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The background of the page is a photograph of a woman with long, wavy brown hair, wearing a red and black plaid shirt, leaning over a desk. She is smiling warmly at a young boy with short dark hair, who is wearing a red patterned shirt. The boy is focused on writing in a notebook with a blue pencil. The scene is set in a classroom or home office environment. The entire image has a soft, teal-colored overlay.

State Education Agency Data Sharing and the Family Educational Rights and Privacy Act

State education agencies (“SEAs”) provide essential support and services to school districts and schools, including by helping local education leaders effectively manage and use data to support teaching and learning and to guide policy and administrative decisions. SEAs also serve as a hub for lawfully connecting elementary and secondary data with early learning, postsecondary, and workforce data. The rich data SEAs maintain is also a valuable resource for researchers in the public and private sectors.

The data collection and maintenance aspect of SEAs’ work has grown over the past two decades, prompted by expanded federal and state accountability requirements, a desire to make program data reporting more accurate and less burdensome, interest in connecting related state agency data systems, and the emergence and adoption of new technologies that make it easier to use data. As SEA data responsibilities expand and evolve, including based on new federal and state policies, so do questions about how to properly comply with the privacy requirements of the Family Educational Rights and Privacy Act of 1974 (“FERPA,” 20 U.S.C. 1232g). This paper provides guidance specific to when SEAs may share students’ personally identifiable information (PII).

The U.S. Department of Education (the “Department”) significantly updated FERPA’s regulations in 2008 and 2011 to address changing education data policies and practices, including expanded SEA responsibilities. Among other improvements, the amended FERPA rules opened the door to additional research and promoted more efficient data collection and sharing, without compromising student privacy. For example, the Department’s FERPA 2011 Final Rule, for the first time, permitted disclosures for evaluating or auditing programs managed by non-education agencies, such as workforce or early childhood agencies that desired to analyze their education programs. Also, for the first time, the 2011 Final Rule began to permit the application of FERPA’s studies exception to state-level data.

Nearly a decade after the Department adopted the revised FERPA regulations, however, many state leaders remain uncertain about the types of student data disclosures they can lawfully approve without FERPA-required consent. Furthermore, much of the resource guidance on FERPA is directed to the needs of schools and districts and provides little guidance to SEAs. Given the need for information to make decisions on data use and disclosure at the state level, the National Council of State Education Attorneys prepared this guidance to help state-level policymakers and SEA staff deepen their understanding of FERPA and, in consultation with SEA legal counsel, evaluate data use questions and disclosure requests consistent with best practices for protecting student information. SEAs, boards, and staff cannot properly apply FERPA to data disclosure requests without first recognizing how SEAs fit within the law’s definitions and requirements.



INSIGHT FOR SEA LEADERS

FERPA distinguishes state education agencies from schools, school districts, and postsecondary institutions. Although FERPA generally does not directly apply to SEA records, SEAs must comply with certain FERPA provisions, such as the law's data redisclosure rules.

How Does FERPA Apply to SEAs?

FERPA does not apply to SEAs in the same way that it does to schools and districts. As a general matter, FERPA applies to “educational agencies and institutions” that receive any funds—including grants and contracts—from the Department.¹ State officials thus sometimes incorrectly, but understandably, assume that SEAs fall within FERPA’s reference to “educational agencies.” They do not. With very limited exceptions, the only entities the Department considers to be FERPA-defined “educational agencies or institutions” are schools, school districts, and postsecondary institutions.



FERPA’s regulations define an “educational agency” as one that is “authorized to direct and control public elementary or secondary schools, or postsecondary institutions” and that receives any U.S. Department of Education funding.² The term does not include SEAs because SEAs do not have students in attendance.³ In explaining this interpretation, the Department relies on FERPA’s statutory definition of “student”: “For the purposes of this section, the term ‘student’ includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.”⁴

Likewise, an “educational institution” is one that both provides educational services or instruction to students and receives Department funding.⁵ Similarly, an “institution of postsecondary education” is one that provides education to students beyond the secondary school level.⁶ SEAs are not “educational institutions” because they generally do not provide educational services or instruction to students. This point is reinforced by the 2011 FERPA Final Rule’s preamble, which adds that educational institutions include school districts, elementary or secondary schools, schools funded or operated by the Bureau of Indian Education, and postsecondary institutions.⁷

