

VAWA, HIPAA, FERPA, and Title X Privacy Laws: A Comparison Chart



Attorneys working on projects funded by the Office on Violence Against Women (OVW) need to understand the Violence Against Women Act (VAWA)¹ confidentiality provisions. However, these provisions are not the only federal confidentiality laws that they need to know, especially when they represent clients in health care and school settings. The Victim Rights Law Center (VRLC) has developed this comparison chart to help these attorneys to readily identify differences between VAWA’s confidentiality provisions, the Health Insurance Portability and Accountability Act (HIPAA), the Family Educational Rights and Privacy Act (FERPA), and Title X of the Public Health Service Act (Title X) so that they may better protect their survivor-clients’ privacy. This chart is not legal advice. Anyone using it should pay close attention to the sources of law cited in the footnotes to make sure that the points are current and accurate, and to fully understand the information in the chart. VRLC’s training and technical assistance team welcomes the opportunity to discuss this information and any other questions OVW-funded attorneys may have about protecting survivor-clients’ confidentiality. We also have resources on HIPAA and FERPA in a higher-education campus context. You can contact us at TA@victimrights.org.

¹The VAWA confidentiality provisions are very similar – but not identical – to the confidentiality provisions in the Victims of Crime Act (VOCA) and the Family Violence Prevention and Services Act (FVPSA) confidentiality statutes and regulations. Please request VRLC’s VAWA, VOCA, and FVPSA Comparison Chart to learn more.

VAWA, HIPAA, FERPA, and Title X Confidentiality Laws

	VAWA	HIPAA	FERPA	TITLE X
What is the purpose of the law?	The VAWA ² confidentiality provisions are intended to “ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families” and “to protect the confidentiality and privacy of persons receiving services.” ³	HIPAA ⁴ is intended to protect patient privacy and the security of protected health information while facilitating the flow and exchange of information within the health care system to increase administrative efficiency and the effectiveness of health care. ⁵	FERPA ⁶ is intended to allow parents of students to inspect, review, and challenge education records of their children, and to require parents’ written consent for the release of students’ education records. (Exceptions apply.) ⁷ Note: When a student turns 18 years old, or is attending a postsecondary institution, the consent required of, and the rights accorded to, the parents are only required of and accorded	Title X ¹⁰ is intended to allow all individuals to access comprehensive family planning services and related preventative health services. ¹¹

² 34 U.S.C. § 12291; 28 C.F.R. § 90.4.

³ 34 U.S.C. § 12291(b)(2)(A); 28 C.F.R. § 90.4(b)(1).

⁴ 45 C.F.R. Parts 160, 162, and 164.

⁵ 45 C.F.R. Part 160 and Subparts A and E of Part 164.

⁶ 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

⁷ 20 U.S.C. § 1232g.

¹⁰ Title X of the Public Health Service Act, 42 U.S.C. § 300, et seq.

¹¹ 42 U.S.C. §§ 300(a); 300a(a); 300a-1(a); 300a-2; 300a-3(a).

	VAWA	HIPAA	FERPA	TITLE X
			to the student. ⁸ A postsecondary institution may opt to share certain education records with parents regardless of age if the student is a tax dependent and the institution notifies students this is the policy. ⁹	
To whom does the law apply?	VAWA confidentiality provisions apply to any OVW-funded grantee or sub-grantee who is providing “victim services.” ¹² “The terms ‘victim services’ and ‘services’ mean services provided	HIPAA applies to “covered entities” (health plans, and health care clearinghouses and providers) ¹⁴ who electronically transmit any health information in connection with transactions for which Health and Human	FERPA applies to educational agencies and institutions that receive funding under any program administered by the Department of Education. ¹⁶	Title X applies to all “grantees and subrecipients” of project grants and contracts for family planning services from the Secretary of Health and Human Services. ¹⁸

⁸ 20 U.S.C. § 1232g(d).

⁹ 20 U.S.C. § 1232g(b)(1)(H); 26 U.S.C. § 152.

