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TO: Dr. Caitlin Pedati, State Epidemiologist  
FROM: Heather L. Adams, Assistant Attorney General  
RE: Exchange of COVID-Positive Case Information Between  
Public Health and School Officials  
DATE: August 26, 2020

You have asked whether public health officials and school officials are authorized to exchange information regarding COVID-positive students, teachers, staff, and close contacts, specifically: (1) can state and local public health officials disclose the name of a COVID-positive student, teacher, or other staff member to the school such person attends or at which such person is employed; (2) can state and local public health officials disclose the names of COVID-19 case contacts (those persons who had close contact with a COVID-19 positive person) to the school such person attends or at which such person is employed; and (3) can a school disclose the name of a COVID-positive student, teacher, other staff member, or case contact to state and local public health officials?

Summary:

First, it is my opinion that state and local public health staff are authorized to disclose the name of a COVID-positive student, teacher, or other staff member to such person's school if disclosure of the positive case's name to the school is necessary to conduct the disease investigation and institute necessary control measures. Public health officials are also authorized to disclose the names of COVID-19 case contacts (those persons who had close contact with a positive case) if necessary to conduct the disease investigation and institute necessary control measures. Confidential case and contact information provided by public health to schools retains its confidential status and shall not be re-released by the school.

Second, it is my opinion that a school is authorized to disclose the names of a COVID-positive student, teacher, other staff member, and case contacts to state and local public health officials.

## Legal Analysis:

*Disclosure of information from public health to schools.* State and local public health staff are responsible for conducting disease investigations into COVID-19 outbreaks at schools in Iowa, including preschools, K-12 schools, and colleges and universities. You have indicated that disclosure of the name of a COVID-19 positive student, teacher, or other staff member to the school may be necessary in order to conduct the disease investigation for a number of reasons, including (1) to quickly and accurately identify other students, teachers, or school staff members who were in close contact with the positive person, and (2) to ensure that the positive person follows proper isolation protocols and is not physically present within the school while infectious. You have further indicated that disclosure of the names of those persons with whom a COVID-19 positive person had close contact may also be necessary to ensure that case contacts comply with proper quarantine protocols.

HIPAA. Local public health departments are typically covered entities under HIPAA, and thus an analysis of whether they can make such disclosures is governed by both federal and state confidentiality laws. Local public health is authorized by law to conduct disease investigations, which include determining “the specific source, mode of transmission, and cause of a disease or suspected disease and to determine the specific incidence, prevalence, and extent of the disease in the affected population.” Disease investigation also includes “instituting appropriate control measures.” 641 IAC 1.1, 1.7, Iowa Code § 139A.3. Under HIPAA, local public health is authorized to disclose protected health information without patient authorization if such disclosure is permitted by law and necessary in order to conduct public health activities such as disease investigations. 45 CFR §§ 164.512(b)(1)(i) and 164.512(b)(2).

In addition, local public health staff are permitted under HIPAA to disclose the names of positive cases and case contacts to a school if such disclosure is necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public and such disclosure is made to a person reasonably able to prevent or lessen the threat. 45 CFR § 164.512(j)(1)(i). The Office for Civil Rights has issued COVID-19 guidance for interpreting this section of HIPAA which broadly construes this section in a manner that would allow for local public health to disclose the name of a COVID-positive individual to schools if necessary to conduct the disease investigation, trace contacts, and implement necessary disease control measures. (March 24, 2020, OCR COVID-19 and HIPAA: Disclosures to law enforcement, paramedics, and others).

These provisions of HIPAA require a factual analysis of the level of the threat to the health and safety of persons - including other students, teachers, and school staff - if disclosure is not made, as well as an analysis of whether there are alternative means to conducting the investigation which do not involve disclosing identifiable information to

the school. Where a student, teacher, or staff member has been physically present in a school building when other persons have also been present, disclosure of the name may be necessary to reduce the risk of such threat to close contacts and others. In such situations, the disclosure of the case's name to the school may also be necessary to institute control measures such as ensuring the COVID-positive person is removed from the school environment until they are no longer infectious.