If an SEA is not an “educational agency” or “institution,” what is it? Although most FERPA provisions apply to the records of “educational agencies and institutions,” the law imposes obligations on states’ departments of education as “State Educational *Authorities*.” The FERPA regulations do not define “State and Local Educational Authorities,” but citing a Family Policy Compliance Office letter to Western Kentucky University, the preamble to the 2011 FERPA Final Rule states “[w]e generally have interpreted the term...” to include (1) state education agencies; (2) school districts; (3) state postsecondary commissions; (4) the Bureau of Indian Education; and (4) other entities that are responsible for and authorized under local, State, or Federal law to supervise, plan, coordinate, advise, audit, or evaluate elementary, secondary, or postsecondary Federal- or State-supported education programs and services in the State.⁸ Such state educational authorities are subject to special data use and data redisclosure requirements (see further analysis in the sections below).

There are also several FERPA provisions specific to State Education *Agencies*, which include the following:

- FERPA expressly requires SEAs to provide parents and eligible students with access to inspect and review education records.⁹
- FERPA also directly references SEAs in a provision that permits the disclosure of a student’s PII, by a school, school district, or postsecondary institution, to the secretary of agriculture for the purpose of monitoring, evaluating, and measuring delivery of federal nutrition programs by state and local educational and other agencies and institutions.¹⁰
- SEAs and “other recipients of Department funds under any program administered by the Secretary” that receive student data from educational agencies or institutions are subject to the FERPA regulations’ enforcement provisions.¹¹



INSIGHT FOR SEA LEADERS

FERPA permits school districts to provide students' personally identifiable information to SEAs. Typically, this district-to-state student data sharing is based on FERPA's disclosure exception for auditing or evaluating federal- or state-supported education programs.

How does FERPA allow SEAs to obtain student PII?

FERPA allows school districts, schools, or postsecondary institutions to disclose personally identifiable student data to SEAs without consent,¹² so long as they properly use one of the law's data disclosure exceptions.¹³ Most commonly, district or school data sharing with SEAs occurs through FERPA's exception for auditing or evaluating federal- or state-supported education programs or for the enforcement of or compliance with federal legal requirements related to those programs. Such data disclosures need not be for an immediate purpose. SEAs may store the student data for future audits or evaluations, which enables regular SEA data collection and the operation of state longitudinal data systems (SLDS) to promote effective data use.

DATA DISCLOSURE

There is often a misconception that FERPA gives a blanket prohibition on data disclosure. In fact, educational agencies and institutions may disclose student's PII to third parties under certain conditions, including to "FERPA-permitted entities"¹⁴ such as SEAs. School districts may also share student PII without consent under several statutorily specified exceptions, including: sharing data for "auditing or evaluating" or enforcing a state- or federally funded education -program; sharing data for select types of "studies"; sharing data with other schools or school districts where a student has transferred or intends to transfer; or sharing data with properly designated "school officials" that have a legitimate educational interest in the data.¹⁵

Most commonly, school districts and schools disclose personally identifiable student data to SEAs without parent or eligible-student consent by using FERPA's disclosure exception for an "audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs" (hereafter the "audit or evaluation exception").¹⁶ The audit or evaluation exception allows districts to share data with SEAs to enable the agencies to conduct all types of research and analysis and to satisfy the monitoring and reporting requirements associated with major federal education laws, such as the Elementary and Secondary Education Act, the Individuals with Disabilities Education Act, the Higher Education Act, and the Perkins Career and Technical Education Act.



Specifically, FERPA's audit or evaluation exception permits disclosures to "state educational authorities." As the Department's Family Policy Compliance Office (now called the Student Privacy Policy Office) wrote in 2016, "FERPA permits educational agencies and institutions, such as LEAs and their constituent schools, to disclose PII from education records to SEAs.... The most common exception that relates to disclosure to a State educational authority is found in 34 CFR §§ 99.31(a)(3) and 99.35. The disclosure must be in connection with an audit or evaluation of Federal or State supported education programs; or the enforcement of or compliance with Federal legal requirements relating to such programs."¹⁷

Importantly, such local-to-state disclosures need not be for an audit and evaluation that the SEA is currently undertaking or is otherwise imminent. Rather, the disclosure can be to facilitate future audits or evaluations. This interpretation enables SEAs to receive data from schools or school districts on a regular interval and maintain the data in an SEA-administered records management system to support audits or evaluations the SEA may undertake at a future date.¹⁸



INSIGHT FOR SEA LEADERS

FERPA permits SEAs to redisclose personally identifiable data for research and for certain other educational purposes on behalf of their schools, school districts, and postsecondary institutions. SEA redisclosures do not require the originating party's permission or the consent of parents or eligible students so long as they align with a FERPA exception available to state educational authorities.