¹² 34 U.S.C. § 12291(b)(2).

¹⁴ 45 C.F.R. § 160.102.

¹⁶ 20 U.S.C. § 1232g(a)(3).

¹⁸ 42 C.F.R. § 59.1.

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	to victims of domestic violence, dating violence, sexual assault, or stalking, including telephonic or web-based hotlines, legal assistance and legal advocacy, economic advocacy, emergency and transitional shelter, accompaniment and advocacy through medical, civil or criminal justice, immigration, and social support systems, crisis intervention, short-term individual and group support services, information and referrals, culturally specific services, population specific services, and	Services has adopted standards, and to their business associates. ¹⁵	Note: FERPA protected records may convert to HIPAA-covered records in certain circumstances (e.g., if they are released to the student or to a provider who is not the school-sponsored healthcare provider). ¹⁷	

¹⁵ 45 C.F.R. § 160.103.

¹⁷ 45 C.F.R. § 164.104.

	VAWA	HIPAA	FERPA	TITLE X
	other related supportive services.” ¹³			
Must a provider, agency, or institution give notice of the confidentiality protections?	No, VAWA does not require notice of confidentiality protections.	Yes, an individual has a right to adequate notice of the uses and disclosures of protected health information that may be made by a covered entity. ¹⁹ The requirements of the notice of privacy practices for protected health information do not apply to a correctional institution that is a covered entity. ²⁰	Yes, educational agencies and institutions are required to notify parents and eligible students about their rights under FERPA. ²¹	No, Title X does not require notice of confidentiality protections.
Must a provider, agency, or institution receive authorization from an individual to	It depends. Written permission is required for anyone who sought, received, or was denied	It depends. Except as otherwise permitted or required, a covered entity may not disclose	It depends. No educational agency or institution may permit the release of education	It depends. All information about individuals receiving services’ personal facts

¹³ 34 U.S.C. § 12291(a)(51).

¹⁹ 45 C.F.R. § 164.520(a).

²⁰ 45 C.F.R. § 164.520(a)(3).

²¹ 20 U.S.C. § 1232g(e).

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release the individual’s personally identifying or individual information?	services from the victim service provider to release the information unless a statute, case law, or court order mandates the release. ²² Grantees and subgrantees must discuss why the information might be shared, who would have access to it, and what information could be shared; reach agreement with the about what information would be shared and with whom; and record the agreement about the scope of the release. ²³	protected health information (PHI) without a valid authorization. ²⁴ PHI is individually identifiable health information, excluding PHI in education records covered by FERPA, certain student treatment records, employment records held by a covered entity in its role as employer, and regarding a person who has been dead more than 50 years. ²⁵ See 45 C.F.R. § 164.510 for disclosures requiring an opportunity for the individual to agree or to object.	records without the written consent of students’ parents (or eligible students). ²⁶ See, however, “What are the exceptions to confidentiality?” below.	and circumstances obtained by project staff must not be disclosed without the individual’s documented consent, except as may be necessary to provide services or as required by law (including reporting laws). Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals. Individuals must be informed of “any potential for disclosure of their confidential health

²² 34 U.S.C. § 12291(b)(2)(B).

²³ 28 C.F.R. § 90.4(b)(3)(ii)(A).

²⁴ 45 C.F.R. § 164.508(a)(1).

²⁵ 45 C.F.R. § 160.103.

²⁶ 20 U.S.C. § 1232g(b)(1).

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				information to policyholders.” ²⁷
What information must be kept confidential?	Personally identifying information (PII) or individual information must not be disclosed, revealed, or released. PII is “individually identifying information for or about an individual including information likely to disclose the location of a victim . . . including – (A) a first and last name; (B) home or other physical address; (C) contact information ...;	Protected health information is individually identifiable health information transmitted or maintained in any form or medium. Individually identifiable health information is health information, including demographic information collected from an individual that identifies the individual or with which there is a reasonable basis to believe that information can be used to identify the individual. ²⁹	Personally identifiable information derived from “education records.” ³⁰ (Information obtained through personal knowledge, observation, or heard orally from others is not protected under FERPA. ³¹)	All information about individuals receiving services’ personal facts and circumstances obtained by project staff. ³²

²⁷ 42 C.F.R. § 59.10.

