

# HIPPA

45CFR – A – C - 164 E 164.512

**§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.**

A covered entity may use or disclose protected health information without the written authorization of the individual, ... .

....

***(j) Standard: Uses and disclosures to avert a serious threat to health or safety -***

**(1) Permitted disclosures.** A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:

**(i)**

**(A)** Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

**(B)** Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

....

**(4) Presumption of good faith belief.** A covered entity that uses or discloses protected health information pursuant to paragraph (j)(1) of this section is presumed to have acted in good faith with regard to a belief described in paragraph (j)(1)(i) or (ii) of this section, if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

# FERPA

## **34 CFR § 99.31 Under what conditions is prior consent not required to disclose information?**

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

...

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in § 99.36.

## **§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?**

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

...

(c) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

## Section 504 & The ADA

**29 U.S.C. § 794 et seq (“Section 504”)** No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ....

**42 U.S.C. §12133** "The remedies, procedures, and rights set forth in [Section 504] shall be the remedies, procedures, and rights [that Title II] provides..."

### ***Title I of the ADA prohibits disability-based discrimination in employment.***

**29 CFR § 1630.15 - Defenses.** Defenses to an allegation of discrimination under this part may include, but are not limited to, the following:

(b)Charges of discriminatory application of selection criteria -

...

(2)Direct threat as a qualification standard. The term “qualification standard” may include a requirement that an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace. (See § 1630.2(r) defining direct threat.)

### **29 CFR § 1630.2 - Definitions.**

(r)Direct Threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

### ***Title II prohibits disability-based discrimination by public entities.***

**28 CFR 35.104 - Definitions.** Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services as provided in § 35.139.

**§ 35.139 Direct threat.** (a) This part does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others.