SEA Redisclosure

FERPA recognizes that SEAs lead and support their schools, school districts, and, in some jurisdictions, postsecondary institutions. The law not only enables SEAs to use student data to make education policy decisions, but also to share that data in support of the work of educational agencies and institutions. For example, SEAs may redisclose PII about students to authorized parties for research, using the law’s audit or evaluation exception or studies exception. SEAs may also redisclose data consistent with FERPA’s other disclosure exceptions, such as sharing a student’s education record with a school where the student has enrolled or plans to enroll, sharing data required for student financial aid determinations and related actions, and sharing data directly with parents and eligible students. These and other SEA data redisclosures under FERPA are subject to specific rules and conditions, which are described further below.

GREATER DISCRETION UNDER 2008 AND 2011 AMENDMENTS

The Department changed its FERPA regulations in 2008 and 2011 to give SEAs greater discretion to redisclose students’ PII for specific educational purposes. These regulatory changes better aligned FERPA with federal policies that encourage state and local education data collection and use, including facilitating the development and use of SLDSs. The preamble to the 2011 FERPA rulemaking acknowledges this policy goal: “The amendments also reduce barriers that have inhibited the effective use of SLDS as envisioned in the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Act (the America COMPETES Act) (Pub. L. 110–69) and the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5).”¹⁹ The America COMPETES Act encouraged statewide data partnerships and supported the “establishment or improvement of statewide P–16 education data systems....”²⁰ Similarly, ARRA required states receiving federal emergency funding to “establish a longitudinal data system” as envisioned by the COMPETES Act and called on states to report on their progress in “implementing a State longitudinal data system....”²¹



The Department weighed these federal requirements and policy goals in adopting the 2008 and 2011 FERPA rule changes. The Department has since then continued to emphasize student data collection and use policies adopted by Congress, including by providing grants to states to develop, expand, and use SLDSs, as authorized by the Education Sciences Reform Act.²² The National Center for Education Statistics describes SLDSs this way: “These systems are intended to enhance the ability of States to efficiently and accurately manage, analyze, and use education data, including individual student records. The SLDSs should help states, districts, schools, educators, and other stakeholders to make data-informed decisions to improve

student learning and outcomes; as well as to facilitate research to increase student achievement and close achievement gaps.”²³



REDISCLUSURES UNDER THE AUDIT OR EVALUATION EXCEPTION AND THE STUDIES EXCEPTION

Audit or Evaluation of State or Federal Programs.

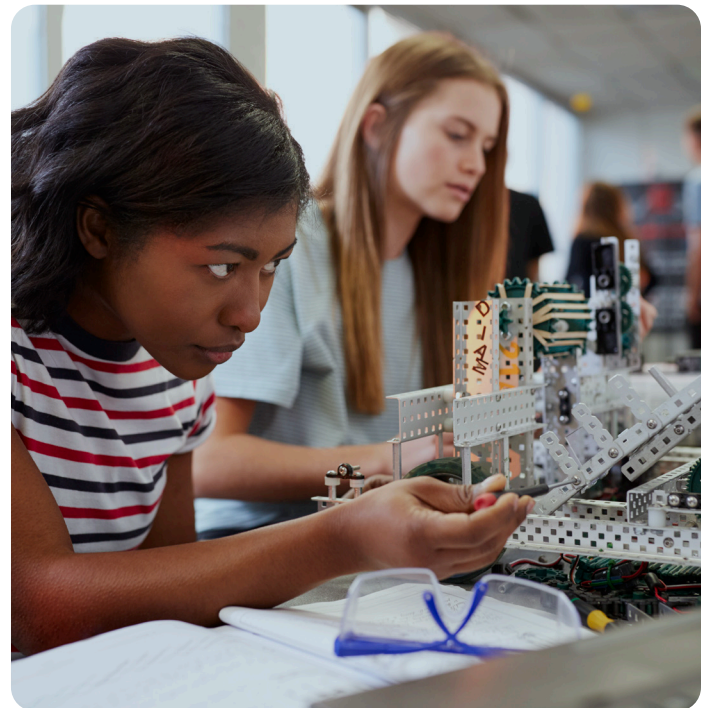
FERPA's exception for the audit or evaluation of federal or state-supported programs permits “state and local educational authorities,” including SEAs, to disclose students’ PII for qualified audits or evaluations without parent or eligible-student consent. Meanwhile, researchers frequently ask SEAs for access to students’ PII for independent research. SEAs also often initiate research and other evaluation projects that are conducted by authorized third parties for the purpose of informing