²⁹ 45 C.F.R. § 160.103.

³⁰ 20 U.S.C. § 1232g(a)(4).

³¹ 20 U.S.C. § 1232g(a)(4)(B).

³² 42 C.F.R. § 59.10.

	VAWA	HIPAA	FERPA	TITLE X
	<p>(D) a social security number, driver license number, passport number, or student identification number; and</p> <p>(E) any other information including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.”²⁸</p>			
What are the exceptions to confidentiality?	<p>OVW-funded victim service providers may share the personally identifiable or individual information of someone who sought, received, or was denied victim services without a release of information:</p>	<p>Exceptions to HIPAA confidentiality:</p> <ul style="list-style-type: none"> When disclosure is required by law and the use or disclosure complies with and is limited to the requirements of such law.³⁶ 	<p>A school may disclose “directory information” to third parties without consent if it has given public notice of (1) the types of information it has designated as “directory information,” (2) a parent’s or eligible student’s right to restrict</p>	<p>Exceptions to Title X confidentiality are:</p> <ul style="list-style-type: none"> Disclosure as necessary to provide services to the patient. Disclosure as required by law.

²⁸ 34 U.S.C. § 12291(a)(25).

³⁶ 45 C.F.R. § 164.512(a).

	VAWA	HIPAA	FERPA	TITLE X
	<ul style="list-style-type: none"> When required by a statutory mandate or when required by a court order or case law.³³ When the information is being sought for a fatality review.³⁴ <p>OVW funded victim services providers “shall make reasonable attempts to provide notice to victims affected by the disclosure of information” and “shall take steps necessary to protect the privacy and safety of the person</p>	<ul style="list-style-type: none"> For certain public health activities and purposes.³⁷ Information about an individual reasonably believed to be a victim of abuse, neglect, or domestic violence to a government entity authorized to receive such reports.³⁸ For health oversight activities.³⁹ For judicial and administrative proceedings.⁴⁰ 	<p>the disclosure of such information, and (3) the time within which a parent or eligible student must notify the school in writing that they do not want those types of information designated as “directory information.”⁴⁵</p> <p>PII may also be released without the parents’ or eligible student’s consent to:</p> <ul style="list-style-type: none"> A “school official” with a “legitimate educational interest” 	<p>Disclosure to comply with child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, human trafficking, or similar reporting laws.</p> <p>Otherwise, information may be disclosed only in summary, statistical, or other forms which does not identify particular individuals.⁵⁵</p>

³³ 34 U.S.C. § 12291(b)(2)(B) and (C); 28 C.F.R. § 90.4(b)(3)(i).

³⁴ 34 U.S.C. § 12291(b)(2)(H).

³⁷ 45 C.F.R. § 164.512(b).

³⁸ 45 C.F.R. § 164.512(c).

³⁹ 45 C.F.R. § 164.512(d).

⁴⁰ 45 C.F.R. § 164.512(e).

⁴⁵ 20 U.S.C. § 1232g(b)(1).

⁵⁵ 42 C.F.R. § 59.10.

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	affected by the release of the information.” ³⁵	<ul style="list-style-type: none"> • For law enforcement purposes.⁴¹ • Information about decedents.⁴² • For specialized government functions.⁴³ • For research.⁴⁴ 	<p>(school must define this in advance).⁴⁶</p> <ul style="list-style-type: none"> • Authorized government entities for audit, evaluation, or compliance purposes.⁴⁷ • Others in connection with financial aid.⁴⁸ • State and local officials or authorities concerning juvenile justice system services for student.⁴⁹ • Organizations studying school’s test administration, 	

³⁵ 34 U.S.C. § 12291(b)(2)(C).

