FERPA for Postsecondary

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What is FERPA?

A federal privacy law that affords eligible students the right to—

- have access to their children’s education records,
- seek to have the records amended, and
- consent to the disclosure of personally identifiable information from education records, except as provided by law.
Key Points

- FERPA protects the privacy of students by restricting access to records that contain Personally Identifiable Information (PII).

- FERPA does not permit the Disclosure of PII from education records without consent, except under certain Exceptions.

- FERPA requires that Reasonable Methods be used to protect the integrity and security of the data being maintained at the school or district.

- FERPA does permit the disclosure of certain types of PII that is previously designated as Directory Information by the school or district.
To which educational agencies and institutions does FERPA apply?

Elementary

Secondary

Postsecondary

United States Department of Education, Privacy Technical Assistance Center
Just what is an Education Record?

“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.
Inspection and Review of Education Record

What rights exist for a parent or 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.
What are the recordkeeping requirements?

• An educational agency or institution must maintain a record of each request for access to and each disclosure from an education record, as well as the names of State and local educational authorities and Federal officials and agencies listed in § 99.31(a)(3) that may make further disclosures of personally identifiable information from the student’s education records without consent under § 99.33.
Destruction of Information

• § 99.10(e) of FERPA states that an educational agency or institution, or SEA or its component, shall not destroy any education records if there is an outstanding request to inspect and review the records.
What are the exceptions to general consent?

- To school officials with legitimate educational interests (defined in annual notification);
- To schools in which a student seeks or intends to enroll;
- To State and local officials pursuant to a State statute in connection with serving the student under the juvenile justice system;
- To comply with a judicial order or subpoena (reasonable effort to notify parent or student at last known address);
- To accrediting organizations;
- To parents of a dependent student;
What are exceptions to general consent? (cont.)

- To authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs;
- To organizations conducting studies for specific purposes on behalf of schools;
- In a health or safety emergency;
- To child welfare agency or tribal organization for those children in foster care; and
- Directory information.
School Official Exception

- Schools may disclose PII from education records without consent if the disclosure is to other school officials, including teachers, within the school whom the school has determined to have legitimate educational interest.

- Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.
School Official Exception, Cont.

• Outsourcing services under school official exception
  • Schools may outsource institutional services or functions that involve the disclosure of education records to contractors, consultants, volunteers, or other third parties provided certain conditions are met.
  • If these outside parties meet the conditions for outsourcing, they may have access to education records.
School Official Exception, Cont.

• Conditions for outsourcing:
  - Performs an institutional service or function for which the agency or institution would otherwise use employees;
  - Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
  - PII from education records may be used only for the purposes for which the disclosure was made;
  - Meets the criteria specified in the school, LEA, or institution’s annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.
Exception: Disclosure to Officials of Another School

• Consent is not required to disclose personally identifiable information from education records 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 the purposes related to the student’s enrollment or transfer.
Judicial Orders & Subpoenas Exception

• School **may** disclose PII from education records necessary to comply with a judicial order or lawfully issued subpoena.

• School must make a reasonable effort to notify the parent or eligible student of the order or subpoena before complying with it in order to allow parent or eligible student opportunity to seek protective action.

• Some judicial orders and subpoenas are exempt from FERPA’s notification requirement.
Disclosure to Police Officer

• A police officer shows up at the main office of a high school/university, and he asks if a certain student is attending school today. The police officer does not have a search warrant or a subpoena. The police officer wants to speak to the student regarding some gang violence that occurred three weeks ago. Can the school/university tell the officer whether or not the student is attending school today?

TECHNICALLY, NO
Law Enforcement Unit Maintaining Records (PS)

• A student is expelled from a university and barred from campus. A copy of his disciplinary record is sent to the university’s law enforcement unit so that campus police can keep the student off campus. The law enforcement unit maintains that record and discloses it to a reporter in response to a State open records request. Is that permissible under FERPA?

NO
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 schools 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
College Disability Office

- The college’s disability office wants to share information on a student about his or her condition with teachers and administrators. Which law, FERPA or the HIPAA Privacy Rule, protects the privacy of student health records?

FERPA
§ 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.
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.
Disclosure Provisions

§ 99.31  Under what conditions is prior consent not required to disclose information?