and guiding agency policymaking and improving practices in the field. The work of outside researchers may fall within FERPA's audit or evaluation exception if it will assist the SEA in assessing education programs. FERPA itself does not, on its own, provide authority for specific audits or evaluations. Rather, FERPA permits “state and local educational authorities” to designate “authorized representatives” to access “personally identifiable information only to carry out an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements related to these programs.”²⁴ The Department has said, meanwhile, that any express or implied authority within federal, state, or local law is sufficient to support application of this disclosure exception.²⁵

Four key definitions are embedded in FERPA's audit or evaluation exception: (1) “state and local educational authorities”; (2) “authorized representatives”; (3) “education programs”; and (4) “evaluations.” As discussed above, FERPA's reference to “state and local educational authorities” includes SEAs.

Under the audit or evaluation exception, authorized representative means “any entity or individual designated by a State or local educational authority or an agency headed by an official listed in 34 CFR §99.31(a)(3) to conduct—with respect to Federal- or State-supported education programs—any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs.”²⁶ An SEA should use a written agreement to designate outside entities or researchers who are assisting in program evaluation.

The definition of “education program” is broad. The Department’s definition “recognizes the fact that education begins prior to kindergarten and involves programs not administered by State or local educational agencies.”²⁷ FERPA defines “education program” as “any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution.”²⁸ The Department has said that “[w]hether a program is determined to be an education program should be based on the totality of the program, and not on whether the program contains a specific ‘incidental educational or training activity within a broader non-education program...’”²⁹



This “totality of the circumstances” standard ensures that the audit or evaluation exception can apply to programs that are not administered by an educational agency or institution. As examples, the preamble to the 2011 Final Rule cites education programs “conducted by correctional and juvenile justice facilities or alternative long-term facilities such as hospitals, dropout prevention and recovery programs, afterschool programs dedicated to enhancing the academic achievement of its enrollees, schools for the hearing and visually impaired, college test tutoring services, and high school equivalency programs.”³⁰ The preamble only specifically excludes programs that are principally engaged in “recreation or entertainment (such as programs designed to teach hunting, boating safety, swimming, or exercise), programs administered by direct marketers, and neighborhood book clubs.”³¹

The Department broadly interprets “evaluation” to “include all manner of studies, assessments, measurements, appraisals, research, and other efforts, including analyses of statistical or numerical data derived from education records.”³²

SEA or other qualified state agency redisclosures under the audit or evaluation exception could, for example, include disclosing data to evaluate the following:

- the impact of dual and concurrent enrollment programs on preparation for higher education (e.g., see the [Massachusetts Department of Higher Education Data Center](#));
- the effectiveness of early intervention administered by an early learning provider (e.g., see the Early Childhood Profile report created by the [Kentucky Center for Statistics](#));
- the effectiveness of a job training program administered by a state workforce agency (e.g., see Washington's [Education Research and Data Center](#), which links education and workforce data from multiple state agencies to inform state decision makers).³³

Audit or Evaluation Exception Requirements.

In order for SEAs or other “state and local educational authorities” to use the audit or evaluation exception, they must abide by the following requirements:

- formally designate the organization or individual researcher as an “authorized representative”;
- use “reasonable methods” to ensure, to the greatest extent practicable, that the PII is only used to carry out the audit or evaluation, including ensuring that the authorized representative uses the PII only for the authorized purposes, protects it from further disclosures or other uses (except as authorized), and later destroys it. The scope of any evaluation can be written broadly and can include multiple years of review and/or multiple programs and parameters;
- enter into a written agreement to designate the “authorized representative” (other than its employee) and obtain an independent written agreement for each new audit or evaluation;³⁴ and
- maintain a record of each request for access to and each disclosure of PII from education records.