⁴¹ 45 C.F.R. § 164.512(f).

⁴² 45 C.F.R. § 164.512(g) and (h).

⁴³ 45 C.F.R. § 164.512(k).

⁴⁴ 45 C.F.R. § 164.512(i).

⁴⁶ 20 U.S.C. § 1232g(b)(1)(A) and (B).

⁴⁷ 20 U.S.C. § 1232g(b)(3).

⁴⁸ 20 U.S.C. § 1232g(b)(1)(D).

⁴⁹ 20 U.S.C. § 1232g(b)(1)(E).

	VAWA	HIPAA	FERPA	TITLE X
			<p>student aid programs, or improving instruction.⁵⁰</p> <ul style="list-style-type: none"> • Comply with a judicial order or subpoena.⁵¹ • Address a health or safety emergency.⁵² <p>Note: Law enforcement records are not “education records” covered by FERPA.⁵³ FERPA also distinguishes between “education records” and healthcare “treatment records.”⁵⁴</p>	
Is verbal permission to release information ever sufficient?	No. The release must be in writing. ⁵⁶	Possibly. A disclosure requiring an authorization must be a signed, plain	No. Consent for disclosure of education records must be signed	The individual’s consent must be documented, but Title X does not specify

⁵⁰ 20 U.S.C. § 1232g(b)(1)(F).

⁵¹ 20 U.S.C. § 1232g(b)(1)(J).

⁵² 20 U.S.C. § 1232g(b)(1)(I).

⁵³ 20 U.S.C. § 1232g(a)(4)(B)(ii).

⁵⁴ 20 U.S.C. § 1232g(a)(4)(B)(iv).

⁵⁶ 34 U.S.C. § 12291(b)(2)(B)(ii); 28 C.F.R. § 90.4(b)(3)(ii)(A).

	VAWA	HIPAA	FERPA	TITLE X
		language document that meets certain requirements. ⁵⁷ An individual may agree or object verbally, however, to a use or disclosure requiring an opportunity for the individual to agree or to object. ⁵⁸ Furthermore, when an individual may agree to a disclosure for which an authorization is not required, the individual's agreement may be given verbally. ⁵⁹	and dated, specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or parties to whom the disclosure may be made. ⁶⁰	whether a verbal release documented by a provider, for example, is sufficient. ⁶¹
May an individual give verbal permission to release their	VAWA does not have a provision that allows for verbal permission to	Usually not. However, a covered entity may disclose protected health information without	FERPA does not have a provision that allows for verbal consent to release information in the	Title X requires that the consent be documented. It does not, however,

⁵⁷ 45 C.F.R. § 164.508(c).

⁵⁸ 45 C.F.R. § 164.510.

⁵⁹ 45 C.F.R. § 164.512.

⁶⁰ 20 U.S.C. § 1232g(b)(1) and (b)(2)(A).

⁶¹ 42 C.F.R. § 59.10.

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information in an emergency?	release information, even in an emergency. ⁶²	written authorization, or the opportunity to agree or object, for the reasons stated above (see “What are the exceptions to confidentiality?”). When an individual may agree to a disclosure permitted by this section, the individual’s agreement may be given verbally. ⁶³	education records of students, even in an emergency. ⁶⁴	indicate how the consent must be given. ⁶⁵
May a provider, agency, or institution release information without the consent of a minor or a legally incapacitated person who has a court-appointed guardian?	It depends. If a minor or legally incapacitated person with a court-appointed guardian is permitted by law to receive services without a parent’s or guardian’s consent, the minor or legally incapacitated	An authorization to disclose information must be signed by the individual or a personal representative of the individual. ⁶⁷ If “a parent, guardian, or other person acting <i>in</i>	Yes, if the student is under eighteen years old and is not attending a post-secondary institution. Furthermore, an institution of higher education may disclose, to a parent or legal guardian of a student,	No. Family participation is encouraged, but confidential information cannot be released without consent. ⁷³

⁶² 34 U.S.C. § 12291(b)(2)(B) and (C); 28 C.F.R. § 90.4(b)(3)(i).

