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2017 Project Directors Meeting

In Pursuit of Higher Education for All



Student Data Privacy 101

Michael Hawes
Director of Student Privacy Policy
U.S. Department of Education

The U.S. Department of Education's Role in Protecting Student Privacy

- Administering and enforcing federal laws governing the privacy of student information
 - Family Educational Rights and Privacy Act (FERPA)
 - Protection of Pupil Rights Amendment (PPRA)
- Raising awareness of privacy challenges
- Providing technical assistance to schools, districts, and states
- Promoting privacy & security best practices



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Family Educational Rights and Privacy Act (FERPA)

- Gives parents (and eligible students) the right to access and seek to amend their children's education records
- Protects **personally identifiable information** (PII) from **education records** from unauthorized disclosure
- Requires **written consent** before sharing PII – **unless an exception applies**



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Personally Identifiable Information (PII)

- **Direct Identifiers**
 - e.g., Name, SSN, Student ID Number, etc.
(1:1 relationship to student)
- **Indirect Identifiers**
 - e.g., Birthdate, Demographic Information
(1:Many relationship to student)
- **“Other information** that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.” (§ 99.3)



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Education Records under FERPA

“Education Records” are records:

- Directly related to the student; and
- Maintained by (or on behalf of) an educational agency or institution.



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But wait! There are exceptions!

Four of FERPA's exceptions to the parental consent requirement are most relevant to grantees:

- Directory information exception
- School official exception
- Studies exception
- Audit and evaluation exception

See §99.31 for information on other FERPA exceptions and their requirements.

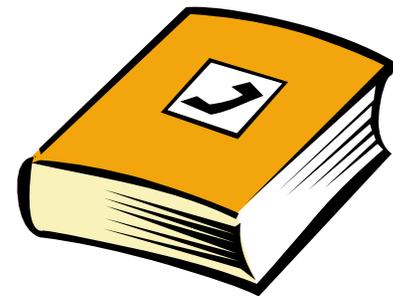


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Directory Information Exception

- Students don't attend school anonymously.
- Allows schools to release certain information without consent. A few examples:
 - name, address, telephone listing, electronic mail address;
 - date and place of birth;
 - photographs;
 - weight and height of athletes;
 - degrees & awards received, etc.



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Directory Information Exception

- Schools/Districts must designate the data elements they consider to be Directory Information.
- Common uses:
 - Yearbooks
 - Concert programs
 - Telephone directories

Parents have a right to opt-out of disclosures under the Directory Information exception!



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School Official Exception

Schools or LEAs can use the School Official exception to disclose education records without consent to a third party if the third party:

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



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Studies Exception

Allows disclosure of PII from education records for studies that are “for or on behalf of” schools, school districts, or postsecondary institutions, if:

- The studies are for the purpose of
 - Developing, validating, or administering predictive tests; or
 - Administering student aid programs; or
 - Improving instruction; and
- There is a written agreement with the individual/organization performing the study that meets certain requirements.



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Written Agreements— Studies Exception

- Written agreements **must**
 - Specify the purpose, scope, and duration of the study and the information to be disclosed, and
 - Require the organization to:
 - use PII only to meet the purpose(s) of the study
 - limit access to PII to those with legitimate interests
 - destroy PII upon completion of the study and specify the time period in which the information must be destroyed



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Audit/Evaluation Exception

Allows PII from education records to be shared without consent, for certain audits or evaluations, with:

- “Authorized representatives” of certain FERPA-permitted entities”:
 - Comptroller General of U.S.,
 - U.S. Attorney General,
 - U.S. Secretary of Education, and
 - State or Local Educational Authorities;if there is a written agreement that meets certain requirements.

34 CFR Section 99.31(a)(3)



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Audit/Evaluation

- 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

Any program principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution (FERPA regulations § 99.3)



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Written Agreements— Audit/Evaluation Exception

- Written agreements **must**
 - Designate an authorized representative;
 - Specify the PII that will be disclosed and for what purpose;
 - Describe the activity to make clear that it falls within the audit/evaluation exception;
 - Require an authorized representative to destroy PII upon completion of the study 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.



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How should you obtain the student data you need for your grants?

Directory
Information

Audit and
Evaluation

CONSENT

Studies

School Official



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Protection of Pupil Rights Amendment (PPRA)

- Mostly known for provisions dealing with surveys in K-12
- Special protections for surveys covering sensitive topics
- Includes limitations on using personal information collected from students for marketing
- Parental notification and opportunity to opt out may be required
- Development of policies in conjunction with parents may be required



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Will you be publishing data?

Remember: FERPA's definition of PII includes anything linked or linkable to the student...

Aggregate data may still contain PII!



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PTAC Resources

<http://studentprivacy.ed.gov/>

Help Desk (privacyTA@ed.gov)

Guidance and Best Practice Documents

- Data Sharing under FERPA
- Data Security
- Data Governance
- ...and much, much more.

Videos

- FERPA for Parents and Students
- Designing a Privacy Program
- ...and many others.



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Privacy Technical Assistance Center



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Policy Technical Assistance Center