Integrated Data Systems:

Powerful Use of the Audit or Evaluation Exception



The Department, through its Privacy Technical Assistance Center (PTAC), published guidance in 2017 applying FERPA to state-level integrated data systems (IDS) that allow linkage of administrative data from multiple governmental agencies, including an SEA.³⁵ IDS often involve an entity, such as a university or nonprofit, that hosts and operates the systems (the “IDS lead”). The IDS lead links records from an SEA with data received from other participating agencies to provide ongoing capacity for evaluations involving integrated data. An SEA can collaborate with an IDS lead by applying FERPA’s audit and evaluation exception to facilitate future evaluations of federal or state-supported education programs.

All the requirements specified above for using the audit or evaluation exception would apply to the SEA’s agreement with the IDS lead. The SEA will need to have in place a written agreement with the IDS lead that

- designates the entity as the SEA’s authorized representative;
- specifies the data to be disclosed (which can be a categorical description of data from one or more SEA systems);
- specifies that the purpose for which PII is disclosed is to facilitate future audits or evaluations of federal or state-supported education programs that the SEA has the authority to carry out;

- describes the scope of any audits or evaluations that the IDS lead is authorized to carry out as of the effective date of the agreement and a process for approving the scope of any future audits or evaluations;
- uses “reasonable methods” to ensure that PII disclosed to the IDS lead is used only to carry out audits or evaluations that the SEA has authorized, protects the PII from further disclosures or unauthorized uses, and later destroys the PII; and
- ensures that a record of each request for access to and each disclosure of PII that involves any data initially disclosed by the SEA is maintained in compliance with FERPA.

In addition, the SEA must consider whether the IDS lead will be the only entity authorized to perform audits and evaluations using the integrated data within the system, or whether the IDS lead is authorized to redisclose the data to third party organizations (such as another agency participating in the IDS or a researcher requesting access to data from the IDS to perform a longitudinal study). If the IDS lead is authorized to redisclose integrated data from the IDS to third parties, the written agreement between the SEA and the IDS lead must provide such an authorization; describe the circumstances under which such redisclosure is permissible under FERPA; and the approval, contractual, and recordation procedures and requirements applicable to the redisclosure. For a redisclosure to a third party relying on the audit or evaluation exception, the SEA must approve the scope of the proposed third party research, formally designate the third party as its “authorized representative,” and ensure that the agreement with the third party complies with the other applicable requirements of FERPA’s audit or evaluation exception.³⁶

Link: The information in this section is generally drawn from the PTAC guidance and supplemented by the authors’ direct experience with integrated data systems.



Studies Exception.

SEAs may also redisclose personally identifiable student data to “organizations” for research using the law’s “studies” exception. The exception allows SEAs to release FERPA-protected information to “organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction.”³⁷

Organizations include but are not limited to federal, state, and local agencies and independent organizations such as a private university or a nonprofit. The studies exception “is not a general research exception” and permits the redisclosure of student PII only for specific kinds of studies.³⁸ It permits data sharing to facilitate research focused on (1) developing, validating, or administering predictive tests; (2) administering student aid programs; or (3) improving instruction.³⁹ As a result, the studies exception is narrower in scope than the audit or evaluation exception but still covers a wide range of research within these three topical areas.

Prior to the 2008 and 2011 FERPA rule makings, the Department construed the statutory reference to studies “for or on behalf of” an educational agency to require that the disclosing institution must “initiate, authorize, or otherwise have some control over the study.”⁴⁰ That a study “may benefit an educational agency or institution,” FPCO formerly reasoned, “does not transform the study into one done ‘for or on behalf of’ the educational agency or institution.”⁴¹



More recently, the Department has confirmed that SEAs have the discretion, independent of any approval from the educational agency or institution that provided the data, to redisclose data using the studies exception. The only requirement is that the SEA has express or implied legal authority to have the study conducted. A study “for, or on behalf of” does not require the assent or express approval of the original disclosing educational agency or institution.⁴²

The Department has also said that a “FERPA-permitted entity would be permitted to redisclose PII from education records under the studies exception in § 99.31(a)(6) if: (1) The FERPA-permitted entity has the express or implied legal authority to have the study in question conducted, and (2) the educational agency or institution either agrees to the redisclosure, in which case the redisclosure would be ‘for’ the educational agency or institution, or the study is designed to improve instruction, in which case the redisclosure would be ‘on behalf of’ the educational agency or institution. Accordingly, a redisclosure may be ‘for’ or ‘on behalf of’ of the original disclosing entity even if that entity objects to the redisclosure.”⁴³