⁶³ 45 C.F.R. § 164.512(f).

⁶⁴ 20 U.S.C. § 1232g(b)(1) and (b)(2)(A).

⁶⁵ 42 C.F.R. § 59.10.

⁶⁷ 45 C.F.R. § 164.508(c)(1)(vi).

⁷³ 42 C.F.R. § 59.10.

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	<p>person may consent to release information without additional consent. If an unemancipated minor is not permitted by law to receive services without a parent or guardian's consent, the release must be signed by the minor and the non-abusive parent or guardian. If a legally incapacitated person is not permitted by law to receive services without a legally appointed guardian's consent, the release must be signed by a non-abusive legally appointed guardian. If a minor is unable to knowingly consent to the</p>	<p><i>loco parentis</i> has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative."⁶⁸</p> <p>However, the minor has authority to solely act as the individual if:</p> <ul style="list-style-type: none"> • The minor, a court, or another authorized person consents to such health care and no other consent is required, or • a parent, guardian, or other person acting <i>in loco parentis</i> assents to an agreement of confidentiality.⁶⁹ 	<p>information about any violation of law, or of any rule or policy of the institution, on the use or possession of alcohol or a controlled substance if the student is under the age of 21 and the institution determines that the student has committed a disciplinary violation.⁷²</p>	

⁶⁸ 45 C.F.R. § 164.502(g)(3)(i).

⁶⁹ 45 C.F.R. § 164.502(g)(3)(i).

⁷² 20 U.S.C. § 1232g(i).

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	<p>release, only the non-abusive parent or guardian needs to sign.⁶⁶</p>	<ul style="list-style-type: none"> Some disclosures of information to parents, guardians, or persons acting <i>in loco parentis</i> are authorized even when the minor consents to health care.⁷⁰ <p>A covered entity may elect not to treat a person as the personal representative of an individual if they reasonably believe that the individual has been or may be subjected to domestic violence, abuse, or neglect by such person or treating such person as the personal representative could endanger the individual, and the</p>		

⁶⁶ 34 U.S.C. § 12291(b)(2)(B)(ii); 28 C.F.R. § 90.4(b)(3)(ii).

⁷⁰ 45 C.F.R. § 164.502(g)(3)(ii).

	VAWA	HIPAA	FERPA	TITLE X
		covered entity decides that it is not in the best interest of the individual to treat the person as the individual's personal representative. ⁷¹		
May law enforcement require the provider, agency, or institution to release information?	Only if the disclosure is authorized by a VAWA-compliant release of information, a statute, court order, or case law requires the release, or it is aggregate information. ⁷⁴	<p>A covered entity may disclose protected health information to a law enforcement official for a law enforcement purpose if the disclosure:</p> <ul style="list-style-type: none"> • Is required by law. • Is to identify or locate someone. • Is about a victim of a crime if the individual agrees or covered entity can't get the individual's agreement because 	Only if law enforcement is the "appropriate party" to address a specific and articulable threat of a health or safety emergency. ⁷⁶	Only if required by law or in a form which does not identify particular individuals. ⁷⁷

⁷¹ 45 C.F.R. § 164.502(g)(5).

⁷⁴ 34 U.S.C. § 12291(b)(2)(B) and (C); 28 C.F.R. § 90.4(b)(3)(i).

⁷⁶ 20 U.S.C. § 1232g(b)(1)(I).

⁷⁷ 42 C.F.R. § 59.10.

	VAWA	HIPAA	FERPA	TITLE X
		<p>of incapacity or other emergency circumstance (exceptions apply).</p> <ul style="list-style-type: none"> Alerts law enforcement that death may have occurred from criminal conduct. Constitutes evidence of criminal conduct that occurred on the covered entity's premises or, in an emergency response, off their premises.⁷⁵ 		

⁷⁵ 45 C.F.R. § 164.512(f).