

The Family Educational Rights and Privacy Act Guidance on Sharing Information with Community-Based Organizations

Introduction

This document provides guidance to schools and local educational agencies (LEAs) regarding disclosure of personally identifiable information (PII) from education records to community-based organizations. We hope this guidance assists schools and LEAs by offering an overview of applicable provisions in the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g and 34 CFR Part 99). FERPA is a Federal education law that is administered by the U.S. Department of Education's (Department or we) Family Policy Compliance Office (FPCO). Other Federal, State, and local laws, regulations, or policies may also be applicable, but are not addressed in this document.

For the purposes of this guidance, community-based organizations include such entities as volunteer organizations, professional organizations, foundations, faith-based organizations and other public or private nonprofit organizations. Many of these community-based organizations partner with schools and LEAs to administer vital academic, social, recreational, and vocational programs to students during the day, after school, and during the summer. Community-based organizations offer extracurricular activities such as tutoring and academic enrichment, parent and family engagement, nutrition education, daycare, physical fitness, and job-readiness to youth and parents from high-risk neighborhoods.

The information in this guidance applies to elementary and secondary schools and LEAs, unless otherwise stated. This guidance only addresses schools and LEAs sharing information with community-based organizations and does not address disclosures to other third party entities, such as other government agencies, individual researchers, and parent volunteers.

FPCO is available to respond to questions regarding this guidance. You may e-mail questions to FERPA@ed.gov or call FPCO at 202-260-3887. You also may write to FPCO at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520

Additional information and guidance on FERPA is available on FPCO's Web site at: www.ed.gov/fpc.

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General Requirements of FERPA and Definitions Applicable to this Guidance

Q.1. What is FERPA and to which entities does it apply?

FERPA is a Federal law that protects the privacy of student education records and gives parents certain rights with respect to their children’s education records, including the right to inspect and review them. Under FERPA, a parent generally must provide a signed and dated written consent before a school discloses personally identifiable information (PII) from the student’s education records. 34 CFR § 99.30. The rights accorded to, and the consent required of, parents under FERPA transfer from the parents to the student when the student becomes an eligible student. 34 CFR § 99.5. An “eligible student” is a student who has reached the age of 18 or is attending a postsecondary institution at any age. 34 CFR § 99.3 (definition of “Eligible student”). FERPA directly applies to all educational agencies and institutions that receive funds under any program administered by the Secretary of Education (“Department”). In general, when we refer to “local educational agencies” (LEAs) or “schools,” we mean “educational agencies and institutions” that are subject to FERPA. Private schools at the elementary and secondary levels generally do not receive funds from the Department and are, therefore, not subject to FERPA.

Q.2. To whom does the information in this guidance apply?

While the information in this guidance is generally applicable to all schools (elementary, secondary, and postsecondary institutions), the discussion in this guidance focuses on issues facing elementary and secondary schools.

Q.3. What are the rights of parents and students under FERPA?

FERPA affords parents certain rights with respect to their children’s education records at schools and LEAs to which FERPA applies. These rights include the right to have access to their children’s education records, the right to seek to have the records amended, and the right to provide consent for the disclosure of PII from education records, unless an exception to consent applies. 34 CFR § 99.10, §§ 99.20 – 99.22, and § 99.30. These rights transfer to the student when he or she reaches the age of 18 or attends a postsecondary institution at any age (“eligible student”). See §§ 99.3 for the definition of “Eligible student” and 99.5.

Q.4. What are “education records”?

The term “education records” is defined 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. See 34 CFR § 99.3 for the definition of “Education records.”

Q.5. What is “personally identifiable information”?

The definition of PII in 34 CFR § 99.3 “Personally identifiable information” provides that PII includes not only direct identifiers like name, Social Security number (SSN), etc., but also indirect identifiers such as the student’s date and place of birth and the mother’s

maiden name. It also includes “other 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.” In some cases, there may not even be a direct or even an indirect identifier in an education record, but, for example, because of publicity, if the school disclosed the education record, even redacted, the school may have disclosed PII in violation of FERPA.

Q.6. What is “directory information”?

“Directory information” means information in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. *See* 34 CFR § 99.3 for the definition of “Directory information.” Directory information includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; 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. *Id.* Directory information does not include a student’s SSN, or a student identification (ID) number, except under the conditions specified in § 99.3 under the definition of “Directory information”.