“Studies” need not be initiated by the SEA—or the originating school, school district, or postsecondary institution—and these entities do not need to “agree with or endorse the conclusions or results of the study.”⁴⁴ In other words, an outside organization may approach the agency to propose a study that requires PII. Among other reasons, SEAs may choose to use FERPA’s studies exception when the agency seeks a degree of independence from the planned research and does not want to designate the organization as its “authorized representative” under the audit or evaluation exception.

Studies Exception Requirements.

An SEA that chooses to share data using the studies exception must record the names of the additional parties to which it discloses information and their legitimate interests in the information, unless the recording requirement is otherwise satisfied by the educational agency or institution that provided the information.⁴⁵ This requirement is designed to promote data use transparency for students and parents.

Similar to the audit or evaluation exception, an SEA’s use of the studies exception must satisfy specific requirements. An SEA may redisclose a student’s PII for a study only under these circumstances:

- the study does not permit identification of individual parents and students by anyone other than representatives of the organization with legitimate interests in the information;
- the information is destroyed when it is no longer needed for the study’s purposes; and
- the SEA enters into a written agreement with the organization conducting the study that describes the (1) purpose and scope of the study; (2) limits the organization to only use the data to meet the study purpose or purposes; (3) requires the organization to conduct the study in a manner that does not permit the personal identification of parents and students by anyone other than the organization’s representatives; and (4) requires the organization to destroy the data when it is no longer required for the study’s purposes and specifies the period by which the information must be destroyed.⁴⁶

OTHER PERMISSIBLE SEA REDISCLOSURES

SEAs that receive data from schools, school districts, or postsecondary institutions through FERPA's audit or evaluation exception may redisclose the data for limited other purposes. The Department has said, "FERPA expressly permits the redisclosure, without consent, of PII from education records for a reason other than the reason for which the PII was originally collected, if the redisclosure is made on behalf of the educational agency or institution that provided the PII and the redisclosure meets the requirements of sec. 99.31."⁴⁷ In other words, SEAs may redisclose the data under any of the exceptions listed in the FERPA regulations (34 C.F.R. § 99.31). An SEA may rely on a FERPA exception to make a redisclosure so long as the disclosures are "on behalf of" an educational agency or institution and the disclosure is properly recorded by listing the names of the parties to whom the information was disclosed and their legitimate interests in the information.⁴⁸ Upon request, the SEA must provide a record showing that its redisclosures are available to an educational agency or institution within a reasonable period (not exceeding 30 days).⁴⁹



The Department confirmed this redisclosure authority in a letter to the Council of Chief State School Officers in 2020. The Department noted that SEAs, like the federal officials and agencies listed in 34 CFR § 99.31(a)(3), may "redisclose personally identifiable information from education records on behalf of educational agencies and institutions in accordance with the requirements in § 99.33(b) that require that the redisclosure meet the requirements of § 99.31 and be recorded."⁵⁰ Looking back farther at the Department's interpretation of FERPA, the 2008 FERPA Final Rule's preamble notes that a state agency that receives data under the audit or evaluation exception may redisclose the information "under any of the exceptions in § 99.31(a), including transferring education records to a student's new school under § 99.31(a)(2), sharing information

among other State and local educational authorities and Federal officials for audit or evaluation purposes under § 99.31(a)(3); and using researchers to conduct evaluations and studies under § 99.31(a)(3) or § 99.31(a)(6), without violating the statutory prohibitions on redisclosing education records provided certain conditions have been met."⁵¹ Explaining this authority, the 2008 Final Rule notes that SEAs are responsible for overseeing schools and school districts and that enabling such state-level redisclosures promotes administrative efficiency.

Examples of permissible non-research SEA data redisclosures, consistent with the rules cited above, could include providing the following education records on behalf of schools or school districts for these purposes:

- **Student Enrollment.** FERPA permits sharing data with officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll or where the student is already enrolled so long as the disclosure is for purposes related to the student’s enrollment or transfer.
- **Financial Aid Decisions.** FERPA permits sharing data in connection with financial aid applications or receipt in order to determine eligibility, amounts of the aid, conditions for the aid, or to enforce terms and conditions of the aid.
- **Health or Safety Emergencies.** FERPA permits sharing data to appropriate parties in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the students. Such sharing may be more appropriate, and likely, directly through the school or school district, but under special exigent circumstances, such sharing could be necessary.
- **Parents and Eligible Students.** FERPA permits sharing data to a parent of a student who is not an eligible student or to the student. Note that FERPA expressly requires SEAs to provide parents and eligible students with access to inspect and review their education records.

