



UNITED STATES DEPARTMENT OF EDUCATION

STUDENT PRIVACY POLICY OFFICE

February 5, 2026

Dear President:

The U.S. Department of Education (Department), through its Student Privacy Policy Office (SPPO), is writing this letter to provide technical assistance to presidents of Institutions of Higher Education (IHEs) that are subject to the Family Educational Rights and Privacy Act (FERPA). Specifically, we want to address concerns regarding the National Study of Learning, Voting, and Engagement (NSLVE), a study of student political engagement in higher education institutions encompassing data from over 1,000 U.S. colleges and universities. While NSLVE's stated mission is to promote civic engagement through analysis of student voting behavior, recent inquiries raise questions about its compliance with FERPA, as discussed below. Institutions intending to utilize any NSLVE report or data this year are advised to wait to do so until the Department has completed its investigations into Tufts University and the National Student Clearinghouse. Any IHE that utilizes NSLVE data released in 2026 could be at risk of being found in violation of FERPA.

Background

In response to a 2012 Obama administration call to action, Tufts University formed a partnership with the National Student Clearinghouse (NSC) "to measure voting and registration rates" of students. That national call to action was published in a report entitled "A Crucible Moment: College Learning and Democracy's Future," which stated: "Higher education has a distinctive role to play in the renewal of U.S. democracy... this report argues that colleges and universities are among the nation's most valuable laboratories for civic learning and democratic engagement... With this report we call on the higher education community... to embrace civic learning and democratic engagement as an undisputed educational priority."

In 2021, the Biden administration further promoted this initiative when Secretary Cardona issued a toolkit entitled "Promotion of Voter Participation for Students." The agency toolkit directly recommended that IHEs use data from prior voting cycles to expand voter registration. Further, the toolkit specifically encouraged institutions to participate in the NSLVE in order to "see where there are gaps among their students in registering" as well as "to determine target populations" for voter registration. The toolkit includes various links, including one that leads to an NSLVE FAQ document that suggests the data sharing under the NSLVE is fully compliant with FERPA. However, SPPO, the office that administers and enforces FERPA, has not made such a determination.

The NSLVE relies on student data provided by the NSC. IHEs authorize and instruct the NSC to use the institution's enrollment data as described in the Participation Authorization Form ("Authorization") that amends the Institution's Participation Agreement with NSC. The

organization conducting NSLVE on behalf of the IHE had been the Institute for Democracy and Higher Education (IDHE), based at Tufts University. However, the IDHE moved to the American Association of Colleges and Universities (AAC&U)¹, with the NSLVE study remaining at Tufts University's Tisch College of Civic Life where it is presently overseen by the Center for Information & Research on Civic Learning and Engagement (CIRCLE). In addition, reports suggest Catalist² and L2³, third-party vendors, share national public voter registration and voting records they collect to be used for the NSLVE. SPPO's understanding based on the reports and our preliminary analysis is the information collected includes whether an individual registered to vote, whether they voted, vote method, where they voted, but does not include vote choice. NSC then appends some or all of the following data elements, as reported by the institution in its Clearinghouse enrollment data, de-identifies the resulting files, and sends the de-identified files to IDHE for analysis: age at election, age eligibility flag, birth year, home zip code, class, program level, major and classification of instructional program (CIP) code, sex, race, enrollment status, degree seeking status, school code, and campus city and state. IDHE then uses this dataset to study student registration and voting rates, along with comparisons with appropriate reference groups. While the Authorization with NSC states these data elements are either de-identified or directory information, it further states that "any such data elements provided by the Institution to the Clearinghouse that are non-directory shall be provided pursuant to the studies exception to the Family Educational Rights and Privacy Act ("FERPA"), 34 C.F.R. §99.31(a)(6) and shall be included as part of the de-identified dataset sent back to IDHE and incorporated into the aggregate reporting back to IHE." Using the studies exception appears to be a workaround to share information on students that have opted out of the disclosure of directory information, and to share information that would typically not be designated as "directory information."

FERPA Compliance and Data Privacy

FERPA protects the privacy of students' education records. The term "education records" means 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. *See* 34 CFR § 99.3 "Education records." FERPA affords parents and eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. (An "eligible student" is a student who has turned age 18 or is attending college at any age.) Under FERPA, an educational agency or institution is prohibited from disclosing personally identifiable information (PII) from students' education records, without consent, unless the disclosure meets an exception to FERPA's general consent requirement. *See* 34 CFR § 99.30 and § 99.31.⁴

One exception to FERPA's general consent requirement permits the nonconsensual disclosure of

¹ <https://tischcollege.tufts.edu/news-events/news/tisch-college-announces-transition-strengthen-youth-civic-engagement-research-impact>

² <https://catalist.us/who-we-are/>

³ <https://www.l2-data.com>

⁴ The Department's regulations define "personally identifiable information" to include "information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." 34 C.F.R. § 99.3.

information derived from education records that has been appropriately designated as “directory information” by the school. *See* 34 CFR § 99.31(a)(11). FERPA defines directory information as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as the student’s name; address; telephone listing; email address; photograph; date and place of birth; major field of study; grade level; enrollment status (*e.g.*, undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees; honors and awards received; and the most recent educational agency or institution attended. *See* 34 CFR § 99.3. FERPA provides that a school may only disclose directory information if it has given public notice of the types of information which it has designated as “directory information,” the eligible student’s right to restrict the disclosure of such information, and the period of time within which the eligible student has to notify the school in writing of their desire to opt out of any or all of those types of information designated as “directory information.” *See* 34 CFR § 99.37. Under FERPA, we have historically prohibited schools from disclosing the names, addresses, and other directory information that is linked to non-directory information, *e.g.*, race, sex, or ethnicity.

FERPA restricts institutions from disclosing directory information without consent unless they publicly identify precisely what constitutes directory information and enable each student to opt-out of the sharing of their directory information. However, NSLVE’s data matching process appears to involve combining directory information with non-directory information. This type of data matching creates records that cannot be disclosed without students’ consent and is where FERPA concerns are at their zenith. That the NSLVE appears to rely on a private organization’s interpretation of the studies exception under FERPA (34 C.F.R. §99.31(a)(6); 20 U.S.C. § 1232g(b)(1)(F))—which permits disclosure of PII without consent if the disclosure is to organizations conducting studies for or on behalf of educational institutions to improve instruction—does nothing to mitigate those concerns. The exception to prior written consent is narrowly construed and requires that study be conducted to:

- A. Develop, validate, or administer predictive tests;
- B. Administer student aid programs; or
- C. Improve instruction.

Based on our preliminary analysis, it appears that the NSLVE does not comply with the requirements of the studies exception under FERPA.

Conclusion

SPPO has concerns about the NSLVE's use of the directory information and studies exceptions to prior written consent under FERPA. Pursuant to our authority under 20 U.S.C. §1232g(f), 34 CFR § 99.60 and §99.62, SPPO will ensure all IHE participation in the NSLVE complies with institutional obligations regarding student privacy. There are a number of enforcement options available to the Department when an IHE is not in voluntary compliance with FERPA, including withholding further payments, issuing a cease-and-desist order, and recovering funds. See 34 CFR § 99.67 and 20 U.S.C. § 1234c. Please contact the Student Privacy Policy Office at PrivacyTA@ed.gov for further guidance or other questions related to the matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank E. Miller Jr.", is positioned above the typed name.

Frank E. Miller Jr.

Director

Student Privacy Policy Office