A school may disclose directory information without consent if it has given public notice to parents of students in attendance and eligible students in attendance of the types of information it has designated as directory information, the parent or eligible student's right to opt out of the disclosure of such information, and the period of time within which a parent or eligible student has to notify the school that he or she does not want any or all of those types of information designated as directory information. *See* 34 CFR § 99.37(a). If a parent or eligible student opts out of the disclosure of directory information, then the school generally may not disclose that information, except as specified in § 99.37(c). Note that FERPA does not require a school to individually notify parents of students in attendance and eligible students in attendance about the types of information that it has designated as directory information and their opt-out rights. Rather, the school may provide this public notice by any means likely to inform parents of students in attendance and eligible students in attendance.

Q.7. What is an “education program”?

“Education program” is used in the context of the audit or evaluation exception to consent and is defined as any program 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. *See* 34 CFR § 99.3 for a full definition of “Education program.”

Q.8. Who is an “authorized representative”?

“Authorized representative” is used in the context of the audit or evaluation exception to consent and is defined as any entity or individual designated by a State or local educational authority or an agency headed by an official listed in § 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. *See* 34 CFR § 99.3 for the definition of “Authorized representative.”

Q.9. Who can provide consent for the disclosure of PII from a student’s education records?

A parent or eligible student must provide a signed and dated written consent before a school discloses PII from the student’s education records (34 CFR § 99.30), unless an exception to the general consent rule, as set forth in § 99.31 of the regulations, applies.

Q.10. Are there exceptions to FERPA’s general consent requirement that permits schools to disclose PII from education records without consent?

Yes. This guidance provides an overview of the exceptions that may be most relevant to the types of inquiries that schools and LEAs typically receive from community-based organizations. Please remember that it is the responsibility of the LEA or school considering potential disclosure of PII from education records to carefully evaluate each individual request to determine which, if any, exceptions to the written consent rule might apply, before permitting the disclosure of the PII from education records.

Disclosure of PII from Education Records to Community-Based Organizations

Written Consent

Q.11. Is prior written consent of the parent or eligible student required to disclose information to community-based organizations?

In most cases, yes. Written consent is generally required before PII from students’ education records may be disclosed to community-based organizations. Except as set forth in § 99.31 of the regulations and in the statutory exceptions to consent at 20 U.S.C. 1232g, FERPA requires written consent from parents or eligible students before PII from education records are disclosed (34 CFR § 99.30). For activities that do not fit within the statutory exceptions to consent, we recommend that schools, LEAs, and/or community-based organizations build written consent into the registration process so that when parents sign students up for services offered by a community-based organization, the organization obtains the consent needed to access those education records of the student that will be needed to provide its services to that student.

Q.12. Who is responsible for obtaining written consent from the parent or eligible student - the school or the community-based organization?

FERPA does not address this. Rather, FERPA requires that the parent or eligible student “provide a signed and dated written consent” before a school or LEA discloses PII from a student’s education record, unless one of the conditions in § 99.31 of the regulations applies. There is nothing in FERPA that would preclude a community-based

organization from obtaining a signed and dated written consent as long as the consent: (1) specifies the education records that may be disclosed, (2) states the purpose of the disclosures; and (3) identifies the organization or other parties to whom the disclosure may be made. 34 CFR § 99.30(b).

Q.13. May a school disclose directory information to a community-based organization without written consent?

Generally yes. FERPA allows schools that have adopted directory information policies to disclose properly designated directory information without consent on students whose parents (or eligible students) have not opted out of the disclosure of directory information. *See* § 99.37(a). However, if a school adopts a directory information policy specifying that disclosure of directory information will be limited to specific parties, for specific purposes, or both, then the school is required to limit its directory information disclosures to those specified in its public notice. *See* § 99.37(d).

Q.14. May a school disclose de-identified data to community-based organization?

Yes. Schools do not need to obtain written consent or to inform parents or eligible students when releasing properly de-identified information. For additional information on de-identified data and recommended practices, see § 99.31(b)(1) of the regulations and a relevant case study released by the Department, [Case Study #5: Minimizing Access to PII: Best Practices for Access Controls and Disclosure Avoidance Techniques](#).

Exceptions to Written Consent

Q.15. Are there ways that a school or LEA may disclose PII from education records (other than directory information) to a community-based organization without obtaining written consent of the parent or eligible student?

Yes. If the disclosure meets one of the exceptions set forth in § 99.31 of the regulations, a school or LEA may disclose PII from an education record of a student without consent to a community-based organization. We note, however, that there are three exceptions to the written consent requirement that schools or LEAs most often consider when disclosing PII from education records to community-based organizations. These exceptions are the “school official,” “studies,” and “audit/evaluation” exceptions (*see* 34 CFR §§ 99.31(a)(1), 99.31(a)(6), and 99.31(a)(3) and 99.35, respectively).

