**Introduction**

The Family Educational Rights and Privacy Act (FERPA) protects the privacy of students by giving them (and their parents if they are minors) access to their educational records and control over how this information is disclosed to third parties.

Professionals who work in education should know the law’s core aspects to ensure compliance with the regulations. These professionals include:

* Public school, college, and university administrators who work with student records and are responsible for regularly collecting and disclosing information like transcripts and other data
* Public school instructors (including kindergarten through twelfth [K-12] grade teachers and university professors) who are increasingly using digital learning tools that collect and use student assessments and other data that are protected under FERPA
* Researchers and academics that conduct studies on education and psychology, and regularly analyze data and information about students and youth in educational settings
* Institutional Review Board (IRB) members and administrators that are responsible for the review and oversight of research

This module provides a brief history of FERPA. It then proceeds to discuss details about the law’s different components, how it is applied, and how it is enforced. Finally, the module explores the emerging issues with FERPA, especially in K-12 schools, as education moves towards the use of digital learning tools and collection of student data. All information in this module can be applied and practiced in K-12 schools, postsecondary institutions (colleges and universities), and other educational agencies.

**Learning Objectives**

By the end of this module, you should be able to:

* Describe FERPA’s requirements and how the law protects students’ educational records.
* Define how FERPA categorizes protected information.
* Identify how FERPA is applied in public K-12 schools, postsecondary institutions, and other educational agencies.
* Discuss current issues and reasons why some groups want to revise FERPA.

**What is FERPA?**

**Overview**

FERPA is a federal law (20 USC 1232g), and the regulations specific to this law can be found at 34 CFR 99. FERPA provides parents the right to access their minor children’s school records, the ability to amend those records, and a level of control over the disclosure of protected information that is found in such records. The same rights afforded to parents under FERPA are transferred to students when they turn 18 years of age or when they enter a postsecondary institution -- thereby becoming an “eligible student.”

FERPA applies to any educational institution that receives funds from programs administered by the U.S. Department of Education (ED). This includes public K-12 schools and postsecondary institutions. It also includes state educational agencies (SEAs) (state school districts) and local educational agencies (LEAs) (local school districts). While all public K-12 schools are covered under FERPA, many private and parochial schools are not because they do not receive federal funds (though it is important to always check with the record holder if this is the case). Private colleges and universities generally do receive federal funding and are subject to FERPA rules (ED 2015).

FERPA is a spending clause, which means that the government will use its authority to withhold federal funds to enforce the law. Federal funds can technically be withheld from an educational institution if it fails to meet FERPA’s statutory requirements. The law has no defined penalties for individuals who violate the law (negligently or non-negligently). In other words, if individual administrators violate FERPA’s requirements, their institution is liable (not the individual administrator) and the only remedy is withholding federal funds.

**History of FERPA**

FERPA was first signed into law in 1974. The law was introduced as an amendment to the authorization of the Elementary and Secondary Education Act of 1965. The law’s principal sponsor, Senator James Buckley, stated to Congress (Joint Statement 1974):

An individual should be able to know, review, and challenge all information — with certain limited exceptions — that an institution keeps on him, particularly when the institution may make important decisions affecting his future, or may transmit such personal information to parties outside the institution. This is especially true when the individual is a minor. Parents need access to such information in order to protect the interest of their child.

FERPA was introduced based on growing concerns about the lack of transparency and abuse of student records. At the time, advocates and others raised concerns that parents had little access to their children’s records in public schools beyond academic and attendance information. They were also troubled by the fact that schools lacked consistent procedures for guarding against access to students’ records by third parties (Russell Sage Foundation 1970). In fact, during this period, it was not uncommon for U.S. Federal Bureau of Investigation (FBI) agents, police officers, health officials, and others to have unregulated access to student records. Parents and students also had little recourse to view what was in their records and request any changes to records that were false or misrepresented the student (Shiley 2003).

