



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

December 15, 2016

Dear Chief State School Officers and Superintendents:

The Department of Education (Department) is required to notify annually each State educational agency (SEA) and each local educational agency (LEA) of its obligations, as a recipient of Department funds, under the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). FERPA protects the privacy interest of parents and students in education records maintained by educational agencies and institutions. PPRA affords parents and students certain rights concerning marketing and surveys, parental access to information, and the administration of certain physical examinations to students. These privacy protections in FERPA and PPRA should not be viewed as barriers or challenges to be minimized and overcome, but instead as important public safeguards with which schools and school districts must comply. This letter serves as the cover letter to the Department's annual notices to SEAs and LEAs, which may be accessed at www.ed.gov/fpc.

In addition to notifying you of your legal obligations, we want to update you on some developments regarding student privacy, including the importance of developing and maintaining a data security program, the option for LEAs and schools to adopt limited directory information policies, and the availability of additional resources and guidance that we have released.

Developing and maintaining a data security program

One of the greatest data challenges facing SEAs and LEAs is protecting students' personally identifiable information (PII) from hackers, thieves, breaches, and other unauthorized disclosures. Although FERPA does not dictate specific requirements for safeguarding education records, the Department encourages SEAs and LEAs that maintain PII from said records to consider actions that mitigate the risk of unauthorized disclosures and are reasonably calculated to protect such information. A comprehensive data security program is critical to mitigating these risks and protecting the individual privacy and confidentiality of education records. A successful data security program is a vital component of an SEA's and LEA's data governance and security plan, and involves management of people, processes, and technology to ensure the physical and electronic security of an agency's student data. We have created several resources to assist SEAs and LEAs in developing and maintaining their data security programs. We encourage you to review the resources available on the Department's Privacy Technical Assistance Center's (PTAC's) website (<http://ptac.ed.gov>) regarding data security and data governance. Among the many resources available is a data security checklist designed to assist with developing and maintaining a successful data security program by listing essential components that should be considered when building such a program, with a focus on solutions and procedures relevant to supporting data security operations of educational agencies. In addition, we have prepared a video on developing a privacy program for LEAs and schools,

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available at https://youtu.be/clcJ_6n2qPA, and a data breach training kit for LEAs and schools that includes a facilitator’s guide, PowerPoint slide deck, and exercise handouts and scenarios. These resources are available under the “Data Breach Response” tab at <http://ptac.ed.gov/toolkit>.

Limited directory information policy

Many LEAs and schools have elected to allow the release of directory information and have established directory information policies under FERPA. We have recently released a brief video on this subject, which can be found at <https://youtu.be/TJr2nIJQ6Ls>. Congress included the disclosure of properly designated directory information as an exception to the general consent requirement in FERPA so that LEAs and schools may make disclosures of the type of information that would not generally be considered harmful or an invasion of privacy, such as information on students that would normally be found in a school yearbook or directory, provided that parents or eligible students have not opted out of such disclosures. By its nature, directory information is intended to be publicly shared. However, the Department recognizes that broad directory information policies may not provide some LEAs and schools with desired control over the disclosure of directory information. LEAs and schools may well wish to allow the disclosure of directory information to third parties, but restrict the purposes for which they will disclose it, restrict the third parties to whom they will disclose it, or both.

While LEAs and schools are required neither to disclose directory information, nor to adopt a directory information policy, they should be aware of the option of establishing a limited policy. In order to better assist LEAs and schools in limiting directory information disclosures to specified third parties, for specific purposes, or both, the Department included in its 2012 amendments to the FERPA regulations the option for LEAs and schools to adopt a limited directory information policy. We believe a limited directory information policy will often better protect against improper disclosures of PII from education records and reduce the number of complaints in this regard. LEAs and schools are in the best position to determine who should receive directory information and for what purposes, and we encourage LEAs and schools to work with parents and eligible students in implementing a limited directory information policy to exercise greater control over the disclosure of directory information. For example, a limited directory information policy might allow the disclosure of directory information to third parties to create materials for school purposes (e.g., student directories or programs for school sporting events), while disallowing the disclosure of this same information to third parties for any other marketing purpose. We encourage school officials to act responsibly in developing their directory information policies and to keep in mind routine disclosures that LEAs and schools need to make in the normal course of business, including providing properly designated directory information to the media about various student activities and extracurricular pursuits of students.

