Case Study #1: High School Feedback Report

Illustrating an SEA creating high school feedback reports using FERPA's audit or evaluation exception

About PTAC

The U.S. Department of Education established the Privacy Technical Assistance Center (PTAC) as a "one-stop" resource for education stakeholders to learn about data privacy, confidentiality, and security practices related to student-level longitudinal data systems and other uses of student data. PTAC provides timely information and updated guidance through a variety of resources, including training materials and opportunities to receive direct assistance with privacy, security, and confidentiality of student data systems. More PTAC information is available at http://ptac.ed.gov.

PTAC welcomes input on this document and suggestions for future technical assistance resources relating to student privacy. Comments and suggestions can be sent to PrivacyTA@ed.gov.

Purpose

In December 2011, the U.S. Department of Education (Department or we) released new regulations governing the Family Educational Rights and Privacy Act (FERPA), (76 FR 75604 (Dec. 2, 2011)), and supplemental non-regulatory guidance. We are providing the following case study to illustrate how specific provisions of FERPA may be implemented. This case study uses fictional agencies, does not address individual circumstances, and does not consider additional legal requirements that may be required under other Federal, state, or local laws.

We will release additional case studies, and welcome suggestions for future topics. Comments and suggestions can be sent to PrivacyTA@ed.gov.

Background

The state education agency (SEA) in State X participates in the State Fiscal Stabilization Fund (SFSF) program. By accepting funds under the SFSF program, the SEA agreed to collect and publish various data, including data on students' success in college (such as whether they enrolled in remedial courses). The SEA has data on State X high school graduates because it has a functioning K-12 statewide longitudinal data system (SLDS) and wants to provide its high schools with information on how their graduates are doing at the postsecondary level. To prepare the feedback reports, however, the SEA needs to match data on State X's public high school graduates with data from State X's public institutions of higher education (IHEs). The SEA wishes to obtain these data yearly, and house the data in its SLDS so that it can conduct an ongoing evaluation and produce annual individual high school feedback reports.

What does the SEA do?

The SEA relies on FERPA's audit or evaluation exception as a mechanism to meet the SFSF requirement and produce feedback reports. This exception allows an educational agency or institution to disclose personally identifiable information (PII) from education records to authorized representatives of state educational authorities without consent to evaluate a Federal- or state-supported education program (34 CFR § 99.31(a)(3); 34 CFR § 99.35). The SEA, as a state educational authority, determines it can use this exception because it is evaluating public high school instruction, which is considered an "education program" under FERPA.

The SEA determines that State X's higher education governing board (HEGB) has the needed information for public IHEs in State X. As described below, the SEA enters into a written agreement with the HEGB designating the HEGB as its authorized representative, allowing the SEA to send the HEGB PII on its high school graduates.

The HEGB matches the SEA's list with its data and identifies students who have enrolled in State X's IHEs. The HEGB then sends the SEA information about those students' enrollment and college credits earned.

The SEA ensures to the greatest extent practicable, prior to designating the HEGB as its authorized representative, that the HEGB will comply with FERPA and use the SEA's information only for the purposes specified in the written agreement.

The SEA consults the Guidance for Reasonable Methods and Written Agreements and selects applicable best practices to safeguard the data. The SEA also records its disclosure of education records to the HEGB, identifying the students whose records were disclosed and that the purpose of the disclosure was to permit the SEA to evaluate its programs.

The SEA then uses the matched data to prepare high school feedback reports, which it sends to its local education agencies.

What does the HEGB do?

The HEGB is interested in supporting the SEA because it recognizes the value of this evaluation for improving student preparation for college. The HEGB requires that the SEA destroy the HEGB's data when it is no longer needed for the purposes of evaluating the SEA's programs. Because the SEA will be including the HEGB's data in the State X SLDS for use in preparing future feedback reports, the HEGB does not require the immediate destruction of the data. Upon expiration of the agreed-upon data retention period, the HEGB requires the SEA to certify that the data obtained from the HEGB has been destroyed.

How does the written agreement work?

To accomplish these transfers, the SEA and the HEGB enter into a written agreement. FERPA only requires a written agreement to cover the SEA transfer of PII to the HEGB under 34 CFR § 99.31(a)(3). The HEGB and the SEA, however, use best practices and enter into a two-way agreement that

- designates the HEGB as the SEA's authorized representative;
- specifies the data that the SEA will send the HEGB and the data the HEGB will send the SEA;
- specifies that the data are being shared to allow the SEA to evaluate its programs and describes how it will be used;
- requires that the HEGB destroy the incoming list of identifying information when it is no longer needed for the purpose specified, and provides a time period for that destruction;
- requires the SEA to destroy the HEGB's PII when it is no longer needed for the purpose specified, and provides a time period for that destruction; and
- establishes policies to protect the data from further disclosure or unauthorized use, including specifying that the HEGB may not re-disclose the PII.