



Privacy Technical
Assistance Center

Protecting the Privacy of Student Information



Ross Lemke
Privacy Technical Assistance Center

Disclaimer

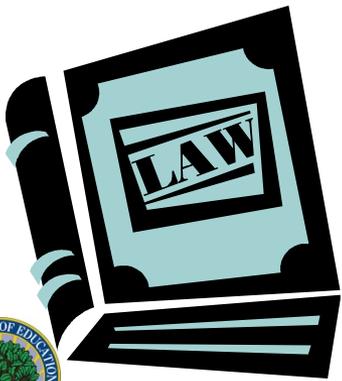
- This presentation is intended to discuss the current FERPA regulations and recent changes.
 - It is **NOT** intended to interpret or provide comment on whether sharing of data with other agencies is permissible under other federal, state, or local laws.
 - State and local laws may have MORE stringent protections around privacy and security of education data and other state agency associated data.
Remember that for student education data containing PII, ***FERPA is the floor, not the ceiling***, regarding the protection of the privacy of student education records.



Poll: FERPA Awareness

Please rate your familiarity with FERPA:

- A) “FERPA, what’s FERPA?”
- B) I know enough to be dangerous
- C) You could add me to your national cadre of experts on FERPA: I’m an expert.

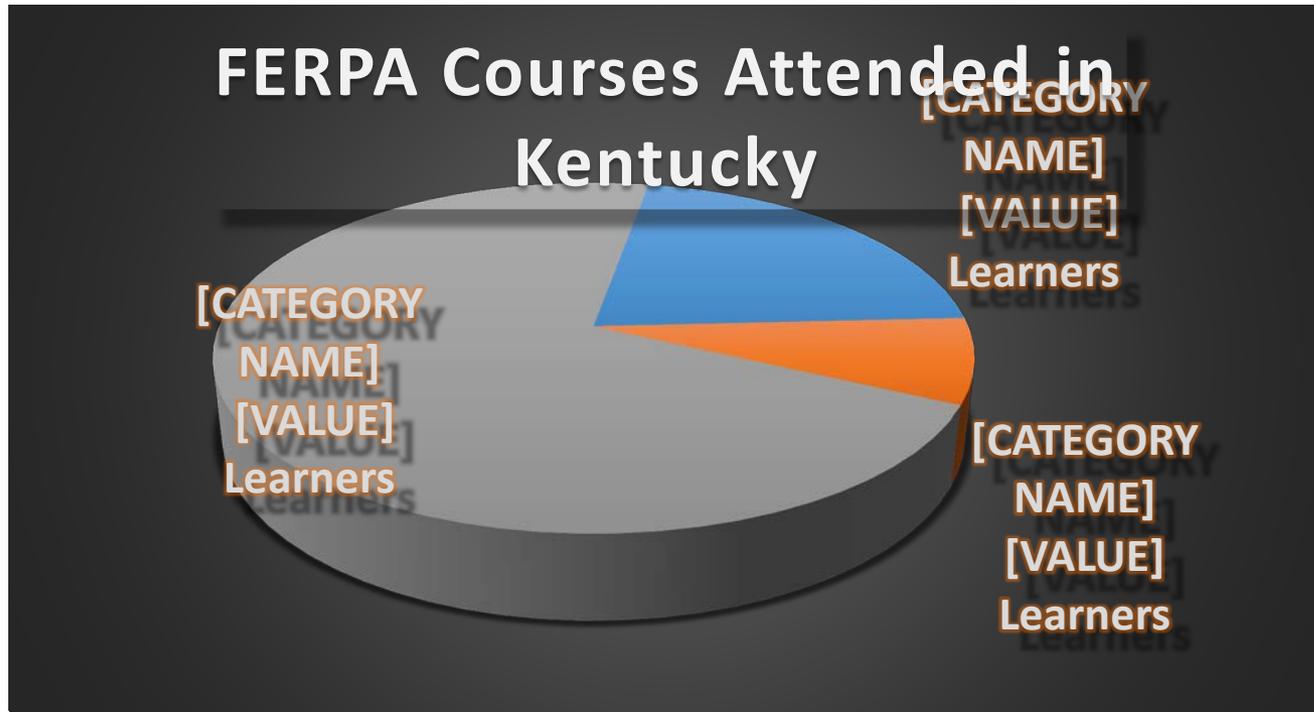


FERPA Training / Kentucky Statistics

- KY is highest utilization rate for FERPA training of all 50 states (followed by TX, CO and HI)
- 1819 Total attendees from Kentucky
 - FERPA 101: LEA's – 1286
 - FERPA 101: Postsec – 143
 - FERPA 201: Data Sharing – 390
- Attendees from 59 unique KY educational domains and 7 KY universities
 - Breathitt.kyschools.us – 498
 - Lawrence.kyschools.us - 389