The exceptions which relate to postsecondary institutions are:

• To school officials with legitimate educational interests (defined in annual notification). § 99.31(a)(1)

School officials with legitimate educational interests can include a contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions, provided the outside party –

• performs an institutional service or function for which the agency or institution would otherwise use employees;
Disclosure Provisions (cont.)

• is under the direct control of the agency or institution with respect to the use and maintenance of education records;
• is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records; and,
• an educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests (physical or technological access controls or administrative policy for controlling access).

• To schools in which a student seeks or intends to enroll.

§ 99.31(a)(2)
When is a student considered “in attendance” under FERPA?

- Neither the statute nor the regulations offer guidance which provide further clarification as to when a student is considered “in attendance” for the purposes of FERPA.

- Institutions should determine this based on “reasonable basis of fact”

- Applications of individuals who are not attending an institution are generally not “education records” because the individuals are not “students” at the institutions.

- However: State law may govern the confidentiality of that information provided by applicants!
What statutes govern financial assistance data?

Federal statutes:

- FERPA – certain student records
- Graham Leach Bliley – certain financial information
- HIPAA – certain medical information
- HEA, Higher Education Act – certain financial information

But you also need to pay attention to state privacy and data security statutes because they often contains provisions dealing with SSN use and incident response.
Guidance on FERPA and Reverse Transfer

FERPA and Reverse Transfer (SUNY Letter)

- Issued by the Family Policy Compliance Office (January 2016)
- Details various methods for disclosing student transcript information to promote Reverse Transfer and the awarding of Associate’s Degrees to students who have transferred to four-year institutions.
• Applicant materials aren’t necessarily part of FERPA protected records because they are not necessarily part of a student record.
Dual Enrolled Students

• True or False?

  • FERPA prohibits the sharing of information between the two institutions a dually enrolled student attends.

  • **False:** FERPA not only permits the sharing of information between the institutions, but also allows postsecondary institutions to share information to PARENTS of high school students who are dependents for Federal income tax purposes.
Dual Enrolled Students

• True or False?
  • FERPA requires consent of the parent or student to share/disclose the information as previously mentioned.
  
• False: Two schools may share education records without the consent of either the parents or the student under § 99.34. AND: If the student is under 18, the parents still retain the right under FERPA to inspect and review ANY education records maintained by the high school INCLUDING records that the college or university disclosed to the high school.
Power of Attorney

• Student retains the rights to the education record under FERPA, however the school is authorized to provide student records to an individual who has power of attorney for the student, because POA is considered consent of the student.
University Obtaining Transcripts

- A student applies to a four-year institution. The university attempts to obtain an official transcript from the student’s high school or community college, as the case may be. The applicant’s previous school refuses to disclose an official transcript because the student owes money. Does the previous high school/community college have to disclose the student’s transcripts or other education records to the new institution? **NO**
Audit/Evaluation Exception

• Federal, State, and local officials listed under §9.31(a)(3), or their authorized representative, may have access to education records only –
  • 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 which relate to those programs.

• The information must be:
  • protected in a manner that does not permit disclosure of PII to anyone; and
  • destroyed when no longer needed for the purposes listed above.
Who is an authorized representative?

• Any entity or individual designated by a State or local educational authority or an agency headed by an official listed in § 99.31(a)(3) to conduct—with respect to Federal- or State-supported education programs—any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs.
Reasonable Methods

• In disclosing to a designated authorized representative under audit/evaluation exception, LEA must ensure to the greatest extent practicable that an authorized representative

  • Uses PII only to carry out an audit or evaluation of education programs, or for the enforcement of or compliance with, Federal legal requirements related to these programs.
  • Protects the PII from further disclosures or any unauthorized use.
  • Destroys the PII records when no longer needed for the audit, evaluation, or enforcement or compliance activity.
Studies Exception

• Studies conducted “for or on behalf of” schools, school districts, or postsecondary institutions
• Studies must be for the purpose of
  • Developing, validating, or administering predictive tests; or
  • Administering student aid programs; or
  • Improving instruction
What are written agreements?

• Mandatory for LEA or SEA disclosing PII without consent under audit/evaluation.
• Mandatory for school or LEA for disclosing to outside organization under the studies exception, or for SEA redisclosing for, or on behalf of, school or LEA.
Post-Secondary Institution Data-Security Overview and Requirements

2017
Agenda

• Who needs to worry about data security?
• Why do I need to worry about data security?
• What are the data security requirements?
• What is a breach?
• When do I report a breach?
• How do I report a breach?
• How can you help me with data security?
Who needs to worry about data security?