FERPA’s greatest opponents were guidance counselors (school counselors) and postsecondary institutions. School counselors were concerned about parents’ access to their children’s records, which might contain sensitive information divulged to counselors by the student. This access, they argued, would in turn encourage school counselors to limit what they entered into student records, thereby making less meaningful student counseling records (Shiley 2003).

Postsecondary institutions opposed the potential burden the new law would place on their institutions. They feared the law would require them to develop expensive and cumbersome bureaucracies to manage the new procedures. Institutions also argued that opening student records would have an effect on the confidentiality of records, particularly as it related to letters of recommendation, which were considered part of a student’s educational record. If a student were to have access to this information, professors might be less likely to write honest appraisals of the student’s abilities and achievements. A concession was eventually made to this issue in one of the early amendments to the law, allowing students to waive their right to view letters of recommendation in their educational record.

**Definition of Protected Information**

FERPA categorizes protected information into two different categories: personally identifiable information (PII) and educational information.

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| **FERPA Protected Information Categories** | |
| **Category** | **Definition** |
| Personally Identifiable Information (PII) | This is defined as the student’s name, parent or other family member names, address, personal identifier (such as, the social security number or student ID number), personal characteristics, or other information that would make the student easily traceable (ED 2004).  PII can be released to a third party only with the eligible student’s explicit consent. For students under 18 or not in a postsecondary institution, the educational institution must obtain parental consent before releasing the records. Failure to obtain consent prior to the release of this information is a violation of the law with some exceptions. The exceptions primarily relate to federal studies and audits. |
| Educational Information | This is defined by FERPA as "those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution" (ED 2004). These include everything from grades, grade point averages (GPAs), test scores, attendance records, and course schedules.  Educational records have also come to include other information (such as, psychological evaluations) (Hlavac and Easterly 2015). If a document (for instance, a résumé or letter of evaluation) contains any protected information (like a GPA) it then becomes protected by FERPA and therefore, if on file at an educational institution, cannot be released without the parent’s or eligible student’s consent (Hlavac and Easterly 2015). |

**Directory Information**

In some cases, an educational institution may designate certain information, including certain PII, as “directory information.” Once designated as directory information (through a public notice) the data can then be disclosed without consent. This is generally limited to less sensitive information like name, address, class level (such as, freshman, sophomore, or junior), major field of study, dates of attendance, enrollment status, graduation date, or degrees.

Eligible students can request that directory information not be released to third parties without their consent. To request this, educational institutions generally require students to complete a form that states they want their directory information withheld.

**Application of FERPA**

**Inspection and Amendment of Educational Records**

FERPA gives parents and eligible students the right to inspect and review their student educational records. Educational institutions are required to respond within a reasonable amount of time to such requests. However, this time period cannot be more than 45 days (FPCO 2016). Some states require the release of the information in a shorter time period.

Parents and eligible students can request an amendment to an educational record if they feel that information is inaccurate, misleading, or in violation of the student’s privacy rights. Once an educational institution receives such a request, they must schedule a fair hearing with the parent or eligible student and then decide whether to amend the record. If the institution disagrees with the requested amendment, then the parent or eligible student has the right to place a written statement in his/her record with comments on the contested information (ED 2016).

**Requirements for Consent to Disclose Protected Information and Exceptions to the Rule**

For an educational institution to release protected information (PII or educational information) from a student’s educational record, they must first obtain written consent from the parent or eligible student. The consent must be signed and include details about the information that will be disclosed, to whom it will be disclosed, and the reasons for the disclosure. If the document with the information includes another student’s educational record, that information must be removed from the disclosure.

There are exceptions to the general consent rule. One exception is if an educational institution releases educational records for the purposes of a study being conducted on the institution’s behalf. In this case, the institution is not required to obtain written consent from the parent or eligible student. However, there must be a written agreement between the institution and researcher, specifying the study can only be for (ED 2004):

* Developing, validating, or administering predictive tests
* Administering student aid programs
* Improving instruction

Similarly, institutions are allowed to release protected information to authorized representatives of state and local educational authorities, the U.S. Secretary of Education, the Comptroller General of the U.S., and the U.S. Attorney General. The reasons for such releases include accountability reports or local school district audits.