Q.16. If a school or LEA discloses PII from education records to a community-based organization under a FERPA exception to consent, what and how much PII from education records can it disclose to the organization?

The school or LEA has discretion under FERPA to decide what and how much PII from education records to disclose to community-based organizations (except in certain cases such as a court order or a subpoena). The school or LEA should determine which data elements are necessary for the activity in question and provide only those elements. Often LEAs and schools will discover that the organization can do the work in question without receiving PII from education records.

School official exception

Q.17. When does the school official exception allow a school or LEA to non-consensually disclose education records to a community-based organization?

A community-based organization may be considered a “school official” *only* if it:

1. Performs an institutional service or function for which the agency or institution would otherwise use employees;
2. Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and
3. Is subject to the requirements of § 99.33(a) governing the use and redisclosure of PII from education records.
4. Meets the criteria specified in the school’s or LEA’s annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

Once a school determines that a community-based organization meets the above criteria, the organization may have access to PII from education records, without consent, under the school official exception, in order to perform the required institutional services and functions for the school. (*See* § 99.31(a)(1)(i)(B))

Q.18. Can schools disclose education records to community-based organizations performing outsourced tutoring programs using the school official exception?

Yes. If a school chooses to outsource to a community-based organization a tutoring program that it would otherwise use school employees to provide, then the school may disclose the education records without the consent of the parents or eligible students under the school official exception. However, the community-based organization *must* meet all the requirements in § 99.31(a)(1)(i)(B) to be considered a school official before the school may disclose the education records to the organization. (*see* Q.17.)

Q.19. Are there limitations as to how the community-based organization may use the PII from education records it receives from a school under the school official exception?

Yes. A community-based organization acting as a school official must be under the “direct control” of the school or LEA with respect to the use and maintenance of education records (§ 99.31(a)(1)(i)(B)(2)) and is also subject to FERPA’s use and redisclosure requirements in § 99.33(a). The community-based organization must not disclose the information it receives as a school official to any other party without the prior consent of the parent or eligible student, and the organization may only use the information for the purposes for which the disclosure was made. One way of achieving that direct control is through a written agreement, requiring that any PII from education records provided to the community-based organization by the school only be used to perform the outsourced service or function and may not be used for any other purpose (*see* Q.21).

Q.20. Are there any limitations as to what education records may be disclosed to a community-based organization to which a school has outsourced an institutional service under the school official exception?

Yes. The school is required to use reasonable methods to ensure that school officials, (including community-based organizations) obtain access to *only* those education records in which they have legitimate educational interests. While a school may disclose education records to a community-based organization in order to outsource institutional services or functions, it is important for the school to only share the information which is necessary for the service or function to be performed by the community-based organization. For recommended practices on data access controls and data security, see the Privacy Technical Assistance Center (PTAC) resources: [Best Practices for Access Controls and Disclosure Avoidance Techniques](#) webinar and [Security Best Practices](#) document library.

Q.21. Must a school have a written agreement or contract with a community-based organization to which it non-consensually discloses education records to outsource an institutional service under the school official exception?

No. While FERPA does not *require* written agreements or contracts when a school chooses to outsource an institutional service or function to a community-based organization under the “school official” exception, we highly recommend the use of written agreements in this context. Written agreements help ensure that the community-based organization understands its obligations and responsibilities with respect to the use of and privacy protections accorded to the FERPA protected information. Further, appropriate contractual provisions can establish the direct control required by FERPA under this exception. Additionally, local or State policies or laws may require the use of written agreements or contracts for procurement.

Q.22. Must a school inform parents and eligible students if the school non-consensually discloses PII from their education records to a community-based organization to which the school has outsourced an institutional service?

No. While there is no specific notification requirement regarding disclosures under the exceptions to consent, FERPA does require that each school or LEA annually notify parents and eligible students of their rights under FERPA. 34 CFR § 99.7. As a part of the annual notice, the school or LEA must include in the notification a specification of the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. 34 CFR § 99.7(3)(iii). Additional information about the annual notification of rights can be found on the FPCO’s website at: <http://www.ed.gov/policy/gen/guid/fpc/index.html>. For a model of a K-12 annual notice, see [Model Notification of Rights for Elementary and Secondary Schools](#).