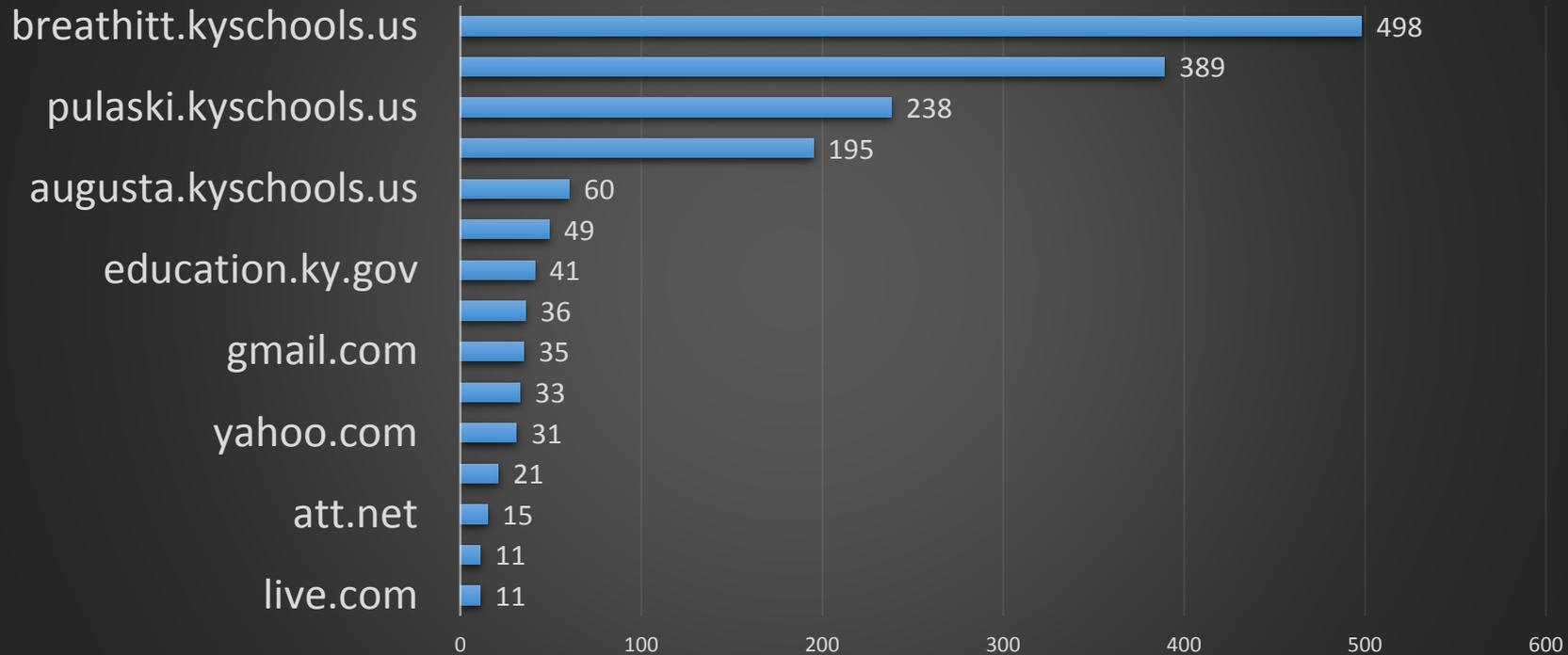


FERPA Training / Kentucky Statistics

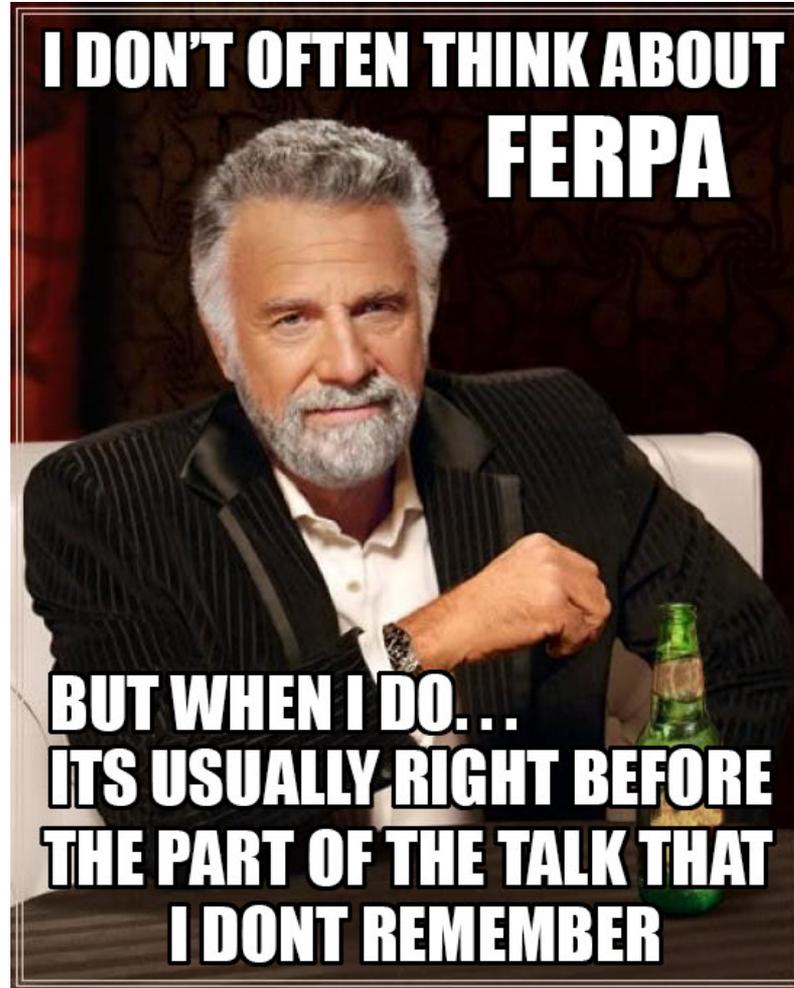


FERPA Training / Kentucky Statistics

Most Courses Completed by Domain



What is FERPA?



What is FERPA?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children's *education records*, the right to seek to have the records amended, and the right to consent to the disclosure of personally identifiable information (PII) from education records, except as provided by law.

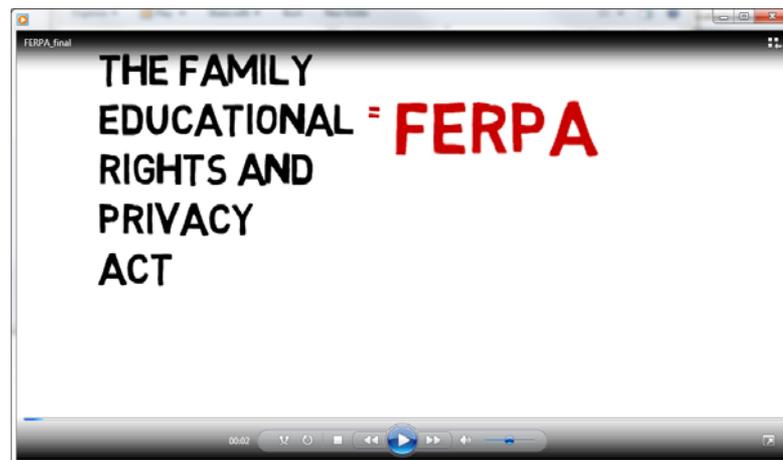
When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student (“eligible student”).



What is FERPA?

- If all that text is too much, check out the Student Privacy 101 video on YouTube!
- This video goes over the basic provisions of FERPA in four minutes. And it has pretty neat animations.

- [Click here for the video](#)



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.



Pop Quiz!

- Is FERPA the only federal law governing student data?



Poll: PPRA Awareness

Please rate your familiarity with PPRA:

- A) I've worked with it, but only in regard to the survey provisions.
- B) I have limited knowledge about PPRA
- C) Oh yes, that stands for "Pen Pal Research Association" right?



What is PPRA?

- Protection of Pupil Rights Amendment (PPRA)
- Amended in 2001 with No Child Left Behind Act
- Mostly known for its provisions dealing with surveys in K-12



What is PPRA?

- Includes limitations on using personal information collected from students for marketing
- May require parental notification and opportunity to opt out
- May require the development of policies in conjunction with parents
- However ... a significant exception for “educational products or services”
- For more information on the PPRA, please visit:
<http://familypolicy.ed.gov/ppra>



What about state laws?

- HB 341: Personal Data Security Study
- Kentucky Family Education Rights and Privacy Act



Now you know everything.

Or maybe not.

Let's talk details.



FERPA: Education Records

“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.



FERPA: Education Records

Education records are *not* protected if they are –

- sole possession records used as a personal memory aid;
- law enforcement unit records;
- student employment records; or
- “treatment records.”