COMPLIANCE REMEDIES

SEAs are expressly subject to FERPA’s penalties. Similar to other entities that lawfully receive students’ PII from a FERPA-covered educational agency or institution, SEAs must satisfy FERPA’s requirements or face “debarment” from receiving FERPA-covered information in the future or loss of federal funds.⁵²

FERPA’s enforcement regulations require specific procedures and penalties not only for “educational agencies and institutions” but also “other recipients of Department funds under any program administered by the Secretary” and “any third party outside of an educational agency or institution” that receives personally identifiable student information. These entities must

- comply with records and other investigative requests from the U.S. Department of Education’s Family Policy Compliance Office;⁵³ and
- be subject to “debarment,” which would prevent them from having access to education records for at least five years. SEAs are also subject to the withholding of payments under any applicable program, termination of eligibility to receive funding under any applicable program, and can be the subject of a cease and desist order.⁵⁴

The Department’s enforcement processes for educational agencies or institutions provides a reasonable period for voluntary compliance and then calls for further enforcement action only if the educational agency or institution does not comply during that time.⁵⁵ As a matter of practice, the same process would be applicable to SEAs.

CONCLUSION

SEAs must prioritize protecting student privacy by carefully adhering to FERPA’s requirements, but they should not refrain from using data effectively for legitimate educational purposes. Those permissible uses include disclosing protected data to outside researchers where the analytical outcomes can evaluate educational programs or improve instruction. The rich data that SEAs maintain is a valuable resource for the future of U.S. public education, and FERPA permits appropriate evaluations and studies, subject to certain requirements.

FERPA provides SEAs with significant authority to redisclose data for important purposes, but not all legal redisclosures may be prudent or practical at the state level. State leaders should carefully consult with their senior staff to develop education data use plans that align with their educational goals and vision, including determining the conditions when SEA data redisclosures may best serve the interests of students, parents, schools, and school districts. They should always consult with counsel to ensure that planned data disclosures comply with FERPA, as well as other federal and state privacy laws that may apply.

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This report was prepared by the National Council of State Education Attorneys (NCOSEA), which is composed of attorneys who represent and advise state boards of education. Established in 1977 as a NASBE affiliate, NCOSEA provides a forum for these attorneys to study and exchange information on legal issues of concern to state education policymakers. NCOSEA would like to acknowledge the contributions of NASBE and Foresight Law + Policy to the report. Foresight is a national education law firm based in Washington, D.C.

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ADDITIONAL RECOMMENDED READING

U.S. Department of Education, Privacy Technical Assistance Center, IES Materials

- [Integrated Data System Guidance](#)
- [Exceptions Summary](#)
- [Written Agreements Check List](#)
- [Letters of Importance](#)
- [Model Forms and Notifications](#)
- [P-20W+ Data Governance](#)

Nongovernmental Organizations

- [Data Quality Campaign, Who Uses Student Data](#)
- [Data Quality Campaign, Roadmap to Safeguarding Student Data](#)
- [Future of Privacy Forum, State Student Privacy Laws](#)
- [Center for Democracy and Technology, Data Sharing & Privacy Demands in Education: How to Protect Students While Satisfying Policy & Legal Requirements](#)
- [Consortium for School Networking, Getting Started with Cybersecurity](#)

REFERENCES

¹ 20 U.S.C. 1232g(a)(3)

² 34 C.F.R. 99.1(a)(2)

³ Family Educational Rights and Privacy; Final Rule, 76 Fed. Reg. 75606 (Dec. 2, 2011)

⁴ 20 U.S.C. 1232g(a)(6)

⁵ 34 C.F.R. 99.1(a)(1);

⁶ 34 C.F.R. 99.3

⁷ 76 Fed. Reg. 75606

⁸ 76 Fed. Reg. 75606; See also FPCO letter to Western Kentucky University (2005).

