

# Family Educational Rights and Privacy Act (FERPA)

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# Today's agenda

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- **FERPA Overview**
- **Preventing Non-Consensual Disclosures**
- **Exceptions to Obtaining Prior Consent**
- **Limitations and Rights**
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# Introductions

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# FERPA Overview

## WHAT IS FERPA?

- The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, is a federal law that protects the privacy of students' **education records**. **Educational agencies and institutions** that receive funds under a program administered by the U.S. Department of Education (ED) must comply with FERPA.
- FERPA gives **parents** certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends an institution of postsecondary education. A student to whom the rights have transferred is an **eligible student**.

Parents or eligible students have these rights under FERPA:

- To inspect and review the student's education records maintained by the school;
- To request amendment of any education records that they believe to be inaccurate or misleading; and
- **To consent to the disclosure of personally identifiable information (PII) from the student's education record to third parties, subject to certain exceptions.**

## What is an "Education Record" under FERPA?

FERPA defines education records as records that are:

- Directly related to a student; and
- Maintained by an educational agency or institution or by a party acting for the agency or institution

20 U.S.C. § 1232g (a)(4)(A); 34 CFR § 99.3.

These records include, but are not limited to, transcripts, class lists, student course schedules, health records, student financial information, and student disciplinary records.



## INSPECTION, REVIEW AND CORRECTIONS

- If a parent or eligible student makes a request to inspect and review the student's education records, the **school** must provide access within a reasonable period of time, but not more than 45 days after it has received the request.
- If a parent or eligible student requests amendment of information in the student's education records that he or she believes to be misleading or inaccurate, the school must consider the request.

# PREVENTING NON- CONSENSUAL DISCLOSURES

## PREVENTING NON-CONSENSUAL DISCLOSURES (34 CFR § 99.3)

As a general rule, a school must have a parent's or eligible student's **written consent** before it may **disclose** PII from the student's education records to a third party. PII includes, but is not limited to —

Direct identifiers, such as

- The student's or student's parent or other family member name or address;
- A personal identifier, such as a Social Security number, student ID number or biometric record;

## PREVENTING NON-CONSENSUAL DISCLOSURES (34 CFR § 99.3)

Indirect identifiers, such as

- The student's date of birth, place of birth and mother's maiden name;
- Other information (alone or in combination) that would allow re-identification of the student with reasonable certainty; and
- Information requested by a person who the school reasonably believes knows the identity of the student to whom the record relates.

## What is required for consent?

Signed and dated written consent can be done electronically as long as it identifies and authenticates a particular person as the source of electronic consent and indicates such person's approval of the information contained in the electronic consent

Consent must include:

- Specific records that would be disclosed
- Purpose of the disclosure
- Identity of individuals / groups who would have access to the records

## **Other Students' PII Contained in an Education Record**

If a student record contains PII about another student(s), the parent or eligible student may inspect and review or be informed of only the specific information about that student.

# EXCEPTIONS TO OBTAINING PRIOR CONSENT

## EXCEPTION FOR DIRECTORY INFORMATION (20 CFR § 99.37)

### Directory information

- Not generally considered harmful or an invasion of privacy
- May ***never*** include Social Security numbers, but it could include **various other types of information**.
- Schools decide what is categorized as directory information.
- Schools must provide public notice to parents or eligible students (1) of the types of information that it has designated as directory information, and (2) of the right to **opt out** of the disclosure of some or all of that information.
- Schools may adopt a limited directory-information policy that allows for the disclosure of directory information to specific parties, for specific purposes, or both. If it adopts such a policy, the school must specify it in the public notice to parents and eligible students.



## Examples of directory information?

- Name, address, telephone listing or electronic mail address;
- Date and place of birth;
- Photographs;
- Participation in officially recognized activities and sports;
- Field of study;
- Weight and height of athletes;
- Degrees and awards received;
- Dates of attendance;
- Most recent previous school attended; and
- Grade level

## EXCEPTION FOR SCHOOL OFFICIALS (34 CFR § 99.31)

FERPA allows a "school official" to access education records that contain PII if the official has a "legitimate educational interest" in the information. "School officials" generally include —

- Teachers, administrators, board members and support or clerical staff;
- Attorneys, counselors, nurses and health staff;
- Human-resources staff and IT staff; and
- Contractors, consultants, volunteers and other parties to whom the school has outsourced institutional services or functions.

## EXCEPTION FOR SCHOOL OFFICIALS (34 CFR § 99.31)

Under FERPA's "school official" exception, a school can outsource institutional services or functions to an outside party if certain conditions are met. Specifically, the outside party must —

1. Perform an institutional service or function for which the school would otherwise use employees;
2. Be under the direct control of the school with respect to the use and maintenance of education records; and
3. Be subject to requirements in section 99.33(a) of the FERPA regulations governing the use and redisclosure of PII from education records.

