent to both mental health and substance.

Use, disorder treatment in their state. So that's important to keep in mind.

And are there any State privacy laws that would apply to the information that Daniel has already shared with you?

Again, remember, in this situation you're not necessarily providing treatment to Daniel just yet, but they have shared sensitive information with you, and you'll need to know how it should be protected.

Moving forward.

Then again some of, I think the most difficult questions are, are you required to share the information?

That Daniel has shared? And are you permitted to share it?

And in our preparation for this webinar, Dr.

Adelsheine raised some important points about how some people's professional obligations, especially within a school system, school mental health professionals versus school counselors versus administrators, for example, may have different professional obligations, and may be required.

To report the information that Daniel has shared, based on again their obligation.

So, knowing what legal or ethical obligations may also apply, is very important here.

And then, of course, again examining the risks of withholding that information, so keeping that information within the relationship just between you and Daniel, or the risks of disclosing it, sharing it with a parent or a teacher or counselor or in the example of the pole question with a la enforcement

agency. What are the risks of disclosing that information?

And again, are you allowed to do it? Are you even permitted to do it based on the law that applies?

Because, for example, if Part 2 does apply, you would be prohibited from sharing that information without Daniel's written concerent.

So again imported to view the analysis in its entirety.

When answering each of these questions on a situational basis, and then, lastly, another question that Dr.

Adalshine really spoke to at the top of the hour, which is does Daniel have a reasonable expectation of privacy in their health?

Information. Did Daniel come to this conversation, thinking, anything I say will be kept confidential between myself and the therapist, or the Daniel know if I say something concerning or alarming in some way, maybe that information will be communicated to my mom or the school?

Administrators, or even another treating provider, that Daniel know that, and they that may be your responsibility of communicating that sort of information.

When Daniel sits down, so they know what to expect about how they're information will be protected and potentially disclosed without their permission.

And lastly, again, who can access the information that you've recorded without Daniel's concern?

So this is another one that really calls back the initial question.

We started with, which was, which of the Federal privacy laws apply right?

Because if you record information in a certain way, it may depend the law that governs the information may dictate who can access it?

So, for example, remember that Burpa allows parents greater access in some cases to information that they would not otherwise have access to if it were covered by hipaa by itself, and if part 2 applies, then there's almost no access allowed without the minor patients concern outside of the treating provider and the

minor patient themselves is Daniel's mom allowed to call the school and say, Hi, I've noticed Daniel has been a little sullen lately.

I've heard they have been seeing a counselor.

Can you tell me what's going on? Is the guidance, Counselor?

Allowed to tap your shoulder and say, Hey, I've been trying to talk to Daniel for months and months, and I saw them walk into your office.

Could you tell me a little bit about what's going on, or is the vice principal allowed to say, hey, I'm noticing Daniel's grades are really slipping.

Can you tell me what there is to know, so that I can possibly?

Help them to, you know, improve their situation. All these things, are dependent again on the analysis that you would have just performed, and that we just walk through.

And so that's why it's important to again take all of these laws into consideration, and remember that they may overlap and interact with one another.

They may not necessarily preempt each other in every situation, but it is important to take these points into consideration when deciding how to share the information that Daniel has shared with you.

And at this point we will open. The floor for questions. If you have them.

I think Michael will lead us in the Tuesday session.

Yes, thank you so much, amber, and Hello, everyone. I'm Michael Grtano, from the C. O. E. Ph.

I, and as time allows you've got a few minutes here, I'm gonna be asking our subject matter.

Experts, one or 2 commonly asked questions that came into the pod during today's presentation of cases.

Again, do the number of people we us today. We won't get to address all of your questions.

But as Jessica mentioned previously, all the questions submitted by you today, we'll be reviewed to assist us in learning more about what your specific learning needs are.

So that we can help develop and disseminate helpful resources for you.

Going forward. Okay? So our first question is for Dr. Adelsheim and Abigail regarding key study number one, when information is in the school records, what are you required?

Recommended or recommended to document in your notes, based on the information that student reports to you any thoughts about that question.

I appreciate the complications in the question and appreciate, you know, asking it, I have a sense that as much as I've not been a formal employee of the school district.

I know that different school districts that I've interfaced with have had different policies, or their school mental health professionals around.

Addressing this particularly for school counselors, or if they have had an addition, maybe masters, level therapists who are identified to work directly with students, maybe outside of Iep related situations, and I know that in many cases many of those therapists keep their own notes that are you know separate and are just for

themselves, tracking their communications that are different from potentially their documentation that they're sharing on a regular basis within the context of the educational record.

