

STUDENT PRIVACY POLICY OFFICE
FERPA & Coronavirus Disease 2019 (COVID-19)
Frequently Asked Questions (FAQs)
March 2020

Introduction

The United States (U.S.) Department of Education (Department) is issuing these Frequently Asked Questions (FAQs) regarding the Family Educational Rights and Privacy Act (FERPA) and the coronavirus disease 2019, abbreviated as “COVID-19” and more commonly referred to as “coronavirus.”¹ We are working with our Federal partners including the Centers for Disease Control and Prevention (CDC), which is leading the Federal effort to address coronavirus or COVID-19. The U.S. Department of Health and Human Services (HHS) issued on January 31, 2020, a declaration of a Public Health Emergency regarding coronavirus or COVID-19.²

The Department’s Student Privacy Policy Office (SPPO) prepared this document to assist school officials working with public health officials in managing public health issues related to COVID-19, while protecting the privacy of students’ education records. Understanding FERPA helps enable school officials to act quickly and with certainty when confronting challenges that affect the health or safety of students or other individuals.

Educational agencies and institutions, such as school districts, schools, colleges and universities, can play an important role in slowing the spread of COVID-19 in U.S. communities. Through information sharing and coordination with public health departments, educational agencies and institutions can help protect their schools and communities.

The purpose of this document is to assist school officials in protecting student privacy in the context of COVID-19 as they consider the disclosure of personally identifiable information (PII) from student education records to individuals and entities who may not already have access to that information. School officials should work with their State and local public health officials to determine the information needed to address this public health concern. Understanding how, what, and when information can be shared is a critical part of preparedness.

Background

FERPA is a Federal law that protects the privacy of student education records. (20 U.S.C. § 1232g; 34 C.F.R. Part 99) The law applies to all educational agencies and institutions that receive funds under any program administered by the Secretary of Education. The term “educational agencies and institutions” under FERPA generally includes school districts and public schools at the elementary and secondary levels, as well as private and public institutions of postsecondary

¹ Please note that this FERPA & Coronavirus Disease 2019 (COVID-19) FAQ document updates the Department’s 2009 FERPA & H1N1 document. Other than statutory and regulatory requirements included in the document, the contents of the guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. This document will be posted at <https://studentprivacy.ed.gov> and <https://www.ed.gov/coronavirus>.

² HHS declaration posted at <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

education. Private schools at the elementary and secondary levels generally do not receive funds from the Department and are, therefore, not subject to FERPA.

FERPA gives parents certain rights with respect to their children's education records at educational agencies and institutions to which FERPA applies. These rights transfer to the student when he or she reaches the age of 18 or attends an institution of postsecondary education at any age (thereby becoming an "eligible student"). 20 U.S.C. § 1232g(d); 34 C.F.R. § 99.5(a)(1). Under FERPA, a parent or eligible student must provide a signed and dated written consent before an educational agency or institution discloses PII from education records, unless an exception to this general consent requirement applies. 34 C.F.R. § 99.30(a). Exceptions to the general consent requirement are set forth in 20 U.S.C. §§ 1232g(b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (h), (i), and (j) and 34 C.F.R. § 99.31. The term "education records" is defined, with certain exceptions, as those 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. 20 U.S.C. § 1232g(a)(4); 34 C.F.R. § 99.3, "Education records." Accordingly, immunization and other health records, as well as records on services provided to students under the Individuals with Disabilities Education Act (IDEA), which are directly related to a student and maintained by an educational agency or institution are "education records" under FERPA.³ The term "PII" refers to a student's name or identification number, as well as other information that can be used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information. 34 C.F.R. § 99.3, "Personally identifiable information."

FERPA prohibits educational agencies (e.g., school districts) and institutions (i.e., schools) from disclosing PII from students' education record without the prior written consent of a parent or "eligible student," unless an exception to FERPA's general consent rule applies. 20 U.S.C. §§ 1232g(b)(1) and (b)(2); 34 C.F.R. §§ 99.30 and 99.31. For instance, pursuant to one such exception, the "health or safety emergency" exception, educational agencies and institutions may disclose to a public health agency PII from student education records, without prior written consent in connection with an emergency if the public health agency's knowledge of the information is necessary to protect the health or safety of students or other individuals. 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. §§ 99.31(a)(10) and 99.36.

For all other situations where an exception to FERPA's general consent requirement does not apply, educational agencies and institutions must obtain prior written consent of a parent or eligible student to disclose PII from student education records. 20 U.S.C. §§ 1232g(b)(1) and (b)(2); 34 C.F.R. §§ 99.30 and 99.31. We have attached a model consent form at the end of this document. We have also listed the email and contact information for SPPO, the Department office responsible for implementing and enforcing FERPA, if school officials have questions that are not covered in this document.

³ Parts B and C of the IDEA contain separate privacy regulations that incorporate FERPA provisions and exceptions, including the health or safety emergency exception that is the primary subject of these FAQs. Where a student is placed in a private school for the provision of Individualized Education Program (IEP) services on behalf of a school or school district subject to FERPA, the education records of the privately placed student that are maintained by the private school are subject both to FERPA and to the confidentiality requirements under Part B of the IDEA.