Postsecondary institutions can only share an eligible student’s educational record with parents or other official agencies, without the student’s consent, under one of the following circumstances:

* If the student is dependent on the parents for tax purposes.
* If the student’s health or safety depends on the disclosure. In these cases, PII may be released to parents, law enforcement, trained medical personnel, or medical health officials.
* When the student is in violation of a law or policy involving alcohol or other controlled substances.
* Information that is not based on an educational record but from an official’s personal knowledge or observations.

**Defining Legitimate Educational Interest**

FERPA makes it clear that educational officials do not have unlimited access to students’ educational records. Only officials who have a “legitimate educational interest” have access to this information. However, FERPA’s language does not provide a clear definition of what legitimate educational interest means, and leaves this up to the educational institutions to define.

ED recommends that educational institutions keep their definition of legitimate educational interest broad and allow for a case-by-case determination of this interest. According to the National Center for Education Statistics (NCES 2016), legitimate educational interest might include the following:

* Access to the protected information is necessary for the educational official in question to perform his/her role (as defined in the job description). Similarly, for a contractor hired by the educational institution, access to the information is critical to completing the contracted task.
* The data use is limited to the work of the office in question and not for any use that is extraneous or outside of the office’s responsibility.
* The specific use of the information is relevant to the students whose data are being accessed.
* The information is to be used consistently with the purposes for which the data are maintained.

**Enforcement of FERPA**

ED’s Family Policy Compliance Office (FPCO) enforces FERPA. FPCO is in charge of investigating complaints and imposing penalties for violations. The primary penalty for FERPA violations is withholding federal funds from non-compliant educational institutions. Since the law’s conception there has never been an instance when federal funds were withheld for FERPA non-compliance. In most cases, FPCO has responded with technical assistance in an effort to help the educational institution achieve compliance (FERPA Guide 2013).

As mentioned before, FERPA only provides for penalties against institutions and not individuals who are non-compliant. FERPA prohibits "the federal funding of educational institutions that have a policy or practice of releasing education records to unauthorized persons" (Gonzaga v. Doe 2002). This was upheld in the U.S. Supreme Court case of Gonzaga v. Doe. Although the student in the case won compensatory and punitive damages, the U.S. Supreme Court ruled that the law does not give right to private cause of action – that is, lawsuits against non-compliant educational institutions. [**Read more about Gonzaga v. Doe**](javascript:showonlyone('newboxes1');).

**FERPA Revisions, Issues, and Trends**

FERPA has been amended several times since the law was enacted in 1974. [**Review information on some of the revisions**](javascript:showonlyone('newboxes3');).

However, the changes to FERPA were not fully supported and [**there are many current issues**](javascript:showonlyone('newboxes5');).

**Trends in Education Reform and FERPA**

Issues around the permissibility of releasing directory information have grown with the increasing use of online educational tools. Many of these tools require teachers and professors to provide vendors with class lists that are protected under FERPA. Teachers and professors need to get consent to use these lists unless the school or university has an appropriate contract in place with the vendor. Many universities have set up offices to provide professors with guidance on whether certain online classroom tools meet these contracting requirements (for example, see this [**brief FERPA tutorial on directory information**](https://www.registrar.psu.edu/staff/ferpa_tutorial/ferpa_directory_info.cfm)).

In addition to online learning, student data in general have become an important component in education reform, especially at the K-12 level. Researchers, policymakers, and advocates have become increasingly interested in collecting, analyzing, and reporting student data to identify and address learning challenges and issues for students.

The increased use and reliance on data to drive instruction in schools has created anxiety among parents about the safety of their students’ privacy (Chui and Sarakatsannis 2015).