⁹ 20 U.S.C. 1232g(a)(1)(B); 34 C.F.R. 99.10

¹⁰ 20 U.S.C. 1232g(b)(1)(K)

¹¹ 34 C.F.R. 99.67

¹² In the absence of specified exceptions, FERPA prohibits the disclosure of student personally identifiable information without the consent of either a parent or an "eligible student" (a student age 18 or older or enrolled in a postsecondary institution at any age).

¹³ 20 U.S.C. 1232g(b); 34 C.F.R. 99.30; 34 C.F.R. 99.31

¹⁴ The entities to which educational agencies and institutions may disclose FERPA-protected information are listed in 34 C.F.R. 99.31(a)(3): representatives of the U.S. Controller General, the U.S. Attorney General, the Secretary of Education, and "State and Local educational authorities."

¹⁵ 20 U.S.C. 1232g(b); 34 C.F.R. 99.31

¹⁶ 34 C.F.R. 99.31(a)(3) and 34 C.F.R. 99.35.

¹⁷ U.S. Department of Education, FERPA Notice to Chief State School Officers, FPCO, (last updated Dec. 2016).

¹⁸ U.S. Department of Education Privacy Technical Assistance Center, Integrated Data Systems and Student Privacy, PTAC-IB-4, Jan. 2017.

- ¹⁹ 76 Fed. Reg. 75604
- ²⁰ 20 U.S.C. 9871
- ²¹ American Recovery and Reinvestment Act, 14005 and 14008, Pub. L. 111-5
- ²² Education Sciences Reform Act, Pub. L. 107-279
- ²³ National Center for Education Statistics, "About the SLDS Program," https://nces.ed.gov/programs/slds/about_SLDS.asp.
- ²⁴ 34 C.F.R. 99.35(a)(2)(i)
- ²⁵ 76 Fed. Reg. 75613
- ²⁶ 20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5); 34 C.F.R. 99.3
- ²⁷ 76 Fed. Reg. 75614
- ²⁸ 34 C.F.R. 99.3
- ²⁹ 76 Fed. Reg. 75614
- ³⁰ Id.
- ³¹ Id.
- ³² Family Educational Rights and Privacy; Proposed Rule, 73 Federal Register 15586 (Mar. 24, 2008)
- ³³ Data Quality Campaign, *The Art of the Possible: Data Governance Lessons Learned from Kentucky, Maryland, and Washington* (Jan. 2018)
- ³⁴ 34 C.F.R. 99.35
- ³⁵ Privacy Technical Assistance Center (PTAC-IB-4, January 2017). Integrated Data Systems and Student Privacy. Retrieved May 20, 2020, from https://studentprivacy.ed.gov/sites/default/files/resource_document/file/IDS-Final_0.pdf
- ³⁶ Id.
- ³⁷ 20 U.S.C. 1232g(b)(1)(F)
- ³⁸ Family Educational Rights and Privacy; Final Rule, 73 Federal Register 74825 (Dec. 9, 2008)
- ³⁹ 34 C.F.R. 99.31(a)(6)(i)
- ⁴⁰ FPCO, Letter to Schiff, 8/1/2003, 104 LRP 16337
- ⁴¹ FPCO, Letter to Lloyd-Jones, 2/18/2004, 104 LRP 8781
- ⁴² 76 Fed. Reg. 75627
- ⁴³ 76 Fed. Reg. 75613
- ⁴⁴ 73 Fed. Reg. 74825
- ⁴⁵ 34 C.F.R. 99.33(b)
- ⁴⁶ 34 C.F.R. 99.31(a)(6)(iii); See also FERPA Exceptions Summary, PTAC-Handout-2H, Apr. 2014.
- ⁴⁷ 76 Fed. Reg. 75607-75608
- ⁴⁸ 34 C.F.R. 99.33(b)(1) – (b)(2) discusses court orders or lawfully issued subpoenas
- ⁴⁹ 34 C.F.R. 99.32(b)(2)(iii)
- ⁵⁰ U.S. Department of Education, FERPA Notice to Chief State School Officers, FPCO, (last updated Apr. 2020)
- ⁵¹ 73 Fed. Reg. 74821
- ⁵² 34 C.F.R. 99.67
- ⁵³ 34 C.F.R. 99.62
- ⁵⁴ 34 C.F.R. 99.67
- ⁵⁵ 34 C.F.R. 99.66, 99.67