State Law. Under state law – which governs both state and local public health officials - the names of persons involved in disease investigations are confidential and disclosed only under limited circumstances expressly authorized by law. Iowa Code § 139A.3(2), 641 IAC 1.17, 175.9, 175.10. Disclosure of the names of COVID-positive persons and case contacts by state or local public health officials may be made to schools only if it is necessary for such school to assist in instituting disease control measures, such as assisting public health in the identification of close contacts or ensuring that the COVID-positive case or case contact does not return to school until it is safe to do so. 641 IAC 1.17(3)(a), (b), (d), 175.10(2)(a), (e). The analysis for this disclosure under state law is similar to the HIPAA analysis as the disclosure should occur only if prompt identification of close contacts and implementation of control measures are not possible without informing the school of the name of the positive case or contact. In addition, the unprecedented nature and scope of the COVID-19 outbreak and the public health threat it poses, as evidenced by the Governor's Declaration of Public Health Disaster Emergency on March 17, 2020, and subsequent extensions, weigh in favor of releasing that level of information necessary to appropriately identify cases and close contacts and ensure appropriate disease control measures are implemented.

In sum, state and local public health officials are authorized to disclose the names of COVID-positive cases and case contacts to a school such person attends or at which such person is employed, under the limited circumstances discussed above. This identifying information retains its confidential status and shall not be redisclosed by the school. Local public health staff should contact their county attorney or other legal counsel for advice in applying this guidance in specific situations, and such counsel should feel free to contact me with additional questions or concerns.

Disclosure of information from schools to public health. School officials in Iowa have a duty under state law to report cases of reportable diseases occurring in students to public health. 641 IAC 1.4(1)(b), (c). Pursuant to the COVID-19 Mandatory Reporting Order issued April 18, 2020, COVID-19 is a reportable disease, and therefore under state law school officials are required to report cases of COVID-19 positive students within their school to public health. School officials must report positive cases within their school both for students tested at or by the school *and* for students tested elsewhere if the school has been informed of the positive test result. Reporting cases of

COVID-19 positive teachers, other staff, and case contacts to public health is authorized under state law. *See* Iowa Code §§ 135.40, 135.144(3), 641 IAC 1.7.

Schools are also permitted to disclose information about COVID-19 positive students and case contacts to public health officials under the Family Educational Rights and Privacy Act (FERPA). While FERPA generally prohibits the disclosure of a student's personally identifiable information (PII) without prior written consent, exceptions to FERPA's general consent rule apply to the disclosure of COVID-19 information. Specifically, schools may disclose PII to a public health agency without prior written consent in connection with a health or safety emergency if public health's knowledge of the information is necessary to protect the health and safety of students or other individuals. 34 CFR §§ 99.31(a)(10) and 99.36.

The U.S. Department of Education has issued guidance that a school may rely on a state or local government's emergency proclamation to find that an emergency exists, and has stated the health and safety exception constitutes "a flexible standard under which the Department will not substitute its judgment for that of the educational agency or institution so that the educational agency or institution may bring appropriate resources to bear on the situation, provided that, based on the information available at the time of the educational agency's or institution's determination, there is a rational basis for such determination." The U.S. Department of Education has expressly stated that student health records may be disclosed to public health departments without consent if a school believes that COVID-19 poses a serious risk to the health of students and public health needs the information to protect the health of the student or other individuals. (FERPA & COVID-19 FAQ's, U.S. Dept. of Education, March 2020).

In sum, schools are authorized to disclose COVID-positive case and contact information to state and local public health officials under both federal and state law. School officials should contact their district's legal counsel for advice in applying this guidance in specific situations, and such counsel should feel free to contact me with additional questions or concerns.

Finally, I note that the federal and state laws discussed above generally prohibit public health and school officials from disclosing identifying information about positive COVID-19 cases in a public manner. Local public health and school officials should contact their legal counsel in determining the nature and scope of information to provide to parents, the public, and the media related to a specific COVID-19 outbreak or investigation to strike an appropriate and legal balance between protecting the privacy of individual students and staff *and* protection of the health of the educational community as a whole.

This memorandum does not constitute a formal opinion of the Attorney General.

