

# MEMORANDUM OF UNDERSTANDING RE: SSHS INFORMATION SHARING

**1. PURPOSE:** This Memorandum of Understanding (MOU) is entered into by and between the various partners and participants engaged in activities under the Helena Public Schools' "Safe Schools / Healthy Students" (SSHS) Initiative, and is intended to set forth their collective understanding regarding the manner in which information may be permissibly exchanged amongst themselves. The parties to this MOU recognize and acknowledge that the primary goals and missions of the SSHS Initiative are as follows:

- Reduce K-12 anti-social and violent behavior in school and community environments;
- Continue positive trends of decreasing use of drugs, alcohol and tobacco by middle and high school students;
- Connect substance-abusing youth with assessment and treatment resources;
- Improve student behaviors and attitudes at home and school;
- Increase social and emotional supports for all students;
- Increase the availability of school and community mental health services for students who need them;
- Reduce suicide ideation and attempts among students;
- Increase inter-personal communications, stress and mood management skills among students referred for mental health services; and
- Increase social and emotional support for infants and young children and their families.

**2. OBJECTIVE/AGREEMENT:** The parties recognize that each of them operate under various laws, rules and/or regulations pertaining to the confidentiality of information regarding students and/or clients, and that the particular laws, rules and/or regulations that may apply to any one party may not necessarily apply to the other. The attached "Annex A" is intended to identify those various laws, rules and/or regulations for purposes of better informing the parties as to their general requirements and applicability.

In the interest of developing and increasing access to a better coordinated system of community and school-based services, in the interest of better serving their respective clienteles, in the interest of developing new strategies based on data trends, and in the interest of enhancing the legitimate and appropriate flow of necessary information by and between themselves, the parties hereby agree as follows:

- That the “Authorization and Consent to Disclosure and Exchange of Information” form attached as “Annex B” is intended to provide a uniform format for the authorization of information sharing by and between the parties on a specific client or specific student basis, and is intended to comply in all respects with the various laws, rules and/or regulations identified on Annex A;
- That they will endeavor to utilize the authorization form attached as Annex B in as many instances as possible in an effort to reduce or minimize barriers to service and resource access under the SSHS Initiative, with the understanding that a party may still require the use of different or additional forms in the context of its own service delivery structure;
- That the Community Resource & Referral Coordinator under the SSHS Initiative is authorized to conduct such periodic audits of the utilization of the authorization form attached as Annex B as may be determined by the grant evaluators;
- That each party will identify a Site Champion whose duties will include, but not be limited to, serving as the direct contact for the Community Resource & Referral Coordinator with respect to information sharing issues and the use of the authorization form attached as Annex B;
- That the parties will not, **except as may otherwise be permitted by law**, exchange information on a specific client or specific student basis in the absence of an executed authorization in the form attached as Annex B or another legally compliant authorization form; and
- That de-identified and/or non-client or student-specific data and information gathered under and/or pertaining to the SSHS Initiative may be routinely shared by and between the parties for various purposes under the SSHS Initiative, including but not limited to the improvement of coordinated services and measurements of program and intervention outcomes and efficiencies.

**3. LEGAL COMPLIANCE / RE-DISCLOSURE:** The parties agree and acknowledge that each and all of them remain individually responsible for complying with the laws, rules and/or regulations that pertain to their specific operations, and that neither this MOU nor any of its specific terms relieves them of those legal obligations. The parties further agree and acknowledge that they will not, **except as may otherwise be permitted by law**, re-disclose any specific client or specific student information that has been provided to them either (A) under the terms of any individual authorization form or (B) through any other channel of communication.

**4. TERM/PARTICIPATION/INITIAL PARTICIPATION:** The term of this MOU shall be from November \_\_, 2010 through \_\_\_\_\_, 20\_\_\_. The parties shall signify their participation in the MOU through the execution of the form attached as “Annex C”, copies of which will be maintained at the office of the SSHS Project Director. Any party may withdraw their participation in the MOU at any time and for any reason by providing written notice of that withdrawal to the SSHS Project Director. The initial participants in the MOU are as follows:

# ANNEX “A”

## IDENTIFICATION OF CONFIDENTIALITY LAWS, RULES, AND REGULATIONS

The following list represents the confidentiality laws, rules and/or regulations that apply to the parties to this Agreement. The parties recognize that the particular laws, rules and/or regulations that may apply to any one party may not necessarily apply to the others.