FERPA: Access and Amend Education Records

Rights to inspect and review education records by parent or eligible student

- 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
- School may not destroy records if request for access is pending



FERPA: Access and Amend Education Records

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.

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.



FERPA: Access and Amend Education Records

- 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.



FERPA: Personally Identifiable Information

What is Personally Identifiable Information (PII)?

PII is information from education records that would make the student's identity easily recognized (by itself or in combination with other factors).



FERPA: Personally Identifiable Information

Some examples of PII:

- Full name
- Student ID number
- Grade level
- Race/ethnicity



FERPA: Disclosure

Disclosure means to permit access to or the release, transfer, or other communication of PII by any means. Disclosure can be authorized, such as when a parent or an eligible student gives written consent to share educational records with an authorized party, such as a researcher. Disclosure can also be unauthorized or inadvertent (accidental).



FERPA: Disclosure

- Under **FERPA**, parents and eligible students have the right to consent to disclosures of PII
 - *They also have the right to opt-out of that disclosure in certain circumstances*
- Disclosure rights must be described in the [Annual FERPA Notice](#)



FERPA: Disclosure

Student data is shared all the time.

How can I make sure PII isn't inadvertently disclosed?

- Can a “reasonable person” in the school community who does not have personal knowledge of the relevant circumstances identify an individual in the publicly released data with reasonable certainty?
 - Paraphrased from 34 CFR § 99.3 and § 99.31(b)(1)



FERPA: Disclosure

How can I prevent accidental PII disclosure?

- FERPA doesn't specify security controls, you must use "Reasonable Methods"
- As educators we have student data in many places, including our own machines / mobile devices and third party providers
- We must take necessary security measures to protect sensitive student data



FERPA & Data Security

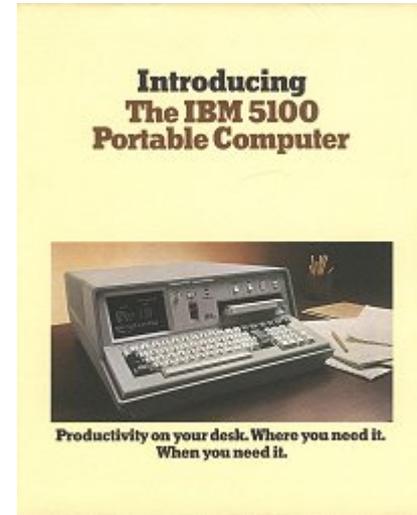
FERPA was written back in 1974 when:

- Average house price was \$38k
- Average income was \$11k
- Federal spending was “only” \$269B
- You could buy a PC for the low, low price of \$20k

And...

- Disco was cool (think about it)
- Education records were papers in the principal’s office

*FERPA is a survivor because it is not prescriptive. It doesn’t tell you **how** to protect student data from disclosure, only that you must use “**reasonable methods**” to protect it.*



FERPA & Data Security

FERPA is everywhere in IT, sometimes masquerading as plain old good common sense:

- FERPA just lays out the expectations, but leaves the details the experts... that's you
- Being compliant with FERPA can sometimes be as easy as having solid IT policy and good data management practices
- The \$64,000.00 question is:

Do you have solid IT policy & good data management practices?



Additional Information on Disclosure Avoidance

- PTAC Website
 - [FAQ on Disclosure Avoidance](#)
 - [In-depth webinar discussion of limiting access to PII](#)
 - [Case Study 5: Minimizing Access to PII](#)



But wait! There are exceptions!

Common exceptions to the parental consent requirement include:

- Directory information exception
- School official exception
- Studies exception

There are many other FERPA exceptions.



FERPA Exception: Directory Information

- Allows schools to release certain information without consent, but *notice is required*
- If directory information is disclosed, notice must include:
 - The types of PII that have been designated as directory information
 - An explanation that parents or eligible students have the right to opt-out
 - A time period within which a parent or eligible student may provide notification that they wish to opt-out



FERPA Exception: Directory Information

Remember:

State and local laws specify what types of information are considered directory information



FERPA Exception: Directory Information

- Examples of directory information:
 - Name, address, telephone listing, email address
 - Date & place of birth
 - Photographs
 - Height and weight of athletes
 - Enrollment status (grade level, full-, part-time, undergraduate, graduate);
 - Dates of attendance;
 - Field of study, degrees & awards received



FERPA Exception: Directory Information

New regulation:

Limited Directory Information Policy:

- allows for the disclosure of directory information to specific parties, for specific purposes, for both.
- specify this limited policy in the public notice to parents and eligible students
- must limit directory information disclosures to those specified in the public notice.



FERPA Exception: Non-directory Information

- Non-directory information
 - *Can be released with written consent*
 - The consent should specify the information that may be released, the purpose of the release, and the recipient



FERPA Exception: Non-consensual Release

- **FERPA** permits non-consensual disclosure of PII from education records under several exceptions
- Staff or employees who need access to perform duties
 - School official exception
 - “Legitimate educational interest”
- External entities
 - Studies exception
 - Audit or evaluation exception
 - Uninterrupted Scholars Act
 - Other (e.g., court order, health or safety emergency)



FERPA Exception: School Official

- Schools or LEAs can use the School Official exception to disclose education records to a third party provider (TPP) if the TPP:
 - Performs a service/function for the school/district for which it would otherwise use its own employees



FERPA Exception: School Official

- Schools or LEAs can use the School Official Exception to disclose education records to a third party provider (TPP) if the TPP:
 - Performs a service/function for the school/district for which it would otherwise use its own employees
 - Is under the direct control of the organization 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



FERPA Exception: Studies

- “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
- Written Agreements



FERPA Exception: Audit and 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



Written Agreements: Audit/Evaluation Exception

- Written agreements **must**
 - Designate an authorized representative
 - Specify what PII will be disclosed and for what purpose
 - under the audit/evaluation exception, the purpose of data sharing can only be to carry out an audit or evaluation of Federal- or State-supported education programs, or to enforce or to comply with Federal legal requirements that relate to those programs
 - Describe the activity to make clear that it falls within the audit/evaluation exception



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



Written Agreements: Best practices

“FERPA represents the floor for protecting privacy, not the ceiling.”

- Bind individuals to the agreement
- Specify points of contact/data custodians
- Mention Institutional Review Board review and approval
- State ownership of PII

Identify penalties



Written Agreements: Best practices

- Include funding terms
- Maintain right to audit
- Identify and comply with all legal requirements
- Have plans to handle a data breach
- Review and approve reported results
- Define terms for conflict resolution
- Specify modification and termination procedures
- Inform the public about written agreements
 - In some cases, a separate confidential IT Security Plan may be appropriate



Pop Quiz!

Q: If we go the consent route for sharing data with a non-profit, can the non-profit or the SEA get the consent from the parents?



