

FERPA REGULATIONS CHANGES AND AMENDMENTS 2009

34 CFR Part 99

Definition of Student/Internet-Based Learning

Students who are not physically present in the classroom and study online via any electronic information and telecommunications technology are covered by FERPA.

Student Identifiers as Directory Information

An educational agency or institution may not include a student's Social Security Number (SSN) or other student ID number as directory information. However, the directory information may include a student's user ID to be used by the student to access electronic systems. The user ID cannot be used to gain access to education records except in conjunction with one or more factors that authenticate the student's identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the student.

Personally Identifiable Information

Biometric records, such as fingerprints, and other indirect identifiers, such as date and place of birth or mother's maiden name, are personally identifiable information.

Returning Data to the Record Creator

The definition of "disclosure" excludes the release or return of an education record, without consent, to the party that created the record. A state or local educational entity is permitted to redisclose education records without consent to the school district that provided the information.

Definition of Education Records

Education records do not include records created or received after an individual is no longer a student or those not directly related to the individual's attendance as a student. For example, alumni activities are excluded from education records.

Peer-Graded Assignments

Peer-graded assignments that have not been collected and recorded by a teacher are not considered "maintained by" an educational agency or institution. They are not "education records" covered by FERPA.

De-Identified Student Data

Education records may be released without consent under FERPA if all personally identifiable information has been removed. Personally identifiable information includes direct identifiers such as a Social Security Number as well as indirect identifiers such as the name of the student's parent or family member that would allow a reasonable person in the community to identify the student with reasonable certainty. Take into account unique patterns of information about the student. Consider "information that is requested by a person who an agency or institution reasonably believes has direct, personal knowledge of the identity of the student to whom the education record directly relates" to be personally identifiable information that could not be disclosed. In releasing de-identified information, the institution should also consider other information that might be linked to a student (e.g., law enforcement records, published directories) and the cumulative effect of disclosure of student data. Analyze the situation so that the risk of disclosure is very low.

Parental Rights for Higher Education Students

An educational agency may disclose educational records to the student's parents without student consent if the student is a dependent for Federal Income Tax purposes.

State Auditors Exception

Educational agencies and institutions may provide personally identifiable information within education records to state auditors without prior consent.

Outsourcing Services

Outside parties, contractors, consultants, volunteers, and others to whom an educational agency has outsourced institutional services that it would otherwise use employees to perform must be under the direct control of the agency. They must follow the same rules and laws as the agency. Educational agencies and institutions that outsource institutional services and functions must comply with the annual FERPA notification requirement to parents and eligible students by specifying their contractors, consultants, and volunteers who will be retained for these purposes.

Disclosure to a School Where a Student Seeks to Enroll

An educational agency is allowed to disclose educational records without consent to another institution even after a student has enrolled and not just if a student intends to enroll, if the disclosure is for purposes related to the student's enrollment or transfer. All education records, including health and disciplinary records, may be disclosed in an attempt to facilitate good information sharing.

USA Patriot Act

Educational institutions must disclose education records to the Attorney General as part of an investigation or prosecution related to potential terrorism.

Campus Sex Crimes Prevention Act

Campus officials are permitted to release information they receive from a state community notification program about a student registered as a sex offender.

Sexual Offense Allegations

A college or school is prohibited from requiring a victim of an alleged sexual offense to agree not to disclose information he or she receives from the institution about the alleged perpetrator as part of a campus disciplinary proceeding. Postsecondary institutions may not require the accuser to execute a non-disclosure agreement or otherwise interfere with the redisclosure or other use of information disclosed.

Expanding USED's Authority to Investigate

The U.S. Department of Education has the authority to investigate possible violations of FERPA even if a complaint by a parent has been withdrawn or no complaint has been filed.

Organizations Conducting Studies

An educational agency or institution that discloses an education record without consent to an organization conducting studies on its behalf must have a written agreement with the organization that specifies the purposes of the study. The agreement must specify that the information from education records may only be used for the purposes of the study, that the records must not be redisclosed, and that the information must be destroyed upon completion of the study. FERPA also does not inhibit disclosure of de-identified information for educational research purposes.

Health and Safety Exceptions

Educational institutions are allowed to disclose education records in the case of a health or safety emergency. The educational agency or institution is allowed to take into account the totality of the circumstances pertaining to a threat to the safety or health of a student or other individuals. If the

educational agency or institution determines that there is an “articulable and significant threat” to the health or safety of a student or others, it may disclose information from education records to third parties whose knowledge of the information is necessary to protect them. The U.S. Department of Education has stated that as long as there is a “rational basis” for that determination at the time the decision is made, it would not substitute its judgment for that of the educational agency or institution.

Authentication of Identity

An educational agency must make reasonable efforts to authenticate the identity of parents, students, school officials, and all others seeking personally identifiable information.

Limitations on Redisclosure

A party who has received personally identifiable information from an education record from an educational agency must provide notice to the parents or students before redisclosing personally identifiable information on behalf of the educational agency in response to judicial order or subpoena.

Directory Information

An agency may continue to honor any valid request to opt out of directory information disclosures while the individual is a student, until the request is rescinded.