



Safe Sailing Through the FERPA Triangle

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Agenda

Overview of FERPA -Key points for researchers and reporting

Recent changes to FERPA

FERPA on the horizon and ways to navigate FERPA to meet your needs

Overview of FERPA

- **Family Educational Rights and Privacy Act**
 - Applies to all schools that receive funds under an applicable program of the U.S. Department of Education.
 - Schools must have written authorization from the student before releasing the student's information except in the following situations:
 - School officials with legitimate educational interest;
 - Other schools to which a student is transferring;
 - Specified officials for audit or evaluation purposes;
 - Appropriate parties in connection with financial aid to a student;
 - Organizations conducting certain studies for or on behalf of the school;
 - Accrediting organizations;
 - To comply with a judicial order or lawfully issued subpoena;
 - Appropriate officials in cases of health and safety emergencies; and
 - State and local authorities, within a juvenile justice system, pursuant to specific State law.

Overview of FERPA

- FERPA protects against the improper disclosure of “Personally Identifiable” information. **Aggregate information, or de-identified information, is not protected under FERPA.** FERPA defines “Personally Identifiable” as including, but not limited to:
 - (a) The student's name;
 - (b) The name of the student's parent or other family members;
 - (c) The address of the student or student's family;
 - (d) A personal identifier, such as the student's social security number, student number, or biometric record;
 - (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
 - (f) 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; or
 - (g) 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.

Overview of FERPA

- In order to determine whether information is “Personally Identifiable,” the University must consider the effect of **other information that has been publicly released**, and **other reasonably available information**. The combination of two pieces of information, each de-identified, can sometimes identify a student.
- Information containing “**small cell sizes**” must be carefully reviewed before disclosure in order to determine whether it has been sufficiently de-identified. The University must consider whether a “reasonable person in the school community” would be able to identify the student.
- The University should also consider whether the person asking for information may have **additional knowledge** about the identity of the student.

Overview of FERPA

- Disclosure to third parties without student consent is permitted under several circumstances:
 - To **authorized representatives** of the Comptroller General, Attorney General, Secretary of Education, or state or local educational authorities, in connection with an **audit or evaluation** of federal- or state-supported education programs, or with the enforcement of or compliance with **federal legal requirements**, relating to those programs.
 - To **organizations conducting research** studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and or improving instruction.
 - To **accrediting organizations** in order to carry out their accrediting functions.

Latest Changes from 2012

- › **Define the term “authorized representative” to include individuals or entities designated by FERPA-permitted entities to carry out an audit or evaluation** of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements related to these programs (audit, evaluation, or enforcement or compliance activity);
- › **Unique student identification (ID) number may be designated as directory information** for the purposes of display on a student ID card or badge if the unique student ID number 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;
- › **“Education program” as 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;
- › **Clarify that FERPA-permitted entities are not prevented from re-disclosing PII** from education records as part of agreements with researchers to conduct studies for, or on behalf of, educational agencies and institutions;

Latest Changes from 2012

- › Remove the provision in § 99.35(a)(2) that required that any FERPA-permitted entity must have legal authority under other Federal, State, or local law to conduct an audit, evaluation, or enforcement or compliance activity;
- › FERPA-permitted entities are responsible for using **reasonable methods to ensure that their authorized representatives comply with FERPA**
- › Require that FERPA-permitted entities **must use a written agreement to designate an authorized representative** (other than an employee) that allows the authorized representative access to PII from education records without prior written consent in connection with any audit, evaluation, or enforcement or compliance activity
- › If Department's Family Policy Compliance Office finds an improper redisclosure with the audit or evaluation exception, the Department would **prohibit** the educational agency or institution from which the PII originated from permitting the party responsible for the improper disclosure **access to PII from education records for a period of not less than five years** (five- year rule);

Latest Changes from 2012

- Clarify that while parents or eligible students may opt out of the disclosure of directory information, this **opt out does not prevent an educational agency or institution from requiring a student to wear, display, or disclose a student ID card or badge that exhibits directory information;**
- Clarify that educational agencies or institutions may **develop policies that allow the disclosure of directory information only to specific parties**, for specific purposes, or both;
- **Authorize the Secretary to take appropriate actions to enforce FERPA against any entity that receives funds** under any program administered by the Secretary, including funds provided by grant, cooperative agreement, contract, subgrant, or subcontract.

Moving forward and how to work within FERPA

- › Making Sure Data is Secure
 - › Use strong passwords and keep them secret.
 - › Password-protect devices with a complex password. Require a password to start up or resume activity.
 - › Keep portable devices (including laptops) with you or lock them up securely before you step away – even for just a moment.
 - › Never leave data visible on your computer screen. Lock your screen even if leaving for only a short time.
 - › When you have finished a computer task involving student data, exit all files, sign off all applications and close all application windows.
 - › Beware of phishing: Don't open attachments, click links or call numbers in unsolicited emails, text messages or instant messages.
 - › Shred printed material that contains sensitive or restricted data. If you don't need it don't save it!

Moving forward and how to work within FERPA

- No major changes are currently out for comment for FERPA
- Challenge yourself to think differently where possible
- How to get to the same end goal while maintaining FERPA compliance. Many times there are multiple ways to get to the same result.

**IF IN DOUBT DON'T
GIVE IT OUT!**

Q & A