- President & Board of Directors
  - CIO, CISO Staff
  - Financial Aid VP/Director
    - Comptrollers and Treasurers
    - Staff & Faculty
      - Users
      - Students
      - Applicants
    - Financial Aid Professionals
    - Parents
Why do I need to worry about data security?

Educational institutions are specifically being targeted because of the current state of weak and ad-hoc security coupled with the educational environ being a rich trove of information and research.
What are the data security requirements?

- Title IV schools are **financial institutions** per **Gramm-Leach-Bliley Act** (GLBA, 2002)
- Per FSA PPA & SAIG agreements, these schools must have GLBA safeguards in place or be found administratively incapable – unable to properly administer Title IV funds.
- **GLBA Safeguards** are:
  - Develop, implement, & maintain documented data security (info-sec) program
  - Designate an employee or employees to coordinate the program
What are the data security requirements? cont’d

• Identify reasonably foreseeable internal and external risks to data security via formal, documented risk assessments of:
  1) Employee training and management
  2) Information systems, including network and software design, as well as information processing, storage, transmission and disposal
  3) Detecting, preventing and responding to attacks, intrusions, or other systems failures
• Control the risks identified, by designing and implement information safeguards and regularly test /monitor their effectiveness.
What are the data security requirements? cont’d

• Oversee service providers, by:
  1) Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the FSA, student, & school (customer) information at issue
  2) Requiring your service providers by contract to implement and maintain such safeguards.

• Evaluate & adjust school’s info-sec program in light of:
  • the results of the required testing /monitoring
  • any material changes to your operations or business arrangements;
  • any other circumstances that you know may have a material impact on your information security program.
What are the data security requirements? cont’d

• Title IV schools are subject to the requirements of the FTC *Identity Theft Red Flags Rule* (72 Fed. Reg. 63718) issued on November 9, 2007
• The “Red Flags Rule” requires an institution to develop and implement a written Identify Theft Prevention Program to:
  • Detect,
  • Prevent
  • Respond to patterns, practices, or specific activities that may indicate *identity theft*
What is a breach?

- Per GLBA, a breach is *any unauthorized disclosure, misuse, alteration, destruction or other compromise of information.*
- Administrative, technical, and physical safeguards:
  1) ensure the security & confidentiality of customer information;
  2) protect against any anticipated threats or hazards to the security or integrity of such records
  3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

Important items to note:
- No minimum size or # of records & employees aren’t exempt
- Not strictly digital or technology-based – **paper counts!**
- Covers data in storage, in transit or being processed
When do I report a breach?

• The Student Aid Internet Gateway (SAIG) Agreement requires that as a condition of continued participation in the federal student aid programs Title IV schools report suspected/actual data breaches.

• Title IV schools must report **on the day of detection** when a data breach is even suspected.

• The Department has the authority to fine institutions that do not comply with the requirement to self-report data breaches; up to **$54,789 per violation** per 34 C.F.R. § 36.2.

• The Department has reminded all institutions of this requirement through Dear Colleague Letters (GEN 15-18, GEN 16-12 and others), electronic announcements, and the annual FSA Handbook.
How do I report a data breach?

1. Email cpssaig@ed.gov
   Data to include:
   • Date of breach (suspected or known)
   • Impact of breach (# of records, etc)
   • Method of breach (hack, accidental disclosure, etc.)
   • Information Security Program Point of Contact
     – Email and phone details will be necessary
   • Remediation Status (complete, in process – with detail)
   • Next steps (as needed)

2. Call Education Security Operations Center (ED SOC) at 202-245-6550 with above data. ED-SOC operates 7x24.

3. Call or Email Tiina Rodrigue – tiina.rodrigue@ed.gov or 202-377-3887 – if both previous methods fail.
How can you help me with data security?

• Cybersecurity Assessment Tool (CAT) - Electronic Tool that helps establish school’s current risk profile and cybersecurity maturity for executive consumption & prioritization:
  • Built by Federal Financial Institution Examiners’ Council (FFIEC) to help financial institutions review current state
  • Education has automated it to better enable schools of all levels to review current state of risk and maturity
  • Targets specific areas to address to close the gaps from a best practice perspective while preventing waste or over-engineering
  • Covers 5 Domains in depth, with diverse areas including culture, acquisitions, 3rd-party management which aligns with GLBA requirements
  • Pertains to policy, people and process issues, too
How can you help me with data security?