*A: FERPA does not address **where** the consent comes from, so yes, the non-profit or SEA can obtain the consent. Remember, even with consent the school/agency is not required to provide the information.*



Example Scenario:

South Mason County School District (LEA) wishes to enter into an agreement with a coalition of outside non-profit organizations that are running various afterschool programs in the community. The LEA would like to view these coalition members as its “agents” in continuing its education program and wishes to create an agency relationship that would allow the programs to have PII from education records.

Q: Would FERPA permit the LEA to enter into an agreement with the coalition members for purposes of disclosing PII from education records of the students who participate in one or more of the afterschool programs?

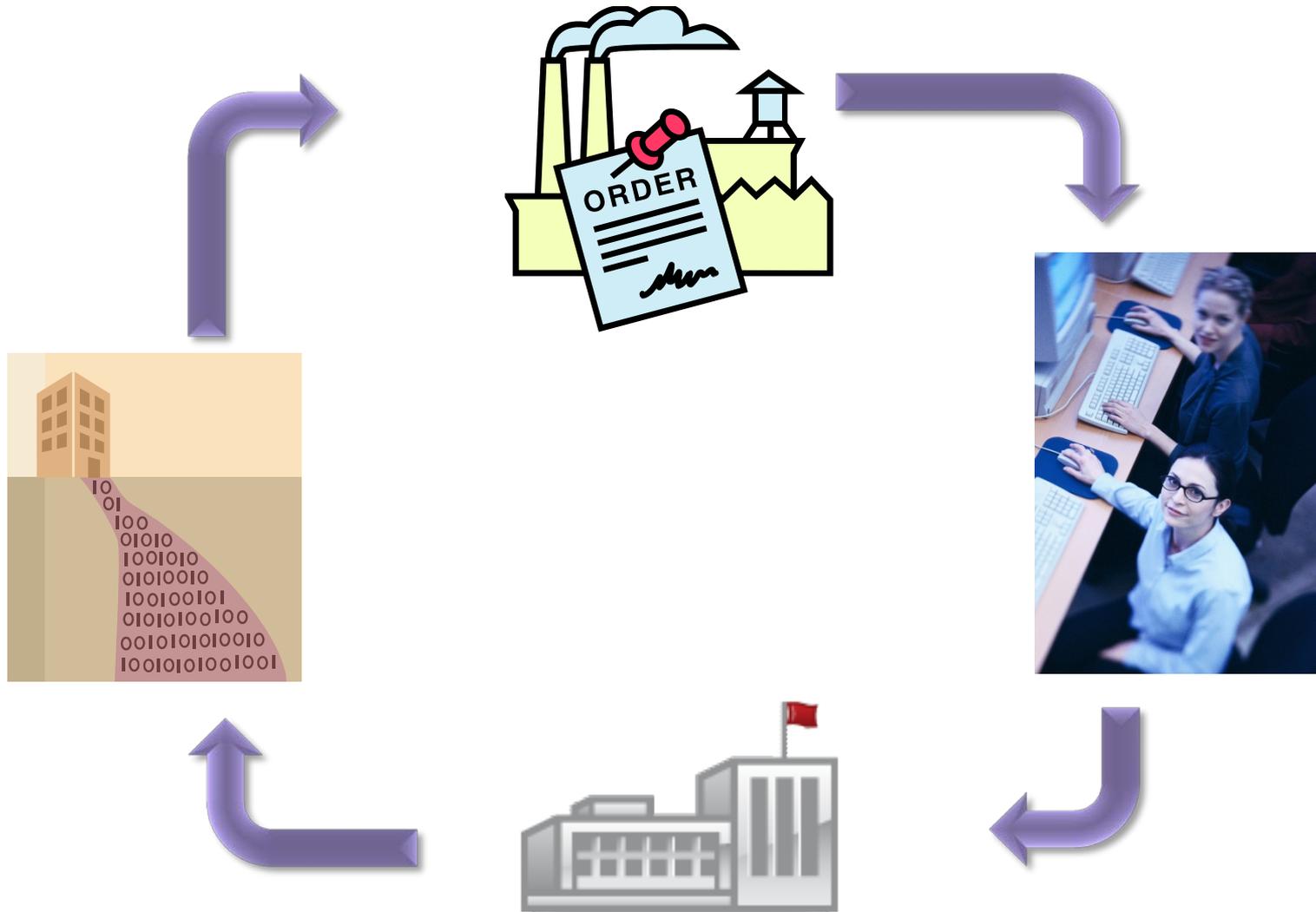


Answers

- **No.**
 - Generally, FERPA requires written consent before PII from students' education records may be disclosed to organizations running afterschool programs.
 - “School Official” exception: Because these organizations are not performing a service or function for which the LEA would otherwise use its employees, this would not apply.
 - FERPA would permit the LEA to disclose properly designated directory information on those students whose parents have not opted out of the disclosure of their directory information, in compliance with the school's or school district's directory information policy.
 - Best Practice: Build consent into the program enrollment process to permit data sharing and increase transparency.



Contracting IT Services



Remember: Use the Appropriate FERPA Exception

Schools/LEAs: IT contractors must meet criteria under the School Official exception discussed earlier.

SEAs: Cannot use the School Official exception; therefore, must designate IT service providers as “authorized representatives” under the Audit/Evaluation exception.



What about Cloud Services?



- FERPA allows the use of cloud services, but the arrangement must meet the School Official exception requirements:
 - Service/function that school/district would otherwise use its employees to perform, direct control over the provider's data use, & data use consistency with annual notification, incl. legitimate educational interest requirement.
- Best practices: See [FAQ on Cloud Computing](#) from PTAC/ED



FAQ: Ownership of Data

Q: When schools share data with a 3rd party IT provider, who “owns” the data?

A: Schools are always responsible for the data, even when they share it!



The IT provider must comply with both FERPA and the terms of the contract. The provider never “owns” the data, and can only act at the direction of the school.

Other terms depend on the specific agreement between the school and the provider.



Discussion: 3rd Party Use of Data

Q: What are cloud providers (or other 3rd party providers) allowed to do with student data?

A: IT providers can only use student data at the direction of the school or district, and in accordance with FERPA and the terms of their contract or written agreement.



FAQ: 3rd Party Use of Anonymized/De-identified Data

Q: Can cloud providers keep and use anonymized or de-identified student data for other purposes?

A: It depends on how and why the data were de-identified.



SEA-Provided IT Systems

Q: Can SEAs offer centralized IT services (such as student information systems) to the LEAs in their state?

A: Yes, but the same FERPA requirements would apply to the SEA as if it were any other IT provider (direct control, authorized use, etc.)



FERPA Exception: Uninterrupted Scholars Act

New exception to the general consent rule passed by Congress January, 2013, P.L. 112-278.

