



Privacy Technical
Assistance Center



FERPA 101

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PTAC



What is FERPA?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children's *education records*, the right to seek to have the records amended, and the right to consent to the disclosure of personally identifiable information from education records, except as provided by law.

When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student").



Video to Share with Parents!!





Confidentiality under FERPA

- Protects personally identifiable information (PII) from education records from unauthorized disclosure
- Requirement for written consent before sharing PII
- Exceptions from the consent requirement for:
 - “Studies”
 - “Audits and Evaluations”
 - Directory Information
 - And others purposes as specified in §99.31



Setting the Context – When was FERPA originally enacted?

- 1996
- 1982
- 1974
- 1965





Key FERPA Regulatory Changes

- Written agreements now required for data sharing under the audit/evaluation exception
- Under the audit/evaluation exception, the entity disclosing PII must use "reasonable methods"
- New definition: *Authorized Representative*
- New definition: *Education Program*



§ 99.3 What definitions apply to these regulations? (Partial)

“Education records” are 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.





Personally Identifiable Information (PII)



“Personally identifiable information” includes, but is not limited to:

- the student’s name;
- name of the student’s parent or other family members;
- address of the student or student’s family;
- a personal identifier, such as a social security number, student number, or biometric record; and
- other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name.



Key Points to Remember

- Properly de-identified data can be shared without any FERPA considerations and should be your **FIRST** option as it limits the risk of unauthorized PII disclosure.
- In ***most*** cases, consent is the best approach for sharing PII.
- Directory Information is often misunderstood. Opt-out provisions do not prevent data from being shared under the Audit/Evaluation or School Official exceptions.



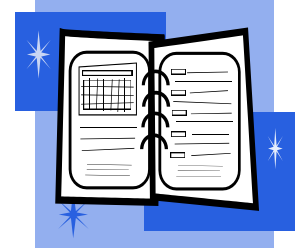


Access to Student Records: Directory Information

- Directory information
 - May be released without prior consent
 - State and local laws specify what types of information are considered directory info
- Under **FERPA**, parents must be informed of what is considered directory information and given the opportunity to withhold its release
 - [FERPA Model Notice for Directory Information](#)



Directory Information



“Directory information” is –

- Personally identifiable information that is not generally considered harmful or an invasion of privacy if disclosed, includes, but is not limited to:
 - name, address, telephone listing, electronic mail address;
 - date and place of birth;
 - photographs;
 - participation in officially recognized activities and sports;
 - field of study;
 - weight and height of athletes;
 - enrollment status (full-, part-time, undergraduate, graduate);
 - degrees & awards received;
 - dates of attendance;
 - most recent previous school attended; and
 - grade level.



Directory Information (cont.)

- “Directory information” cannot generally include a student’s social security number or student ID number.
- “Directory information” may include a student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity, such as a PIN, password, or other factor known or possessed only by the authorized user.



FERPA Regulatory Changes — Directory Information

- Definition of directory information

- Conditions for disclosure
 - Student ID cards and badges
 - Limited directory information



Rights of Parents

§ 99.4 What are the rights of parents, custodial or noncustodial?

- FERPA affords full rights to either parent, unless the school has been provided with evidence that there is a court order, State statute or legally binding document that specifically revokes these rights.



§ 99.7 What must an educational agency or institution include in its annual notification?

Schools must annually notify parents of students and eligible students in attendance of their rights under FERPA, including:

- right to inspect and review education records;
- right to request amendment of education records;
- right to consent to disclosures, with certain exceptions; and
- right to file a complaint with U.S. Department of Education.



Annual Notification



The annual notification must also include the following:

- procedure to inspect and review education records; and
- a statement that education records may be disclosed to school officials without prior written consent, including:
 - specification of criteria for determining who are school officials; and
 - what constitutes a legitimate educational interest.



Inspection and Review of Education Record



§ 99.10 What rights exist for an eligible student to inspect and review education records?

- School must comply with request within 45 days.
- Schools are generally required to give copies only if failure to do so would effectively deny access, or make other arrangements to inspect and review – example would be a parent or student who does not live within commuting distance.
- School may not destroy records if request for access is pending.



Inspection and Review (cont.)

§ 99.11 May an educational agency or institution charge a fee for copies of education records?

- Yes – unless imposing a fee effectively prevents a parent or eligible student from exercising his or her right to inspect and review education records.

§ 99.12 What limitations exist on the right to inspect and review education records?

- If the records contain information on more than one student, the requesting parent or eligible student may inspect, review, or be informed of only the specific information about his or her child's records.



What are the Procedures for Amending Education Records?

§ 99.20, § 99.21, § 99.22

- Parent or eligible student should identify portion of record believed to contain inaccurate or misleading information.
- School must decide within reasonable period of time whether to amend as requested.
- If school decides not to amend, must inform parent or eligible student of right to a hearing.
- After a hearing, if decision is still not to amend, parent or eligible student has a right to insert a statement in the record.



OK.. Wake up.. You are being
QUIZZED!!!





Frequently Asked Question #1

A student aide (or other volunteer) is helping to check out books in the library, and during the course of their work can see other students' ID numbers. Is this a violation of FERPA?



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If a student aide (or other volunteer) is helping to check out books in the library, and can see other students' ID numbers as they are checking out books, is this a violation of FERPA?

Answer: Probably not. This likely falls under the school official exception, since this student aide has a "legitimate educational interest". Districts should specify within its annual notification its policy regarding disclosing PII, legitimate educational interest and determination of "school official".



