

Fall Forum 2023
Bracing For Significant Regulatory Changes

FERPA REGULATIONS: IS PRIVACY STILL A THING?

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WHAT IS FERPA?

- Family Educational Rights and Privacy Act (FERPA)
 - Protect PII in Education Records
 - Prohibition on Disclosure of Records
 - Prior Written Consent Rule & Exceptions
 - Right to Access and Inspect
- Regulations at 34 CFR Part 99



BASIC FERPA RESPONSIBILITIES

- Educational agency or institution may not disclose **personally identifiable information** within **education records** to third-parties without prior written consent of the parent or eligible student
 - (with exceptions) – 20 U.S.C. § 1232g(b)
- Educational agency must permit the parent or eligible student to inspect and review all education records unless such right has been waived (with exceptions) – 20 U.S.C. § 1232g(a)



WHICH RECORDS HAVE FERPA REQUIREMENTS?

- 34 CFR § 99.1 Education Records: Directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution
 - Exceptions include records held by the maker for memory aid, employee records, and others



WHAT IS PII?

- The student's name
- The name of the student's parent or other family members
- The address of the student or student's family
- A personal identifier, such as the student's social security number, student number, or biometric record
- Other indirect identifiers, such as date/place of birth, mother's maiden name



WHAT IS PII? (CONT.)

- Information that is linked or linkable to a specific student that would allow a reasonable person in the school community, to identify the student with reasonable certainty
- Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates



EXCEPTIONS TO NEED FOR PRIOR WRITTEN CONSENT?

- 34 CFR § 99.31(a) includes 16 different exceptions that DO NOT require prior written consent before disclosure, including:
 - Education Officials
 - Prospective Schools
 - Audit Purposes
 - Directory Information
 - Limited Third-Party Servicers



OTHER SCHOOL OFFICIALS - § 99.31(a)(1)

- Access only to records in which they have a legitimate interest
- Must have a combination of “appropriate physical, technical, administrative, and operational controls”
- Policies and procedures must be effective in limiting access to appropriate staff
- Subject to the requirements of § 99.33(a) on use and redisclosure



PROSPECTIVE SCHOOLS – § 99.31(a)(2)

- Disclosure to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled
 - So long as the disclosure is for purposes related to the student's enrollment or transfer, does NOT require prior written consent
 - Notification must be made
- See also § 99.34



AUDIT PURPOSES – § 99.31(a)(3)

- Authorized representatives of:
 - The Comptroller General of the United States
 - The Attorney General of the United States
 - The Secretary
 - The State and local educational authorities
- May have access in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of, or compliance with, federal legal requirements that relate to those programs
- See also § 99.35



DIRECTORY INFORMATION – § 99.31(a)(11)

- Student's name
- Address, telephone listing, email address
- Photograph
- Date and place of birth
- Major field of study
- Grade level, enrollment status (e.g., undergraduate or graduate, full-time or part-time), dates of attendance
- Participation in officially recognized activities and sports, including weight and height of members of athletic teams
- Degrees, honors, and awards received
- The most recent educational agency or institution attended

See also § 99.37



THIRD-PARTY CONTRACTORS – § 99.31(a)(6)

- Can only be used for the specific purpose for which it was disclosed (included in the contract)
 - Not for marketing purposes, but may still have generalized, non-targeted adds
 - Once data is no longer needed, must be destroyed
- <https://studentprivacy.ed.gov/resources/protecting-student-privacy-while-using-online-educational-services-model-terms-service>



ANNUAL NOTIFICATIONS – § 99.7

- Schools must still send annual notifications
 - Right to inspect/amend records and consent to disclosures
 - Any disclosures that will be made throughout the year (right to opt out)



HELPFUL RESOURCE

- ED's FERPA Page: <https://studentprivacy.ed.gov/>

The screenshot shows the homepage of the U.S. Department of Education's 'Protecting Student Privacy' website. At the top left is the Department of Education seal. The main title is 'Protecting Student Privacy' with the subtitle 'U.S. DEPARTMENT OF EDUCATION' and 'A Service of the Student Privacy Policy Office's Privacy Technical Assistance Center'. A search bar is on the right. Below the header is a navigation menu with links for 'RESOURCES', 'TRAINING', 'BROWSE BY AUDIENCE', 'FAQs', 'ABOUT', and 'CONTACT', along with a 'FILE A COMPLAINT' button. The main content area features a 'News and Updates' section with a heading and a paragraph: 'Please see the below resources emphasizing data security and cyber security best practices.' This is followed by three bullet points: 'A video providing cybersecurity best practices for schools and districts', 'A video providing best practices for responding to ransomware attacks', and 'A recorded webinar on cybersecurity and incident response'. Below this is a section titled 'Student Privacy at the U.S. Department of Education' with a paragraph: 'The U.S. Department of Education is committed to protecting student privacy. We administer and enforce student privacy laws such as the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). In addition, we provide technical assistance to help schools and school districts safeguard information about students.' This is followed by another paragraph: 'To learn more about federal student privacy laws and your rights please see the short video to the right or explore these other resources:' and three bullet points: 'A Parent Guide to FERPA', 'An Eligible Student Guide to FERPA', and 'PPRA General Guidance'. To the right of the text is a video player thumbnail with a play button and the text 'WATCH VIDEO'. The thumbnail shows icons for a padlock, a document, a person, a bar chart, and a pie chart.



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