As a best practice for transparency, we recommend that schools and districts post information on their websites about the information they collect about students, how they protect the information, how they use it, parties with whom they share it, and why.

Studies exception

Q.23. May the school or LEA non-consensually disclose PII from education records to a community-based organization that is conducting a study for the school or LEA?

Yes. The studies exception allows for the disclosure of PII from education records without consent to community-based organizations conducting studies for, or on behalf of, the school or LEA. FERPA limits the purpose of the studies conducted under this exception to: (1) developing, validating, or administering predictive tests; (2) administering student aid programs; or (3) improving instruction. *See* 34 CFR § 99.31(a)(6)(i).

Q.24. Are there any restrictions on how a community-based organization can use and protect the PII from education records it receives to conduct a study?

Yes. Under the studies exception, the school or LEA may non-consensually disclose PII from education records to the community-based organization only if—

1. The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization that have legitimate interests in the information;
2. The information is destroyed when no longer needed for the purposes for which the study was conducted; and
3. The school or LEA enters into a written agreement with the community-based organization.

Q.25. Must the school or LEA have a written agreement with the community-based organization conducting the study?

Yes. Written agreements are required under the studies exception, §99.31(a)(6)(iii)(C), and must—

1. Specify the purpose, scope, and duration of the study and the information to be disclosed.
2. Require the community-based organization to use PII from education records only to meet the purpose(s) of the study as stated in the written agreement.
3. Require the community-based organization to conduct the study in a manner that does not permit the personal identification of parents and students by anyone other than representatives of the organization with legitimate interests. This typically means that the organization should allow internal access to PII from education records only to individuals with a need to know, and that the organization should take steps to maintain the confidentiality of the PII from education records at all stages of the study.
4. Require the community-based organization to destroy all PII from education records when the information is no longer needed for the purposes for which the study was conducted, and specify the time period in which the information must be destroyed.

(For more information on drafting written agreements, see [Guidance for Reasonable Methods and Written Agreements](#) by FPCO and PTAC's [Data Sharing Agreement](#) checklist.)

Q.26. When the organization publishes the results of the study can it publish results in a way that allows individual students to be identified?

No. Absent the prior, written consent from the parent or eligible student, FERPA prohibits PII from education records from being published in a way that would allow individual students and their parents to be identified. The organization conducting the study can use PII from education records to conduct the study for the school, but results must be published in a way that protects the privacy and confidentiality of the individuals involved. For example, when publishing data tables, the organization may need to use cell suppression or other methods of disclosure avoidance so that students cannot be identified through small numbers displayed in table cells. Additional information on disclosure avoidance methods is available on PTAC's website at <http://ptac.ed.gov/toolkit>.

Q.27. May the community-based organization that is conducting the study for the school or LEA also use the PII to conduct a study of a different education program?

No. Under the studies exception, the community-based organization may only use the PII from education records to meet the limited purposes listed in Q.23 and for the purpose(s) specified in the written agreement. If the community-based organization inappropriately uses the PII for another purpose or rediscloses the PII to anyone other than representatives of the community-based organization with legitimate interests pursuant to the written agreement, the organization, as well as the school, may be subject to enforcement actions by the Department.

Audit or evaluation exception

Q.28. May an LEA non-consensually disclose PII from education records to a community-based organization in order to conduct an audit or evaluation of the school system's education programs?

Yes. FERPA's audit or evaluation exception allows an LEA to designate an community-based organization as its authorized representative (*see* Q.8.) and disclose PII from education records without consent of parents or eligible students to audit or evaluate a Federal- or State-supported education program (*see* Q.7.), or to enforce or comply with Federal legal requirements that relate to those education programs (audit, evaluation, or enforcement or compliance activity). *See* 34 CFR § 99.35. (This provision does not apply to individual schools that are not considered local educational authorities under State or local law.)

Q.29. Must the LEA have a written agreement with the community-based organization prior to disclosing PII from education records?

Yes. The LEA must use a written agreement to designate the community-based organization as its authorized representative. The written agreement must include certain mandatory components as described in § 99.35(a)(3)(ii) of the regulations. The specific policies and procedures outlined in the agreement should be consistent with FERPA and all other applicable laws.) For additional information, see § 99.35 of the regulations, [Guidance for Reasonable Methods and Written Agreements](#) by FPCO, and PTAC’s [Data Sharing Agreement](#) checklist.

Q.30. May the LEA disclose PII from education records to a community-based organization under the audit or evaluation exception for the purpose of the community-based organization evaluating its own program?