When developing policies, keep in mind that, as discussed more thoroughly in the annual notice discussing LEAs’ obligations under PPRA, LEAs are required to develop and adopt a policy, in consultation with parents, governing the collection, disclosure, or use of personal information, as defined in PPRA, collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for those purposes). The policy must include arrangements to protect student privacy in the event of such collection, disclosure, or use. LEAs are also required to notify parents of students of any activities that involve the collection, disclosure, or use of personal information collected from students for the purpose of marketing or selling that information (or otherwise providing that information to others for those purposes) so that parents may opt their children out of participation in those activities.

Additional resources and guidance

Over the past year, we have issued a number of guidance documents and short videos regarding access to student information. While we highlight a few resources here, we encourage you to visit our websites to explore our toolkit of resources, including case studies, webinars, check lists, technical briefs, and videos. We draw your attention particularly to:

Letter to Louisiana Department of Education on Enrollment Data and Disclosure Avoidance

On April 21, 2016, the Office of the Chief Privacy Officer issued a letter to the Louisiana Department of Education answering questions relating to protecting student privacy in public reporting of enrollment and performance data. (See: <http://familypolicy.ed.gov/content/ocpo-response-louisiana-enrollment-data-and-disclosure-avoidance-1>.) This letter indicates that while basic enrollment information (broken down by basic demographic variables) may be published without disclosure avoidance, disclosure avoidance is mandatory when publishing individually identifiable outcome, performance, and disciplinary data about students.

Armed Forces Recruiter Access to Student and Student Recruiting Information

In the Every Student Succeeds Act (ESSA), Congress amended the “Armed Forces Recruiter Access to Students and Student Recruiting Information” provisions of the Elementary and Secondary Education Act (ESEA). Through the amendments, Congress included the following: (1) removing the provision that allowed a secondary school student, who has not reached 18 years of age, to opt out of disclosure to the military (only parents or students who have reached 18 years of age may now opt out); (2) clarifying that LEAs must notify parents and students who have attained 18 years of age of the option to opt out; and (3) clarifying that LEAs cannot use an “opt-in” process or any other process other than the opt-out process described in the law as a means to withhold access to a student’s name, address, and telephone listing from a military recruiter or an institution of higher education. Congress also directed the Department, in consultation with the Department of Defense, to notify school leaders, school administrators, and other educators about these requirements. The Department issued a Dear Colleague Letter on November 1, 2016, informing LEAs of the amendments to these provisions. You may access this letter at: <http://www2.ed.gov/policy/gen/guid/fpc/pdf/military-recruiter.pdf>.

Joint Guidance on Data Matching to Facilitate WIOA Performance Reporting and Evaluation

In August 2016, the U.S. Departments of Labor and Education issued joint guidance to provide information to assist State agencies (including vocational rehabilitation (VR) agencies and workforce development agencies), educational agencies and institutions, and service providers in performance reporting and evaluation requirements under the Workforce Innovation and Opportunity Act (WIOA). This guidance provides States with information about applicable requirements, procedures, and options, for matching confidential Unemployment Compensation (UC) information from wage records with personal information from VR records and PII from education records, and for protecting the confidentiality of information contained in such records. You may access this guidance document on the Department of Labor’s WIOA Resource Page at <https://www.doleta.gov/wioa/> or on our website at <http://www2.ed.gov/policy/gen/guid/fpc/pdf/final-ferpa-tegl-report.pdf>.

We trust this information is helpful as you continue to meet your important obligation to protect the privacy of students. Should you have questions regarding FERPA, PPRA, student privacy, or

your legal obligations, you may submit your questions through the “Contact Us” tab on our website at <http://familypolicy.ed.gov/> or contact the PTAC help desk at PrivacyTA@ed.gov. We also encourage you to sign up for our listserv under the “School Officials” tab on that same website. You also may call us at 202-260-3887 or write the Family Policy Compliance Office at 400 Maryland Avenue SW, Washington, DC 20202-5920.

Sincerely,

/s/

Dale King
Director
Family Policy Compliance Office