- Disclosure permitted to: “agency caseworker or other representative” of a State or local CWA who has the right to access a student’s case plan
- Disclosure permitted when: the CWA is “legally responsible ... for the care and protection of the student”
- Provisions for tribal organizations as well



FERPA Exception: Uninterrupted Scholars Act

- The CWA can disclose (or re-disclose) the records to “an individual or entity engaged in addressing the student’s education needs”
- This individual or entity must be authorized to receive the records and the disclosure (or re-disclosure) must be consistent with State confidentiality law

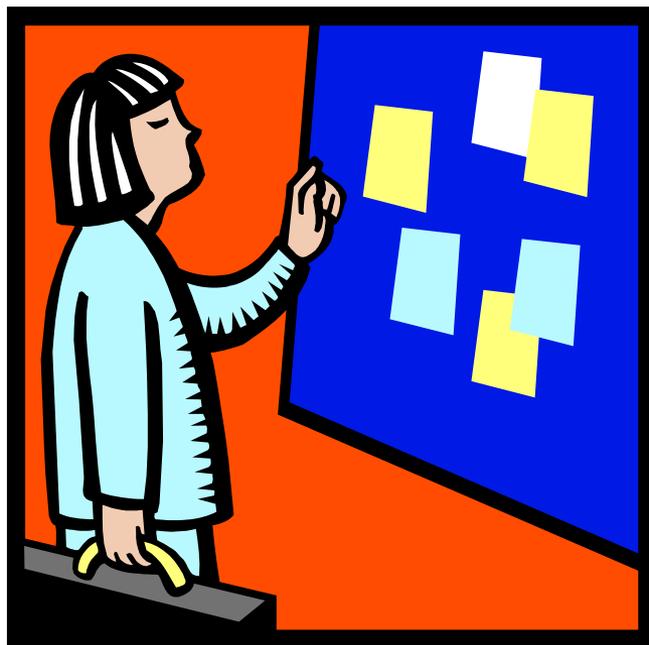


FERPA Exception: Health or Safety Emergencies

- If school determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.
- Must record the following information when it discloses personally identifiable information from education record under the health or safety emergency exception:
 - the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and
 - the parties to whom the agency or institution disclosed the information.



What is this I hear about Annual Notification?



FERPA Annual Notification Requirements

Schools must annually notify parents of students and eligible students in attendance of their rights under FERPA, including:

- right to inspect and review education records;
- right to request amendment of education records;
- right to consent to disclosures, with certain exceptions; and
- right to file a complaint with U.S. Department of Education.



FERPA Annual Notification Requirements



The annual notification must also include the following:

- procedure to inspect and review education records; and
- a statement that education records may be disclosed to school officials without prior written consent, including:
 - specification of criteria for determining who are school officials; and
 - what constitutes a legitimate educational interest.



Federal Privacy Statutes — Examples of Notices

- **PPRA** affords parents a right to opt out of having their child participate in certain school activities
 - Student survey, analysis, or evaluation
 - Collection of information for marketing purposes
 - Certain physical examinations/screenings
 - One or more of the eight areas designated as “protected information surveys”
 - Model notice to parents: “[PPRA Model Notice and Consent/Opt-Out for Specific Activities](#)”



Federal Privacy Statutes — Examples of Notices

- **FERPA and IDEA** protect special education records
 - Provisions regarding procedural safeguards related to parental notice: IDEA–Reauthorized Statute “PROCEDURAL SAFEGUARDS: SURROGATES, NOTICE AND CONSENT”
 - Example of the IDEA notice from CT: “Procedural Safeguards Notice Required Under IDEA Part B”



Federal Privacy Statutes — Examples of Notices

- **NSLA** protects records about eligibility for free or reduced price meals
 - Example of the NSLA notice from KY: “PROTOTYPE DISCLOSURE OF FREE AND REDUCED PRICE INFORMATION AGREEMENT”



Federal Privacy Statutes — Examples of Notices

- **COPPA** protects online collection, usage, and disclosure of personal information (not education records) about children under 13
 - Websites should post a privacy notice
 - Instructions for composing a [Direct Notice to Parents](#)



Federal Privacy Statutes — Examples of Notices

- **HIPAA**
- Privacy rule does not apply to records protected by FERPA and IDEA
 - Authorized uses and disclosures of protected health records are discussed on p. 11 of the **“SUMMARY OF THE HIPAA PRIVACY RULE”**



FERPA

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.



Quiz Time!



Frequently Asked Question #1

- A school designates name, address, telephone listing, email address, and honors and awards received as directory information. A reporter from the local newspaper calls the school/college and informs the school/college that he is writing an article about the success of Hispanic students. The reporter asks the school/college for the name and contact information for all the Hispanic students who made the honor roll/dean's list for the current school year. Are the names and contact information for all the Hispanic students who made the honor roll for the current school year “directory information”?

NO



Frequently Asked Question #2

If a student aide (or other volunteer) is helping to check out books in the library, and can see other students' ID numbers as they are checking out books, is this a violation of FERPA?

Answer: Probably not. This likely falls under the school official exception, since this student aide has a “legitimate educational interest”. Districts should specify within its annual notification its policy regarding disclosing PII, legitimate educational interest and determination of “school official”.



Frequently Asked Question #3

Our county health department has asked for student information regarding age, classes, and residence due to a possible measles outbreak. Can we release this information to them?

Answer: There are a number of exceptions to FERPA's general consent rule; however, there is no specific exemption that permits a school to disclose education records -- outside of an emergency -- to a public health department. There is an exception that permits schools to disclose education records in connection with health or safety emergencies.



Frequently Asked Question #4

Our district has a parent who has opted out of “directory information” as part of our annual notification process. The parent does not want their child to have a photo taken and wants their child to be exempt from wearing a badge. Are we in violation of FERPA should we require the student to wear a badge?

Answer: No. The recently enacted changes to FERPA allow schools/districts the latitude to require that students wear an ID badge. Districts can require their students to wear ID badges and are not required to allow the student/parent to opt out of the badge under FERPA provisions.



Frequently Asked Question #5

Our county health department has asked for student information regarding age, classes, and residence due to a possible measles outbreak. Can we release this information to them?

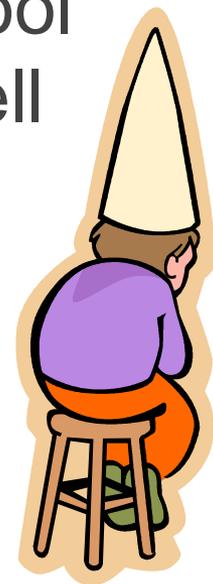
Answer: There are a number of exceptions to FERPA's general consent rule; however, there is no specific exemption that permits a school to disclose education records -- outside of an emergency -- to a public health department. There is an exception that permits schools to disclose education records in connection with health or safety emergencies.



Frequently Asked Question #6

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 school finds out that he attended the first school and calls for information. Can the old school tell the new school about the disciplinary action?