- **Institutions of Higher Education (IHE) Compliance Framework**
- Public-Private Partnership to reduce the burden of compliance for security and privacy controls for Title IV schools
- Register for a free account to access the data
- Driven by the regulation on a federal and state level
- Includes the international regulations for foreign schools
- Consolidates all relevant laws into one compliance framework
- Prevents duplicate effort, saving the schools money and effort
How can you help me with data security?

NIST has provided non-FISMA guidelines (800-171) that are recommended by FSA & Education in GEN 16-12 which gives specific technical standards to prove GLBA compliance:

- Access Control
- Awareness and Training
- Audit and Accountability
- Configuration Management
- Identification Authentication
- Incident Response
- Maintenance
- Media Protection
- Personnel Security
- Physical Protection
- Risk Assessment Requirements
- Security Assessment Requirements
- System and Communications Protection
- System and Information Integrity
Understanding Financial Aid Data Use
What Kinds of Financial Aid Data?

- **Free Application for Federal Student Aid (FAFSA)**
  - Student and parent demographic & financial information

- **Institutional Student Information Record (ISIR)**
  - Contains processed student information reported on FAFSA and NSLDS financial aid history information

- **National Student Loan Data System (NSLDS)**
  - Student enrollment, demographic, and loan information

- **Student Records**
  - Any records that directly relate to the student and are maintained by (or on behalf of) an educational agency or institution
Applicable Laws & Agreements

- Family Educational Rights and Privacy Act (FERPA)
- Higher Education Act (HEA)
- Privacy Act
- Student Aid Internet Gateway (SAIG) Agreement
Higher Education Act

• The HEA authorizes numerous federal aid programs that provide support to both individuals pursuing a postsecondary education and institutions of higher education.

• The HEA applies to both NSLDS data and FAFSA/ISIR data, but places additional provisions on NSLDS data.
FAFSA data, and any data derived from FAFSA data (including data in the NSLDS) may only be used for the application, award and administration of aid awarded under Federal student aid programs, state aid, or aid awarded by eligible institutions or such entities as the Department may designate.

The guidance clarifies that “administration of aid” includes audits and program evaluations necessary for the efficient and effective administration of those aid programs.
The HEA also applies the following provisions to **NSLDS data**

- Prohibits nongovernmental researchers and policy analysts from accessing personally identifiable information
- **Prohibits use of NSLDS data for marketing purposes**
Privacy Act

Prohibits Federal agencies from disclosing records from systems of records unless (among other exceptions) the disclosure is for a specified routine use or:

- to a recipient who has provided written assurance that the record will be used solely as a statistical research or reporting record and the record is to be transferred in a form that is not individually identifiable (5 USC §552a(b)(5))
Under the SAIG Agreement, access, disclosure and use of data is limited to “authorized personnel”.

The Department interprets “authorized personnel” to include individuals in your own institution, but also, when appropriate, individuals outside your institution who are permitted access to the information under applicable statutes and regulations.
Remember…

In instances where more than one law/regulation applies, the most restrictive provisions from each law will jointly apply.
Scenario 1

Can an institution use financial aid information provided by a student on the (FAFSA) to recruit a student who has not yet enrolled or tried to enroll at the institution?
Scenario 2

Can an institution’s housing office obtain FAFSA/ ISIR data to determine if a student qualifies for a housing fee deferral pending financial aid disbursement?
Scenario 3

Can an institution provide student financial aid data obtained directly from NSLDS and that is de-identified to a researcher not affiliated with the institution?
The Question of the Hour ....

Is student consent sufficient to overcome the HEA prohibition on data sharing?

[Image of a checklist with 'YES PLEASE' checked]
Think Twice Before Sharing

Even when permissible under applicable Federal laws, institutions should consider whether each proposed use of PII is consistent with institutional values, as well as State and local law.
Resources and Contact Info

Check out: studentprivacy.ed.gov

- Help desk – phone and email
- Lots of guidance and FAQs
- Consider signing up for our list serve so that you’ll get our regular updates.
CONTACT INFORMATION

United States Department of Education, Privacy Technical Assistance Center

(855) 249-3072
(202) 260-3887

privacyTA@ed.gov

http://studentprivacy.ed.gov

(855) 249-3073