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| **https://www.citiprogram.org/members/images/case-study.pngExpediting a Student Transcript** |

**Summary**

FERPA was created in an effort to ensure parent’s and eligible student’s access to educational records and protect those same records by limiting the disclosure of that information. The impetus for the law came from a growing concern about the lack of transparency around student records and limited safeguards to protect this information from unwanted disclosure. While the passage of the law was not supported by everyone in the education community, it has become a cornerstone of education policy.

Today, the growth of online tools used in the classroom and the use of student data to drive instruction has created concerns about student data privacy. Many of these tools use PII from students and collect additional data about their performance on assessments and projects. In response to these concerns, states have begun to pass their own, more restrictive privacy laws that are targeted toward educational institutions and the handling of student data (Hochleitner 2016).

The growth of digital tools and the increase in electronic recordkeeping have further affected the definition of an educational record. As a response to these developments, FERPA has gone through several changes since its inception.

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**Resource**

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**Introduction**

IRBs are frequently faced with the challenges of reviewing how researchers manage student data and information, especially in social and behavioral sciences research. This includes educational research, which has become increasingly quantitative in recent decades, focusing on the analysis of student data and information. As a result, IRB administrators and members need more guidance on Family Educational Rights and Privacy Act (FERPA) and how to address issues of using student data (from both kindergarten through twelfth [K-12] and postsecondary institutions) for research.

This module covers issues around student data and privacy from the perspective of IRBs that are reviewing research on human subjects in educational settings. It also discusses the role of IRBs as they relate to FERPA. The Common Rule (45 CFR 46, Subpart A) guides IRBs, but does not override any other federal or state regulation that may provide additional protections. For that reason, FERPA does not expressly grant IRBs the power to provide waivers of consent, and in fact, those waivers are under the purview of other administrative offices in an educational institution. The IRB will have to review the consent process for a study and, in consultation with other offices, address any FERPA issues.

**Learning Objectives**

By the end of this module, you should be able to:

* Identify and address any FERPA issues during IRB review of a research plan.
* Discuss the best way to collect, handle, and analyze student records in compliance with FERPA.
* Demonstrate when IRBs need to reevaluate informed consent processes in consideration of FERPA and other rules.

**FERPA and Research Plans**

There are many types of researchers in education.

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| **Different Types of Educational Researchers** | |
| **Type** | **Explanation** |
| Individuals seeking to become teachers in primary and secondary schools | These students enroll in teacher preparation programs that train them in educational pedagogy, classroom management, assessments, and other topics relevant to the profession. After their training, these students are required to take certification exams to earn a teaching license. |
| Researchers interested in education as a field of study in the social sciences | These researchers are interested in studying subtopics in education like education psychology and sociology, curriculum and instruction, assessment and psychometrics, and counseling and guidance. Education also includes concentrations that are relevant to both practitioners and pure researchers, including early childhood education and special education, or specific topics like arts education, science education, and educational leadership. |
| Faculty members in higher education | These may include individuals like the above who are interested in conducting research in educational institutions. It may also include individuals who are interested in using their own students for research. |

All these types of researchers conduct research using student data. Teacher preparation programs frequently require their students to conduct a certain amount of research. Even if the primary focus of such students is not research but teaching, their degree-granting institutions want them to be familiar with the research methods in education.

Teachers are also increasingly asked to use data and evidence to measure the performance of their own students. As a result, teacher preparation programs are eager to give their students the tools to collect and analyze student data.

There are two things IRBs need to be cognizant of when reviewing a research plan on educational research:

* Teachers conducting research on their own students: Teachers may want to conduct research on their own students as part of the requirements of a teaching degree or certification. Although teachers have access to student data in their classroom, they generally do not have a “legitimate educational interest” to use that data for a study that is needed for the fulfillment of a degree.
* Parental or student consent: Using student data for research requires obtaining parental or student consent. The consent forms must conform to FERPA requirements, as well as human subjects research requirements.

**Educational Institutions and Permission**

When the research takes place in a K-12 educational setting, the researcher is required to get approval from the district or school. This may or may not be requested by the IRB of record. Even if a study poses minimal risk to the subjects involved, the researchers must also follow state and local laws, and any institutional policies and procedures. For example, some school districts may prohibit data collection in schools during periods of state testing to ensure that the students are not distracted. There may also be institutional rules to prevent any undue burden on teachers (such as, around data collection in classrooms which may be labor or time-consuming for the teachers).