Answer: Yes



Frequently Asked Question #7: Parental Rights

What should a school do if it is notified that a child is in foster care and then the biological parent asks to meet with the child's teacher and review the student's progress? Does FERPA mean that the school can no longer talk to the biological parent?

Answer: Not usually, as parental rights are not automatically terminated for all children in foster care. In most cases the goal for children is to return them from foster care to their families and it can help for the biological parent to be involved in the child's schooling. However, if a school has evidence that a parent's parental rights have been terminated, then FERPA would no longer provide that parent with any rights, and the school would not be permitted non-consensually to share education records with the parent.



Frequently Asked Question #8

Are grade amendments required by FERPA?



Answer: 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.



Frequently Asked Question #9

Our district has a parent who has opted out of “directory information” as part of our annual notification process. The parent does not want their child to have a photo taken and wants their child to be exempt from wearing a badge. Are we in violation of FERPA should we require the student to wear a badge?



Frequently Asked Question #9

Answer: No. The recently enacted changes to FERPA allow schools/districts the latitude to require that students wear an ID badge. Districts can require their students to wear ID badges and are not required to allow the student/parent to opt out of the badge under FERPA provisions.



Frequently Asked Question #10

If my son (age 17) graduates early and moves on to a postsecondary institution, then he controls the rights to his records, correct?

Correct. However, the great majority of parents of 17 year olds want to remain a part of their academic lives – so FERPA does permit schools to disclose education records to parents of eligible students under several exceptions to the general consent rule. The main exception that typically applies permits schools to disclose a student's education records to parents if that student is a dependent for IRS tax purposes. This is the case whether your son wants the school to disclose the information to you, her parent, or not.



Frequently Asked Question #11

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



Frequently Asked Questions #12

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.



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



Military Recruiter Provision

Q: Is there a provision in No Child Left Behind that permits military recruiters to have access to information on students?

Congress included a provision in the No Child Left Behind Act that requires local educational agencies (LEAs) receiving assistance under the Elementary and Secondary Education Act (ESEA) to provide students' names, addresses, and telephone listings to military recruiters upon request. Typically, recruiters request this information on junior and senior high school students. The information is used specifically for armed services recruiting purposes and to inform young people of scholarship opportunities. Schools are required to provide notice to parents, allowing them an opportunity to opt out of providing the information to recruiters. For more information, visit:

- [*Family Policy Compliance Office website*](#)
- [*Guidance on Access for and Disclosures to Military Recruiters*](#)



Now you know everything!

But...

How do you communicate this to your
public?



Poll: FERPA and PPRA Transparency

How well do you feel your district or school communicates with parents about FERPA and PPRA requirements?

- A. All parents and I are FERPA/PPRA scholars
- B. I think we do a decent job
- C. We're pretty limited in our communication with parents about these issues
- D. What's a FERPA?



The key word for schools and districts to use for communicating with parents about student data:

Transparency



Best Practices for Transparency

- Schools and districts across the country need to collect data about students.
 - Test Scores
 - Grades
 - Credits earned
 - Demographics
 - Enrollment
 - Discipline
 - Special education status



Best Practices for Transparency

- Data are used to foster students' academic achievement by:
 - Identifying students' talents and special requirements



Best Practices for Transparency

- Data are used to foster students' academic achievement by:
 - Identifying students' talents and special requirements
 - Monitoring their academic progress



Best Practices for Transparency

- Data are used to foster students' academic achievement by:
 - Identifying students' talents and special requirements
 - Monitoring their academic progress
 - Developing successful teaching and learning strategies



Best Practices for Transparency

- Data are used to foster students' academic achievement by:
 - Identifying students' talents and special requirements
 - Monitoring their academic progress
 - Developing successful teaching and learning strategies
 - Developing educational tools for personalized learning



Best Practices for Transparency

Schools and districts can't do it all, and they can't do it all by themselves!



Best Practices for Transparency

- School and districts often have legitimate educational reasons to authorize third-parties to access student data for purposes such as:
 - Communicating with parents
 - Improving the effectiveness of education programs
 - Identifying gaps in student services
 - Data storage



Best Practices for Transparency

- Parents expect openness and transparency from schools and districts about their data practices



Best Practices for Transparency

- Parents expect openness and transparency from schools and districts about their data practices
- Transparency allows a parent to evaluate if the protection of their child's personal information meets their expectations



Best Practices for Transparency

- Parents expect openness and transparency from schools and districts about their data practices
- Transparency allows a parent to evaluate if the protection of their child's personal information meets their expectations
- Schools and districts should take a proactive approach in communicating with parents



Best Practices for Transparency

- FERPA and PPRA provide some level of transparency
 - Annual notifications
 - Notification of disclosures
 - Guidelines for protection of students' PII



Best Practices for Transparency

- Best Practices for Transparency can be divided into three main categories:
 1. What information to communicate to parents



Best Practices for Transparency

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 1. What information to communicate to parents
 2. How to convey that information; and



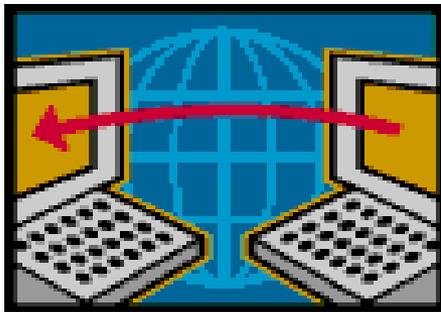
Best Practices for Transparency

- Best Practices for Transparency can be divided into three main categories:
 1. What information to communicate to parents
 2. How to convey that information; and
 3. How to respond to parent inquiries about student data policies and practices



Best Practices for Transparency

- Districts should communicate to parents:
 - *What* student information they collect
 - *Why* they collect it
 - *How* they use it
 - To whom they *disclose* it
 - How it is *protected*



Best Practices for Transparency

- What information are you collecting about students?
 - Develop and publish a *data inventory* listing the information that you collect from or about your students
 - A best practice is to provide this information at the data element level

REMEMBER: The first step in protecting sensitive information is knowing what information you have.



Best Practices for Transparency

- Why are you collecting this information?
 - A best practice is to provide this information at the data element level

REMEMBER: If you cannot provide a good reason for why you are collecting a particular data element, you may want to reconsider collecting it.