Frequently Asked Question #2

Our district has a parent who as opted out of “directory information” as part of our annual notification process. The parent does not want their child to have a photo taken and wants their child to be exempt from wearing a badge. Are we in violation of FERPA should we require the student to wear a badge?



Frequently Asked Question #2

Our district has a parent who has opted out of “directory information” as part of our annual notification process. The parent does not want their child to have a photo taken and wants their child to be exempt from wearing a badge. Are we in violation of FERPA should we require the student to wear a badge?

Answer: No. The recently enacted changes to FERPA allow schools/districts the latitude to require that students wear an ID badge. Districts can require their students to wear ID badges and are not required to allow the student/parent to opt out of the badge under FERPA provisions.



Frequently Asked Question: County Health Department

Our county health department has asked for student information regarding age, classes, and residence due to a possible measles outbreak. Can we release this information to them?



Frequently Asked Question #3

Our county health department has asked for student information regarding age, classes, and residence due to a possible measles outbreak. Can we release this information to them?

Answer: There are a number of exceptions to FERPA's general consent rule; however, there is no specific exemption that permits a school to disclose education records -- outside of an emergency -- to a public health department. There is an exception that permits schools to disclose education records in connection with health or safety emergencies.



Sharing Disciplinary Action

- A student is disciplined for a conduct that posed a significant risk to the safety or well-being of other students. He leaves the school and enters another institution without requesting a transfer. The new school finds out that he attended the first school and calls for information. Can the old school tell the new school about the disciplinary action?

YES





Question: Are grade amendments required by FERPA?

A: No. A school is not required by FERPA to afford a student or parent the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student.

FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices. It was not intended to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations.



FERPA, Privacy and Data Security

- Unlike HIPAA and other similar federal regulations, FERPA does not require specific security controls
- This provides room for innovation, but also heaps more responsibility on the community to protect the privacy and security of student data
- As educators we have student data in many places, including our own machine / mobile devices
- It's up to us to ensure that we take the necessary security measures to protect student data



Other data sharing updates

What about sharing with non-profit organizations?





Key Points to Remember

- Properly de-identified data can be shared without any FERPA considerations and should be your **FIRST** option as it limits the risk of unauthorized PII disclosure.
- In ***most*** cases, consent is the best approach for sharing PII with non-profit organizations.
- Directory Information is often misunderstood. Opt-out provisions do not prevent data from being shared under the Audit/Evaluation or School Official exceptions.





Frequently Asked Question #1

Q: If we go the consent route for sharing data with a non-profit, can the non-profit or the SEA get the consent from the parents?



*A: FERPA does not address **where** the consent comes from, so yes, the non-profit or SEA can obtain the consent. Remember, even with consent the school/agency is not required to provide the information.*



School Official Exception

Schools or LEAs can use the School Official exception under FERPA to disclose education records to a third party only if the outside party:

- Performs a service/function for the school/district for which the educational organization would otherwise use its own employees.
- Is under the direct control of the organization with regard to the use/maintenance of the education records.



School Official Exception (cont'd)

- Uses education data in a manner consistent with the definition of the “school official with a legitimate educational interest,” specified in the school/LEA’s annual notification of rights under FERPA.
- Does not re-disclose or use education data for unauthorized purposes.



Audit/Evaluation Exception

- Data can only be shared in order to
 - Audit or evaluate a Federal- or State-supported **education** program, or
 - Enforce or comply with Federal legal requirements that relate to those education programs.
- Education program – broad, but not limitless.



Written Agreements: Audit/Evaluation Exception

- Written agreements must
 - Designate an authorized representative.
 - Specify what PII will be disclosed and for what purpose.
 - Describe the activity to clarify that it falls under the Audit/Evaluation exception.



Written Agreements: Audit/Evaluation Exception

- Written agreements must
 - Require an authorized representative to destroy PII upon completion of the evaluation and specify the time period in which the information must be destroyed.
 - Establish policies and procedures, consistent with FERPA and other Federal and State confidentiality and privacy laws, to protect PII from further disclosure and unauthorized use.



Non-Profit Scenario

South Mason County School District (LEA) wishes to enter into an agreement with a coalition of outside non-profit organizations that are running various afterschool programs in the community. The LEA would like to view these coalition members as its “agents” in continuing its education program and wishes to create an agency relationship that would allow the programs to have PII from education records.

Q: Would FERPA permit the LEA to enter into an agreement with the coalition members for purposes of disclosing PII from education records of the students who participate in one or more of the afterschool programs?



Answer to Non-Profit Scenario

- No.
 - Generally, FERPA requires written consent before PII from students' education records may be disclosed to organizations running afterschool programs.
 - "School Official" exception: Because these organizations are not performing a service or function for which the LEA would otherwise use its employees, this would not apply.
 - FERPA would permit the LEA to disclose properly designated directory information on those students whose parents have not opted out of the disclosure of their directory information, in compliance with the school's or school district's directory information policy.
 - Best Practice: Build consent into the program enrollment process to permit data sharing and increase transparency.



PTAC in 2014

Upcoming Publications & Videos

<http://ptac.ed.gov>

- Publications
 - FERPA Exceptions (FAQ)
 - Flowchart explaining when each exception may apply
 - Data destruction & recordkeeping (issue brief)
 - Contracting for IT Services
 - Transparency of Privacy/Security Policies
- Video Trainings
 - FERPA for parents & eligible students



Contact Information

Family Policy Compliance Office

Telephone: (202) 260-3887

Email: FERPA@ed.gov

FAX: (202) 260-9001

Website: www.ed.gov/fpco

Privacy Technical Assistance Center

Telephone: (855) 249-3072

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