Educational institutions generally have written procedures to grant approval to researchers, including requiring approval from their own IRBs or research review boards. With school district IRBs, researchers must obtain approval by their own university or research organization and the school district IRB. This can be a challenging process and often delays the approval to conduct research.

Researchers may experience delays in the approval process of district IRBs. District IRBs and research review boards may not have a Federalwide Assurance (FWA) or approval to act as an IRB, but are tasked with reviewing research. In this case, they are also constrained by local privacy laws, in addition to FERPA and other issues that institutions face (such as, collective bargaining agreements that restrict what a teacher can do).

**FERPA Checklists for IRBs**

IRBs are encouraged to use FERPA checklists to ensure compliance, as they make decisions about consent or other aspects of a study. A FERPA checklist focuses on the scenarios when data disclosure is compliant and when it is not. Therefore, the checklist would ask questions, such as:

* Is there written permission to collect the data?
* Will the use of the data be for a legitimate educational interest?
* Will the disclosure be to another educational institution?

[**View an example of the items included on a FERPA checklist**](http://ptac.ed.gov/sites/default/files/data-sharing-agreement-checklist.pdf).

**FERPA and Consent**

**FERPA Consent Forms**

All research generally requires some level of consent from its subjects. Most data collection in schools with youth under the age of 18 requires written parental consent. For students over 18 or in a post-secondary institution, the student’s consent is usually required. While not required by FERPA, many school districts also require that researchers obtain the assent of the student themselves.

A FERPA compliant consent letter must include the following (UCSC 2015):

* Clarify the specific records that will be disclosed
* The purpose of the data disclosure
* The people or organizations that will have access to the student data

The main difference with a FERPA compliant consent letter and informed consent to participate in research is the specificity of the data being collected. This is critical to remain compliant with FERPA and another federal privacy law -- the Protection of Pupil Rights Amendment (PPRA).

**Obtaining Consent and Exceptions to the Rule**

In some cases, it will be impracticable for a researcher to obtain consent from either parents or eligible students for the data they need for the study. For example, the researcher needs records from thousands of individuals from an educational database. In these cases, the researcher may request a waiver of consent from an educational official to access the records for the purpose of the study. The waiver is only granted in cases where the study is being conducted on behalf of the educational institution (Arwood 2016).

The types of studies that are eligible for a waiver of consent include those that focus on any of the following:

* Developing, validating, or administering predictive tests
* Administering student aid programs
* Improving instruction

To obtain the educational records with the students’ personally identifiable information (PII), the researcher must enter into a written agreement with the educational institution. This agreement sets out specific assurances on data confidentiality (The University of Chicago 2016).

In addition, student data may be shared with certain “FERPA-permitted entities” without consent, including the Comptroller General of the U.S., U.S. Attorney General, U.S. Secretary of Education, and state or local educational authorities. Protected data is generally shared with these entities for the purposes of audits or to evaluate state supported education programs. The data may also be shared to enforce specific federal requirements (ED 2012).

**Postsecondary Studies and Data Collection**

If a federal study in postsecondary institutions is eligible for a consent waiver, the researchers conducing the study do not need the written consent of students or their parents to access their educational records. For example, this is the case with studies like the National Postsecondary Student Aid Study (NPSAS). The NPSAS falls under a specific exception for studies of programs administering student aid. If a study is not eligible for a waiver, then the researchers must obtain consent to collect data from students’ educational records.

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| **https://www.citiprogram.org/members/images/case-study.pngA Study of a Postsecondary Federal Program** |

**Other Student Privacy Rules**

**Studies Involving “Protected Information” Under PPRA**

Another law that IRBs need to be aware of is PPRA. Similar to FERPA, PPRA seeks to protect the rights of parents and students in programs funded by the U.S. Department of Education (ED). The law provides parents of minor children the right to review any materials used by ED for any surveys, evaluations, or analyses.