Best Practices for Transparency

- How are you using the information you collect?
 - Do you share any personal information with third parties? If so, with whom, and for what purpose(s)?
 - Post provider contracts online
 - Provide a list of online educational services or “apps” that are approved for use in the classroom



Best Practices for Transparency

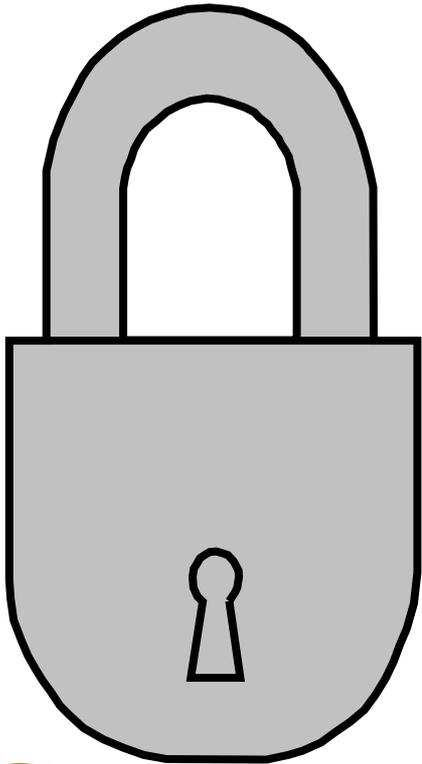
- How are you using the information you collect (cont'd)?
 - If you share student information with external researchers:
 - show parents the research findings, and
 - identify if you made any changes to curriculum, policies, or programs as a result

REMEMBER: Let parents know the reasons you are sharing student data with a third party and explain the legal, contractual, and policy protections in place to safeguard the data.



Best Practices for Transparency

- How is the information protected?
 - Security and data protection policies
 - Policies governing access and use of students' PII
 - Data retention policies
 - Privacy protections to protect against disclosure of PII in “small cells”



REMEMBER: It is important to regularly train your faculty and staff on these IT and data protection policies.



Best Practices for Transparency

- Who should parents contact if they have questions about your data practices?
 - Display contact information prominently on your website, so that it is clear whom parents can contact if they have questions, comments, or suggestions



REMEMBER: Posting information on a website is not enough – ask for constructive feedback from parents and students to ensure that the policies and practices are truly transparent



Best Practices for Transparency

When communicating with parents about the school's or district's data practices, consider the following best practices to improve accessibility and clarity of the messages...



Best Practices for Transparency: Accessibility & Clarity

- Use your website as part of a multi-layered approach to communication
 - Post electronic copies of your required FERPA and PPRA notices
 - Adjust the detail of the message according to the medium



Best Practices for Transparency: Accessibility & Clarity

- Make your website user-friendly, searchable, and easy to navigate
 - Consolidate information about data practices and privacy protections
 - Clearly label the data practices/student privacy section and ensure that users can quickly navigate to it from the homepage with just one or two mouse clicks
 - Add a “Search” tool to your website



Best Practices for Transparency: Accessibility & Clarity

- **Be clear and consistent**
 - Use plain language whenever possible
 - Provide examples to illustrate complex concepts or ideas
 - Include a glossary
 - Make sure that your website's data practices section is accessible to persons with disabilities
 - Translate information on your website into other languages commonly spoken in your community
 - Maintain consistency across communication mediums



Best Practices for Transparency: Communication

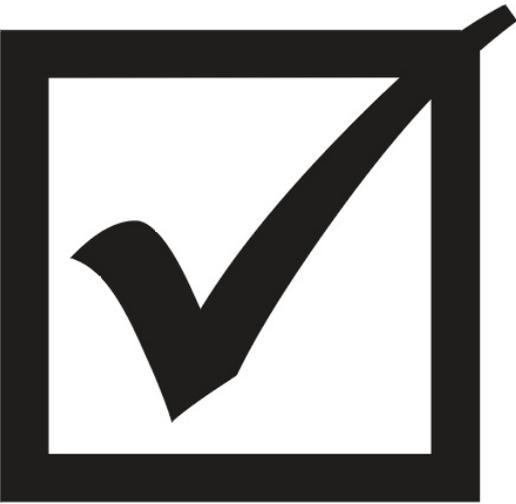
- Have members of the community regularly review your website for useability, comprehension, and completeness
 - Follow up with parents and students to ensure your site is user-friendly
 - Solicit feedback from parents and students on recommended improvements to your website



Poll: Parents' Familiarity with Data Practices

How familiar are parents with your school's/district's IT security and data practices?

- A. They know more than I do
- B. We do a good job letting them know what's going on
- C. We could do better
- D. I'm pretty sure they all still use dial-up



Best Practices for Transparency: Parent Inquiries

- Sometimes parents or students will contact you wanting additional information
- The Department of Education encourages schools and districts to handle parental and student inquiries about data privacy in a responsive and meaningful fashion
- The best practices include...



Best Practices for Transparency: Parent Inquiries

- Keep the lines of communication open
 - Be available to answer questions
 - Provide parents and students with easy ways to reach staff for questions, concerns, or suggestions
 - Use online systems that grant parents access to their children's information



Best Practices for Transparency: Parent Inquiries

- Review parental inquiries, concerns, and suggestions in a thoughtful and careful manner
 - Don't dismiss inquiries, concerns, or suggestions without sufficient consideration
 - Acknowledge parents' concerns about their child's well-being
 - Make the effort to properly understand the question, concern, or suggestion and relevant circumstances
 - Respond in a clear, respectful, and meaningful fashion



Best Practices for Transparency: Parent Inquiries

- Respond to parental or student inquiries in a timely manner
 - Notify the parent or student about the expected turn-around time and explain the logistics of the response process
 - this information can be posted on the school's or district's website, communicated directly to the requestor, or both
 - If additional time is required to address the inquiry, follow up with the parent or student to keep him or her informed about the delay and the reason for it



Best Practices for Transparency: Parent Inquiries

- Periodically review old inquiries and resolutions to evaluate your communication and transparency efforts
 - Evaluate your effectiveness by reviewing changes in the relevant measures
 - Some useful indicators include:
 - the number of privacy concerns,
 - response turn-around time,
 - and feedback from parents and students
 - Review and modify privacy policies and procedures



Best Practices for Transparency: FPCO Example Case

- The Family Policy Compliance Office (FPCO) received a case involving a parent's request for student data from a SLDS
- The State Department of Education (SDE) had no means of displaying individual student data maintained in the State's SLDS in a readable format
 - New software would have to be developed in order for individual student data to be viewed



Best Practices for Transparency: FPCO Example Case

- The Department of Education's response was that the SDE can fulfill parental access requirements under FERPA by:
 - Allowing the parent to view requested data included in the SLDS data fields on his/her child
 - Providing the parent with a copy of the SDE's data dictionary, and
 - If requested to do so, provide a reasonable explanation of the student's data included in the SLDS to the parent
- The SDE would not be required to create software, but would have to provide an explanation and interpretation of the student records



Best Practices for Transparency: Guidance Document

Transparency Best Practices for Schools and Districts

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



That's all well and good, but how do I
manage student privacy while using
Online Educational Services



That's all well and good, but how do I
manage student privacy while using
Online Educational Services

Apps



That's all well and good, but how do I
manage student privacy while using
Online Educational Services

Apps

Freeware

?