Generally no. The audit or evaluation by an community-based organization of its own program (i.e., to determine whether or not the organization’s program is effective) in most cases would *not* be permitted under the audit or evaluation exception because the audit or evaluation exception only permits the audit or evaluation of Federal- or State-supported education programs, which FERPA defines as any program 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.

Q.31. Must the LEA ensure that a community-based organization designated as its authorized representative complies with FERPA?

Yes. Before the LEA discloses PII from education records to a community-based organization designated as an authorized representative, the LEA is required to use “reasonable methods” to ensure to the greatest extent practicable that the community-based organization is FERPA-compliant. This specifically means ensuring that the community-based organization:

1. Uses PII from education records 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. The LEA should make sure that the proposed audit or evaluation is legitimate, and require in the written agreement that the community-based organization use the PII from education records only for that audit, evaluation, or enforcement or compliance activity.
2. Protects the PII from education records from further disclosures or other uses, except as authorized by the LEA in accordance with FERPA. The agreement must specify that the community-based organization may not further disclose the PII from education records, unless authorized.
3. Destroys the PII from education records when no longer needed for the audit, evaluation, or enforcement or compliance activity. The agreement must specify that the community-based organization is required to destroy the PII from education

records when it is no longer needed and specify the time period in which the PII must be destroyed. *See* 34 CFR § 99.35(a)(2).

Other considerations when sharing information with community-based organizations

Q.32. What should the school or LEA do if it finds that a community-based organization has misused or inappropriately redisclosed the PII from the education records it received from the school or LEA?

If the community-based organization misuses or inappropriately rediscloses PII from education records, the school or LEA should immediately take steps to address and mitigate any harm or damage caused by the violation. The LEA or school should evaluate its options under the penalty and termination provisions of its written agreement, contract, or arrangement with the community-based organization and check any relevant State or local laws. Depending on the severity of the circumstance, the LEA or school may decide to terminate its relationship with the community-based organization and require the organization to destroy or return the education records to the school or LEA.

Q.33. Should the school or LEA contact FPCO if the community-based organization has violated FERPA?

While FERPA does not require that you notify us, we recommend that you contact FPCO if a community-based organization violates FERPA and provide us with information concerning the violation and any actions that you have taken. FPCO has the authority to impose what is informally known as “the five-year rule ban” against the community-based organization if FPCO determines that it has violated certain provisions under FERPA. The five-year rule means that FPCO can instruct the originating LEA or school to not provide the community-based organization with further access to PII from students’ education records for a *minimum* period of five years. FPCO may impose a longer period of time in which the community-based organization may not have access to PII. The five-year rule ban applies *regardless* of whether the community-based organization is a recipient of Department funds. For more information on penalties for FERPA violations, *see* 34 CFR § 99.67.

Q.34. May the community-based organization receiving PII from education records redisclose PII from education records without written consent?

No. Regardless of whether the community-based organization received the PII under the school official, studies, or audit/evaluation exception, the answer is the same – the community-based organization may not redisclose it unless such redisclosure is on behalf of the disclosing entity and is consistent with FERPA. (34 CFR § 99.33). If further redisclosure is contemplated, we recommend that provisions addressing authorized redisclosures be included in any agreement with the community-based organization.

A community-based organization may make further disclosures of PII from education records if the disclosure of the information is *on behalf of* the educational agency or

institution, the disclosure meets one of the exceptions to consent (listed in § 99.31), and the educational agency or institution has complied with any applicable recordkeeping requirements in § 99.32(b). Thus, any community-based organization receiving PII from a school or LEA may only use it for the purposes for which the disclosure was made, and is not permitted to further disclose it to other parties unless authorized to do so by the school or LEA under one of the exceptions to consent.

Q.35. Must a school or LEA record the non-consensual disclosure of PII from education records to a community-based organization?

Yes. Generally when a school or LEA discloses without consent PII from education records to a community-based organization, with the exception of disclosures made under the “school official” exception, the disclosure must be recorded. FERPA require schools to record all requests for access to, and all disclosures of, PII from the education records of each student, except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the parent or eligible student. *See* 34 CFR § 99.32(d). Schools and LEAs must maintain these records with the student’s education records for as long as the student’s records are maintained. The recorded information must include the parties who have requested or received PII and their legitimate interests in requesting or obtaining the information. Parents and eligible students have a right to inspect and review the record of disclosures. *See* 34 CFR § 99.32 for the full list of recordation requirements.