The disclosure without prior consent can only be made to school officials who have been determined to have **legitimate educational interest** in the information being disclosed. Further, the disclosing organization is responsible for using **reasonable methods** to ensure that school officials obtain access to only those education records in which they have legitimate educational interests.

## Legitimate Education Interest

"Legitimate Education Interest" is when a school official needs access to the education records to fulfill the official's professional responsibility.

## Reasonable Methods

"Reasonable methods" means the application of appropriate controls and protective mechanisms to ensure that only those with a legitimate educational interest are allowed access to the data. This could include administrative controls contained in a written agreement or technical controls like encryption or password protection.

## DATA SHARING: STUDIES EXCEPTION (34 CFR § 99.31(a)(6))

- Educational agencies may disclose PII from education records without consent to organizations conducting studies for, or on behalf of, schools, school districts or postsecondary institutions. The **studies** must be for the specific purpose of —
- Developing, validating or administering predictive tests;
- Administering student aid programs; or
- Improving instruction.

## DATA SHARING: AUDIT OR EVALUATION EXCEPTION

### (34 CFR § 99.31(a)(3))

- FERPA allows education agencies to disclose PII from education records without consent to *authorized representatives* of the Comptroller General of the U.S., the U.S. Attorney General, the Secretary of Education, and state or local educational authorities.
- PII from education records must be used to audit or evaluate a Federal- or state-supported education program, or to enforce or comply with Federal legal requirements that relate to those education programs (audit, evaluation, or enforcement or compliance activity).
- The entity disclosing the PII from education records must use reasonable methods to ensure to the greatest extent practicable that its designated authorized representative complies with FERPA.

*Example: An school district could designate a university as an authorized representative in order to disclose, without consent, PII from education records on its former students to the university. The university then may disclose, without consent, transcript data on these former students to the school district to permit the school to evaluate how effectively it prepared its students for success in postsecondary education.*

## Data Sharing Agreements When Disclosing PII

- Both the studies and audit/evaluation exceptions specifically require the parties to execute a written agreement when disclosing PII from education records without consent.
- The mandatory elements of that agreement vary slightly between the two exceptions.



## Written Agreements for Studies Exception (34 CFR § 99.31(a)(6)(ii)(C))

Mandatory provisions for written agreements under the studies exception must:

- Specify the purpose, scope, and duration of the study and the information to be disclosed;
- Require the organization to use PII from education records only to meet the purpose or purposes of the study as stated in the written agreement.
- Require the organization to conduct the study in a manner that does not permit the disclosure of PII to anyone other than representatives of the organization with legitimate interests.
- Require the organization to destroy all PII from education records when the information is no longer needed for the purposes for which the study was conducted, and specify the time period in which the information must be destroyed.

## Written Agreements for Audit/Evaluation Exception (34 CFR § 99.35(a)(3))

Mandatory provisions for written agreements under the audit/evaluation exception must:

- Formally designate the individual or entity as an authorized representative.
- Specify the PII from the education records to be disclosed.
- Specify that the PII from education records is being disclosed for an audit or evaluation of Federal- or state-supported education programs
- Sufficiently describe the activity to make clear that it falls within the audit or evaluation exception.
- Require that the PII from education records is destroyed when the information is no longer needed for the purpose specified, and specify the time period in which the PII must be destroyed.
- Establish policies and procedures to protect PII from education records from further disclosure (except back to the disclosing entity) and unauthorized use.

## Additional Data Sharing Agreement Guidance

To disclose PII without consent for use in audits/evaluations or studies, there must be a written agreement in place.

FERPA Guidance

[Agreements | Protecting Student Privacy \(ed.gov\)](#)

Washington State Guidance

[DSA Implementation Guidance v.2.pdf \(wa.gov\)](#)

## OTHER EXCEPTIONS

Schools also are not required to obtain prior written consent from a parent or eligible student to disclose PII from education records —

- To another school to which a student is transferring;
- To law enforcement officers, public health officials, medical personnel, parents, and other appropriate persons when necessary to protect the health or safety of a student or other individuals;
- To appropriate persons in connection with financial aid for which a student has applied or which the student has received;
- To accrediting organizations;
- To comply with a **lawfully issued subpoena or judicial order**; and
- To State and local authorities in a juvenile-justice system to whom the information is specifically allowed to be reported pursuant to State law and subject to other regulatory requirements.

# Limitations and Rights

## LIMITATIONS ON REDISCLOSURE (34 CFR § 99.33)

- When a school discloses PII from education records under any of the exceptions previously discussed, it must inform the recipient that it may not **redisclose** the information, except when —
- The disclosure is to the parent or eligible student;
- The disclosure is pursuant to certain court orders or subpoenas;
- The disclosure is to the parents of a dependent student; or
- The information disclosed is directory information.