**(1) Family Educational Rights and Privacy Act [FERPA]; 20 U.S.C. § 1232g; 34 C.F.R. Part 99**

FERPA is a federal law that protects the privacy of students’ “education records”, and applies to educational agencies and institutions that receive funds under any program administered by the U.S. Department of Education. Under FERPA, an educational agency or institution may not have a policy or practice of disclosing the education records of students, or personally identifiable information from education records, without a parent or eligible student’s (i.e., one who is at least 18 years of age) written consent. FERPA also gives parents and eligible students the right to inspect and review the student’s education records and to seek to have them amended in certain circumstances.

The term “education records” is broadly defined to mean 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. In general, it does not include information based on personal knowledge or observation.

There are a number of important exceptions to the written consent requirement, including but not limited to the following:

- Disclosure of pertinent education records to school officials and others with a “legitimate educational interest.” In general, a person has a “legitimate educational interest” with regard to a particular student/record if that person (1) performs administrative tasks directly related to the student; (2) performs supervisory or instruction tasks directly related to the student; or

(3) performs a service of benefit for the student or student's family such as health care or counseling.

- Disclosure in response to a court order or subpoena
- Disclosure to State and Local Juvenile Justice Officials, in compliance with state law.
- Disclosure in connection with health or safety emergency involving immediate risk of harm.

**(2) Individuals with Disabilities in Education Act [IDEA]; 20 U.S.C. 1400 et. seq., 34 C.F.R. 562 et seq.**

The Individuals with Disabilities in Education Act [IDEA] is a federal law that more specifically addresses access to and confidentiality of education records of students with disabilities. It generally covers the same ground as FERPA, but technically affords greater rights of parental access and imposes somewhat more stringent requirements for safeguarding confidentiality.

In terms of confidentiality, the IDEA regulations contain a specific and express recitation of the duty to safeguard the confidentiality of "personally identifiable information", and that standard of care extends from creation of the records through destruction.

**(3) Health Insurance Portability and Accountability Act [HIPAA]; 45 C.F.R. Parts 160, 162 and 164**

The Health Insurance Portability and Accountability Act [HIPAA] protects the privacy of an individual's health information and medical records under certain circumstances, and specifies when an individual's authorization is required for disclosure of "protected health information" [PHI]. HIPAA applies to (1) health plans; (2) health care clearinghouses; and (3) health care providers that transmit health information in electronic form in connection with a transaction covered by HIPAA.

As a general rule, HIPAA has no application to public school district operations, and almost all medical and immunization records that a school might generate or possess are legally viewed as "education records" under FERPA, not PHI subject to

HIPAA (and that is the case even if a school directly employs (or even contracts with) nurses, physicians, psychologists or other health care providers). For non-school health care providers, however, HIPAA is the governing confidentiality structure.

**(4) Title 50, Chapter 16, Parts 5 and 8, MCA: Health Care Information**

Title 50, Chapter 16, Parts 5 and 8 of the Montana Code contain certain provisions relating to the confidentiality of health care information for **both** (1) entities that **are not** subject to HIPAA [Chapter 5] and (2) entities that **are** subject to HIPAA. For providers that are not otherwise subject to HIPAA, the Title 50 provisions contain stringent confidentiality restrictions that are very similar to (if not more protective than) the HIPAA provisions, including but not limited to written authorization form requirements (50-16-526) and a six month limitation on the validity of authorization forms (50-16-527). For providers that are otherwise subject to HIPAA, the Title 50 provisions contain added protections for patients in terms of disclosing information in response to litigation discovery requests or other subpoenas.