IRBs must consider PPRA’s requirements when reviewing human subjects research in educational institutions. PPRA influences the way an IRB implements the Common Rule criteria for waiving informed consent for certain research activities. The Common Rule (Protection of Human Subjects 2017) states that an IRB can grant a waiver of informed consent if “the research involves no more than minimal risk,” and “the waiver or alteration does not adversely affect the rights and welfare of subjects” along with other criteria.

PPRA goes beyond minimal risk and requires schools, and researchers working in them, to ensure additional protections in the areas of political affiliations, psychological problems, and religious practices. These eight protected topics include (FPCO 2017):

* Political affiliations or beliefs of the student or the student’s parent
* Mental or psychological problems of the student or the student’s family
* Sex behavior or attitudes
* Illegal, anti-social, self-incriminating, or demeaning behavior
* Critical appraisals of other individuals with whom respondents have close family relationships
* Legally recognized privileged or analogous relationships (such as, those of lawyers, physicians, and ministers)
* Religious practices, affiliations, or beliefs of the student or student’s parent
* Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program)

PPRA requires IRBs to address a few questions before proceeding with a study involving students. Specifically, IRBs must ask the following questions:

* Does the research involve "protected information" surveys?
* Are the surveys ED-funded in whole or part?
* Are the surveys "required?"

If the answer is yes to all three questions, then PPRA provides parents the right to written consent before their child takes the survey. In other words, if a study that is being funded by ED focuses on one of the eight protected topics, parents must provide consent for the student's inclusion in the study (Selwitz 2012).

**Data Requests and Management**

**De-Identified Data**

Educational records are protected under FERPA’s disclosure clause if the record includes PII. To conduct their research, researchers may receive data that have been de-identified. This allows researchers to analyze the data without holding any PII that might go against the FERPA disclosure clause.

**Longitudinal Studies and “Scrambled” Identifiers**

In some cases, researchers need identifiable information to conduct their research. The most common need to identify an individual in a database is to conduct longitudinal studies or research over multiple years. Such studies are critical in certain fields (like education research), in which researchers need multiple years of data to build predictive models and other statistical techniques.

In most cases, researchers need a unique identifier to follow a subject in a database over years. For a student, this may be their student ID number or social security number. Both of these numbers (but especially the social security number) are highly protected and generally not accessible without explicit consent.

To conduct longitudinal studies, a researcher may request that the identifiable information be scrambled or changed using a consistent algorithm by the educational institution or administrator providing the data to the researcher. In this way, the information can be “unscrambled” for requests in future years and matched to new data. The file is then again returned to the researcher scrambled and non-identifiable.

**School Districts and Data**

Public school districts, especially large urban districts, often have explicit rules on how researchers and others may obtain student data, separate from IRB or research review board procedures. These data are collected as part of the requirements by state and local accountability systems. These procedures help districts organize the process for distributing data to researchers and ensure the protection of student information.

These procedures may include specific forms that ask researchers the reason for requesting the data and how the data will be used in the study. In addition, only specific offices may be allowed to provide data that is accessible to different officials in a school district. In some cases, an individual may file a Freedom of Information Act (FOIA) request to receive the data, which would then be routed through a district’s legal office.

**Summary**

IRBs need to be aware of the core provisions of FERPA, PPRA, and other data privacy rules when reviewing studies on education. The Common Rule, in regards to consent waivers, will not always apply for a study that involves student education records. Under FERPA, consent forms for the use of education data must further provide more detailed information about the data being used for the study.

Researchers may use de-identified or scrambled data that allows them to conduct longitudinal studies without the need for identifiable information. IRBs must make sure that such data sets are truly non-identifiable and do not allow for any disclosure that goes against FERPA.

State and federal officials have access to student data (both K-12 and postsecondary) without parent or student consent if they are for specific studies or audits or requested by certain FERPA-permitted entities.

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