I think different schools have different policies around how to handle that, and I think part of one of the things that's so challenging frankly about even this whole webinar is the fact that there aren't easy answers to these questions.

And the fact that each school district really often has their own policies around what one is free to do, in terms of nodes, keeping ones on notes, and so as much as I wish we could sort of give you the specific answer.

I think it's really gonna vary, and our hope is with some of the questions that we aren't able to directly give you the answer to.

You can take back to the administration in your district and get clear answers for yourselves related to the nuances within your own community.

Your own State laws, and the interpretation of these Federal ones.

Abigail, what are your thoughts?

Steve. That was such a great answer. I I'm tempted to let it sit right there.

I will just add that a couple of quick notes from a legal perspective many of you may be familiar with the fact that hipaa has some specific provisions related to psychotherapy notes, and there's a very specific definition of psychotherapy notes.

But those notes are able to be kept more priceless than general information.

General protected health information that is subject to disclosure without all authorization for treatment, payment and health care operations, and so on, and the other note that I'll raise is that under Fpa.

Information, say, from a school nurse or a school person personnel, that is, health information that would ordinarily be part of the educational record may be not included in the educational records.

If it's maintained entirely for personal use and only for sort of treatment purposes and not shared generally for personal use, and only for sort of treatment purposes, and not shared generally with other personnel in the school. So I'll just leave it at that but I think Steve's answer was really

was really right on point.

Thank you, doctor, I will shine, and Abigail, for that thoughtful answer, very much appreciated our next question, I believe, is for Abigail, and it's regarding case study number one for a school based provider whose position is funded by the school to their records fall under hipaa

or further.

So once again I know it's frustrating for people on a national webinar like this.

There is. I can't give you a definitive answer, because you really, even though the question specifies that the provider is a school based provider and funded by the school, and there is there is a strong possibility that those records would therefore be covered by Ferpa one really to be

absolutely certain, would have to look at all of the factors in the situation, and whether there was any possibility that for some reason their particular situation place them in a situation of being a covered entity under a under the hipaa privacy rule, and they're information was not contained in education

records. In other words.

Thinking about? Is there any way that those records might really be psychotherapy notes that weren't in the education record?

And therefore weren't subject to Forpa. But it requires all of these situations really do require a case by case analysis, and I urge you, if you have questions about this as Steve had suggested, to go back to your school administration to go back to your employers.

To seek legal counsel. Get your school to have legal counsel.

Look into these questions?

Thank you so much, Abigail. Folks. We're getting very, very close to time here, with only gonna have time for one more quick question.

This question is regarding case study number 2. I believe it's for Admigal and Amber.

If an individual is not a client, and has and has not consented to care.

Does this change the privacy laws that applies? So if Daniel is not a client, does that change anything?

I can take a first. Try it, that when it comes to part 2, a person that is even seeking to receive services. Suv.

Services is protected by that law so if per 2 did apply to the situation, if you were seeking, if they were seeking, excuse me, services from a part 2 program, then they would be protected.

There is also an acception to the rule that allows for disclosure to a minor parent without consent, based on very specific circumstances.

But in general the rule is that minors seeking services are protected by Part 2. When part 2 does apply.

Thank you so much and much appreci appreciated folks. We've got only about a minute and a half left.

So we're gonna move on to providing it with some information about how you can get in touch with us and access our services. Thanks.

Everyone.

Hi! Everyone. My name is Madeline, and I am the program coordinator here with the Coe. Ph.

I, and like Michael said we just wanted to share some ways to access the Mhttc.

And the C. O. I. Network. So for C, O, E, Ph.

I, we will be dropping a link to the website in the chat, and you can request ta here as well as use our resource library.

This is where we keep all of the things that we have developed, such as we've developed, such as recorded webinars, things of that nature and for the Mht.

Tc network. We will be dropping the link in the chat as well and this is where you can access their training and events.

Calendar for trainings just like this, and also access their products and resources.

Catalog.

So when you close out of this webinar today, a screen will pop up and it will navigate you to take our training evaluation.

You are also able to scan this QR code to take the evaluation.

But when you close out it will pop up on your screen.

It is a brief survey, and if you could, please come, that that will greater inform our sessions.

Moving forward.

And we all just wanna take a moment to thank you all for joining us today.

We really appreciate your dedication to protecting students, privacy and their health privacy as a whole. Thank you.

All so much. We will be sending out these slides and a recording. After this webinar.