**(5) TITLE 42 C.F.R.: Confidentiality of Alcohol and Drug Abuse Patient Records; 42 C.F.R. 2.1 et seq.**

This set of federal regulations imposes restrictions upon the disclosure and use of alcohol and drug abuse patient records that are maintained in connection with the performance of **any** federally assisted alcohol and drug abuse program, including school based programs. “Records” means any information, whether recorded or not, which is (1) drug or alcohol abuse information and (2) would identify a patient as an alcohol or drug abuser either directly, by reference to other publicly available information, or through verification of such an identification by another person.

The restrictions on disclosure do not apply to communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment or referral for treatment of alcohol or drug abuse if the communications are within a program, or between a program and an entity that has direct administrative control over the program.

When they do apply, however, the restrictions prohibit the disclosure and use of such information unless certain circumstances exist, including but not limited

written consent by the patient, or a medical emergency. If a minor patient acting alone has the legal capacity to apply for and obtain alcohol and drug abuse treatment, any written consent for the disclosure of information may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement.

#### **(6) State Law Provisions re: FERPA Disclosure**

There are several state law provisions that relate directly to the FERPA exception to the “written consent” requirement that allows for disclosure without prior written consent to “state and local officials and authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute....if the allowed reporting or disclosure concerns the juvenile justice systems and such system’s ability to effectively serve, prior to adjudication, the student whose records are released.”

- Mont. Code Ann. § 20-1-213(5) provides that a “local educational agency...may release student information to the juvenile justice system to assist the system’s ability to effectively serve, **prior to adjudication**, the student whose records are released under [FERPA]...The official to whom the records are disclosed shall certify in writing to the sending official that the information will not, except as provided by law, be disclosed to any other party without prior written consent of the parent of the student...”
- Mont. Code Ann. § 52-2-211(7) provides that when a county interdisciplinary child information team is involved in a proceeding that is held **prior to the adjudication** of a youth in youth court, the Montana school district involved “may release education records to the team” so long as the written agreement that created the team and governs the operation of the team includes a requirement “that the officials and authorities to whom information is disclosed certify in writing to the school district that is releasing the education records that the education records or information will not be disclosed to any other party without the prior written consent of the parents or guardian of the student.”
- Mont. Code Ann. 41-5-215(5) provides that a school district “may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities

***pertaining to violations of the Montana Youth Court Act or criminal laws*** by the pupil.” The youth court or law enforcement authorities receiving the information are required to “certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian or pupil.”

**(7) Title 41, Chapter 1, Part 4, MCA: Minor Consent for Health Services**

Under Title 41, Chapter 1, Part 4 of the Montana Code, minors are given the right to both (1) consent to the provision of health services and (2) control access to protected health care information under certain limited circumstances including a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol.

Even when the minor exercises the right to consent and/or control access to information, the health professional may inform the parent or guardian under the following circumstances:

- Major surgery or prolonged hospitalization is required, or severe complications are present.
- Failure to inform the parent or guardian would seriously jeopardize the safety and health of the minor patient, younger siblings or the public.
- Informing the parent or guardian would benefit the minor’s physical and mental health and family harmony; or
- The health professional providing treatment desires a third-party commitment to pay for services rendered.

The term “health professional” includes only those persons licensed in Montana as physicians, psychiatrists, psychologists, advanced practice registered nurses, dentists, physician assistants, professional counselors, or social workers.



# **ANNEX “B”**

## **AUTHORIZATION AND CONSENT TO DISCLOSURE AND EXCHANGE OF INFORMATION FORM**

# ANNEX “C”

## PARTICIPATION ACKNOWLEDGEMENT MOU RE SSHS INFORMATION SHARING

The following agency/entity hereby acknowledges its participation in and agreement with the terms of the November, 2010 “Memorandum of Understanding Re SSHS Information Sharing”:

AGENCY/ENTITY:

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AUTHORIZING OFFICIAL:

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TELEPHONE NUMBER:

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E-MAIL:

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Please deliver to:

Tracy Moseman, Project Director  
Safe Schools Healthy Students Initiative  
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Helena, MT 59601