Online Educational Services: Overview

- Legal protections for students' information used in online educational services
 - How FERPA and PPRA protect student information used in online educational services
 - Other laws to consider
- Beyond compliance: best practices for protecting student privacy



Online Educational Services: Overview

This guidance relates to the subset of education services that are:

- Computer software, mobile applications (apps), or web-based tools;
- Provided by a third-party to a school or district;
- Accessed via the Internet by students and/or parents;
AND
- Used as part of a school activity.

This guidance does not cover online services or social media used in a personal capacity, nor does it apply to services used by a school or district that are not accessed by parents or students.



Online Educational Services: The Challenge

- Schools and districts are increasingly contracting out school functions
- Lots of data!
- Many online services do not utilize the traditional 2-party written contractual business model
- Concern about the commercialization of personal information and behavioral marketing
- We need to use that data effectively and appropriately, *and still* protect students' privacy



Online Educational Services: ED's Role

- 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



Online Educational Services

Is student information used in online educational services protected by FERPA?



Online Educational Services

Is student information used in online educational services protected by FERPA?

It depends!



Schools and Districts typically need to evaluate the use of online educational services on a case-by-case basis to determine if FERPA-protected information is implicated.



Online Educational Services: Third Party Providers

What does FERPA require if PII from students' education records is disclosed to a provider?



Online Educational Services: Third Party Providers

What does FERPA require if PII from students' education records is disclosed to a provider?

- Parental consent for the disclosure; OR
- Disclosure under one of FERPA's exceptions to the consent requirement.



Online Educational Services: Third Party Providers

Under FERPA, are providers limited in what they can do with the student information they collect or receive?



Online Educational Services: Third Party Providers

If PII is disclosed under the Directory Information exception:

- No limitations other than what the school/district includes in their agreement with the provider.



Online Educational Services: Third Party Providers

If PII is disclosed under the School Official exception:

- PII from education records may only be used for the specific purpose for which it was disclosed
- TPPs may not sell or share the PII, or use it for any other purpose except as directed by the school/district and as permitted by FERPA

When personal information is collected from a student, the PPRA may also apply!



Online Educational Services: Metadata

What about metadata? Are there restrictions on what providers can do with metadata about students' interactions with their services?



Online Educational Services: Metadata

“Metadata” are pieces of information that provide meaning and context to other data being collected, for example:

- Activity date and time
- Number of attempts
- How long the mouse hovered before clicking an answer



Online Educational Services: Metadata

Metadata that have been stripped of all direct and indirect identifiers are not protected under FERPA

Note: school name and other geographic information are often indirect identifying information in student data



Online Educational Services: Metadata

Properly de-identified metadata may be used by providers for other purposes (unless prohibited by their agreement with the school/district)



Online Educational Services: Other Laws to Consider

- Children's Online Privacy and Protection Act (COPPA)
 - Applies to commercial Web sites and online services directed to children under age 13, and those Web sites and services with actual knowledge that they have collected personal information from children
 - Administered by the Federal Trade Commission
 - See <http://www.business.ftc.gov/privacy-and-security/childrens-privacy> for more information



Online Educational Services: Other Laws to Consider

- State, Tribal, or Local Laws



Online Educational Services: Best Practices

- **Maintain awareness of other relevant laws**
- Be aware of which online educational services are currently being used in your district
- Have policies and procedures to evaluate and approve proposed educational services
- When possible, use a written contract or legal agreement
- Be transparent with parents and students
- Consider that parental consent may be appropriate



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Online Educational Services: Freeware

Can individual teachers sign up for free (or “freemium”) education services?



Online Educational Services: Freeware

- Remember the FERPA's requirements for schools and districts disclosing PII under the school official exception.
 - Direct control
 - Consistency with annual FERPA notice provisions
 - Authorized use
 - limits on re-disclosure
- Does the Terms of Service meet these requirements?



Online Educational Services: Freeware

- Freeware may also introduce security vulnerabilities into your school networks
- It is a best practice to establish district/school level policies governing use of free/freemium services, and to train teachers and staff accordingly.



Online Educational Services: Terms of Service

What provisions should be in a school or district's contract with a provider?



Online Educational Services: Terms of Service

- Security and data stewardship provisions
- Data collection provisions
- Data use, retention, disclosure, and destruction provisions
- Data access provisions
- Modification, duration, and termination provisions
- Indemnification and warranty provisions



Online Educational Services: Terms of Service

What about online educational services that use “click-wrap” agreements instead of traditional contracts?



Online Educational Services: Terms of Service

- Before “clicking” ...
 - Check amendment provisions
 - Print (or save) the Terms of Service
 - Best Practice: Develop a district-wide policy on authority to accept the Terms of Service



Online Educational Services: Best Practices

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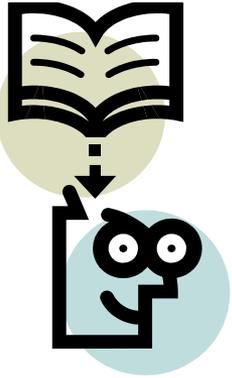


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Online Educational Services: Guidance Document



Protecting Student Privacy While Using Online Educational Services

<http://ptac.ed.gov>



PTAC Resources

- Web resources: <http://ptac.ed.gov>
 - Technical Briefs, Issue Briefs, and White Papers
 - Case studies
 - Security Checklists
 - Frequently Asked Questions
 - Webinars, Presentations, and Training Materials



PTAC Resources

- PTAC offers a wide range of services and trainings free of charge. Selected offers include:
 - On-Site or online FERPA and Data Security Training
 - On-Site or online Technical Security and Systems Architecture Review
 - On-site or online Disclosure Avoidance training and assistance.
 - Data Sharing agreement assistance, including MOU review.



New Resources

- Transparency Best Practices for Schools and Districts 
- FERPA/IDEA Crosswalk
- Heartbleed FAQ
- Protecting Student Privacy while Using Online Educational Services
- Data Destruction Best Practices
- FERPA Exceptions Cheat Sheet



Questions

- Question: How do we handle situations where users do not take password and data security seriously?
- Answer:
 - Require strong, complex passwords which are changed regularly
 - Balance requirements against user acceptance. Users find ways to get around unreasonable security measures
 - Consider multi-factor authentication for sensitive accounts
 - Carefully monitor and manage user and service accounts to remove old or unused accounts and properly on-board new users



Questions

- Question: In what situation would it be acceptable to give out PII to outside agencies, such as Police, Social Services, without parental permission?
- Answer: Hopefully we have covered this today, are there any additional questions on this topic?



Questions:

- Question: We use email as a communication tool. What information should not be included in an email? Does this include attachments?
- Answer: It depends!



Questions:

- Any additional questions?



Contact Information



Privacy Technical
Assistance Center

Telephone: (855) 249-3072

Email: privacyTA@ed.gov

FAX: (855) 249-3073

Website: www.ed.gov/ptac