## LIMITATIONS ON REDISCLOSURE (34 CFR § 99.33)

### Redisclosures on Behalf of Educational Agency or Institution

- Sometimes a third party that has received student PII may want to redisclose that information. For example, a college or university may wish to redisclose PII to a contractor doing work on the organization's behalf. The recipient may redisclose PII on the educational agency's or institution's behalf only if —
- The redisclosure of the information to the recipient would fall within an exception recognized by FERPA; i.e., prior consent for the disclosure is not required;
- The disclosure is on behalf of the educational agency or institution that provided the PII; and
- The educational agency or institution makes and maintains a record of the request for access to or disclosure of the PII and the disclosure of the PII.

## TRANSFER OF RIGHTS FROM PARENT TO STUDENT

- Even though the rights under FERPA transfer from the parents to their son or daughter when the student turns 18 or enters a postsecondary institution at any age, FERPA provides several ways in which a school may continue to disclose a student's education records to the student's parents without the student's consent.
- The most common exception to FERPA's general consent rule in this regard permits the disclosure of PII from a student's education records to a parent if the parent claims the student as a dependent for Federal income tax purposes.



## TRANSFER OF RIGHTS FROM PARENT TO STUDENT

Where the parent does not claim the student as a dependent, a school may disclose certain information about an eligible student to the student's parent without the student's consent —

- Pursuant to a health or safety emergency; or
- If the student is under 21, and the information concerns the student's illegal use or possession of alcohol or drugs; or
- Any other provision in section 99.31(a) that permits such disclosure.

(34 CFR §§ 99.5(a)(2), 99.31(a)(8), 99.31(a)(10), 99.31(a)(15), 99.36)

## ANNUAL NOTIFICATION

Schools must annually **notify** parents of students and eligible students in attendance of their rights under FERPA, including their right to —

- Inspect and review the student's education records;
- Request amendment of the student's education records;
- Option to "opt-out" of having student's directory information shared;
- Consent to disclosures of PII, with certain exceptions; and
- File a complaint with the Family Policy Compliance Office at the U.S. Department of Education.

## ANNUAL NOTIFICATION

The annual notification must include the following:

- The procedure for inspecting and reviewing education records;
- Definition of directory information
- The procedure for requesting amendment of education records.

## ANNUAL NOTIFICATION

The notification must also include a statement that education records may be disclosed to school officials without prior written consent and specify –

- Criteria for determining who are school officials; and
- What constitutes a legitimate educational interest.

(34 CFR § 99.7)

## RECORDKEEPING

Schools must **maintain a record** of each request for access to PII and of each disclosure of PII from the education records of each student. For each request or disclosure, the record must —

- Identify the parties requesting or receiving PII from the education records; and
- Include the parties' legitimate interests in requesting or obtaining the information.
- A school must keep a record of all requests and disclosures with the student's education records for as long as it maintains the education records.

# Reducing Risk and Enforcement

## Reducing Risk of Accidental Disclosure of PII

- Data Sharing Agreements
- Data minimization
- De-identification of files
- Redaction, suppression, blurring
- The "reasonable" person standard

## ENFORCEMENT

- The Family Policy Compliance Office (FPCO) investigates, processes and reviews timely FERPA complaints **filed by parents and eligible students**. FPCO also provides technical assistance to schools on FERPA compliance.
- **Enforcement options** against an educational agency or institution that has a practice of improperly disclosing PII from an education record include —
  - Withholding further payments under any applicable program;
  - Issuing a complaint to compel compliance through a cease-and-desist order; and
  - Terminating eligibility to receive funding under any applicable program.



## Enforcement Options (34 CFR § 99.67(c))

- ED may also require the educational agency or institution to deny any third party or outside entity access to PII from education records for at least five years, if the third party or outside entity—
- Violates FERPA's redisclosure provisions; or
- Fails to comply with the requirement under the studies exception to destroy PII from education records when no longer needed.

## Other State and Federal Privacy Policies and Laws

### **STATE**

- WaTech (OCIO) policies
- Washington State Agency Privacy Principles
- SB 5127
- SB 5593

### **FEDERAL (specific to education or systems that interact with education)**

- IDEA
- National School Lunch Act
- Higher Education Act (HEA)/Clery Act
- Protection of Pupil's Rights Amendment (PPRA)
- Children's Online Privacy Protection Rule (COPPA)
- Children's Internet Protection Act (CIPA)
- Health Insurance Portability and Accountability Act of 1996 (HIPAA)

## FERPA: Additional Resources

- **Addressing Emergencies on Campus:** <http://www2.ed.gov/policy/gen/guid/fpco/pdf/emergency-guidance.pdf>
- **Joint FERPA-HIPAA Guidance:** <http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>
- **FERPA and Disclosures Related to Emergencies:** <http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-disaster-guidance.pdf>
- **Current FERPA Regulations:** <http://www2.ed.gov/policy/gen/reg/ferpa/index.html>
- **Model Notifications for Postsecondary Institutions:** <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/ps-officials.html>

# Questions?

## Website

- [watech.wa.gov/Privacy](https://watech.wa.gov/Privacy)

## Email

- [privacy@watech.wa.gov](mailto:privacy@watech.wa.gov)

