

SCHOOL OFFICIALS' GUIDE TO FERPA AND DATA PRIVACY POLICY**Education Record**

1. *Education record* is defined as any record that directly relates to a student and is maintained by the District or by a party acting for the District. This definition excludes law enforcement records and records in the sole possession of the maker used only as a memory aid.¹

Why the definition matters: Only information considered an education record is protected by the Family Educational Rights and Privacy Act (FERPA) and associated district policy.

Scenarios

2. You keep a personal log of a student's behavior in class. Is this an education record?

☐ Yes ☐ No

Answer and explanation: Probably not. The FERPA definition of education record excludes records that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person. However, once such records are accessed or shared with any other person, the records likely become education records protected by FERPA.

3. You exchange emails with another teacher about a student's performance. Are these emails education records?

☐ Yes ☐ No

Answer and explanation: Probably not but treat emails as education records until clear legal guidance is available. Few courts outside of North Dakota have addressed this matter; therefore, North Dakota does not have clear legal precedent on how emails should be classified under FERPA. However, once emails have been printed out and maintained in a physical file for the student, the emails likely become education records.

4. As part of an assignment, you ask students to create a video and post them on a blog. Are these videos education records?

☐ Yes ☐ No

Answer and explanation: No. In *Owasso Independent School Dist. No. I-011 v. Falvo*, the Supreme Court found that students' assignments are not educational records under FERPA. However, if the blog host requires submission of student directory information, other than or in addition to name, and/or personally identifiable information, this information is

¹ 34 CFR 99.3

protected by law and may only be released in accordance with the district's student data privacy policy.

5. You have a conversation with a student about a classroom incident that was not documented in the student's education record. Is this conversation an education record?

☐ Yes ☐ No

Answer and explanation: No. In a 2006 opinion, the U.S. Department of Education (ED) clarified that FERPA applies to actual records not to information derived from a source other than the education record such as a conversation.

6. Your district has surveillance cameras installed in buses and in hallways. Is footage from these cameras education records?

☐ Yes ☐ No

Answer and explanation: Generally, no. Video footage captures everything and is therefore typically not considered an education record because it does not relate to a specific student. However, if video footage captures an incident that leads to disciplinary action, such as a fight, or a medical emergency involving a student, the footage becomes an education record for students involved in the incident.

7. Your district tape records IEP meetings. Are these recordings education records?

☐ Yes ☐ No

Answer and explanation: Yes. See the ED Office of Special Education and Rehabilitative Services memo dated June 4, 2003.

8. Student attendance records are recorded and stored in PowerSchool. Are these data education records?

☐ Yes ☐ No

Answer and explanation: Yes. This information is considered personally identifiable information (PII) and can only be released with parental consent or if an exception applies under FERPA.

9. Parents are required to complete a student registration sheet at the beginning of the school year. Are these forms education records?

☐ Yes ☐ No

Answer and explanation: Yes. This information will be placed in the student's paper record and/or recorded in PowerSchool. While much of the information on this form is considered directory information, directory information may only be released in accordance with the student data privacy policy.

Directory Information v. Personally Identifiable Information (PII)

Definitions:

- *Directory information* is defined as personally identifiable information contained in a student education record that is generally considered not harmful or an invasion of privacy if disclosed.
- *Personally Identifiable Information (PII)* includes information maintained in the student's education record that could be used alone or in combination to trace a student's identity directly or indirectly and would allow a reasonable person, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

Why the definitions matter: Directory information can be released without parental consent (unless a parent or eligible student has opted out). PII can only be released if parental consent is obtained or an exception under FERPA applies. District policy contains disclosure requirements for both PII and directory information.

In the following scenarios, is the information directory information or protected PII?

1. The local newspaper contacts the school to request the names of students involved in a fight at last night's football game.

☐ Directory Information ☐ PII

Answer and explanation: PII. Release of a student's name in this type of situation would be considered an invasion of the student's privacy because it would reveal portions of his/her disciplinary record.

2. A mother requests a list of names of all parents in her child's classroom and their email addresses.

☐ Directory Information ☐ PII

Answer and explanation: PII. FERPA regulations stipulate that parents' names are considered PII and may not be disclosed without parental consent.

3. The local newspaper covers your local science fair, takes pictures of students involved, and asks for their names.

☐ Directory Information ☐ PII

Answer and explanation: Probably directory information but consult district policy. FERPA classifies names and photographs as directory information if release does not infringe on students' rights to privacy. However, each school district policy defines directory information differently. The district's definition of directory information may be more restrictive than law. Also, eligible students/parents may opt out of the disclosure of directory information without parental consent.

4. A university researcher asks for a list of student tests scores and expulsion records broken down by student ID.

☐ Directory Information ☐ PII

Answer and explanation: PII. Anytime test scores or disciplinary records can be linked to a specific student, disclosure absent parental consent would infringe on student privacy.

5. Your district publishes a quarterly honor roll listing students' names and designating if they earned highest honors, high honors, or honors based on GPA ranges contained in district policy.

☐ Directory Information ☐ PII

Answer and explanation: Probably directory information but consult district policy. FERPA classifies names and honors/awards received as directory information if release does not infringe on students' rights to privacy. However, each school district policy defines directory information differently. The district's definition of directory information may be more restrictive than law. In addition, parents/eligible students have the right to opt out of disclosure of directory information absent consent.

6. You are contacted by your local park district and asked to release the weights and heights of three students for purposes of a summer wrestling program.

☐ Directory Information ☐ PII

Answer and explanation: PII. FERPA only classifies weights and heights as directory information if released in relation to participation in an athletic team. In this case, the students are participating in non-school sponsored athletic program.

7. A classroom parent requests the names and dates of birth of all your students for party planning purposes.

☐ Directory Information ☐ PII

Answer and explanation: Probably directory information but consult district policy. FERPA classifies names and dates of birth as directory information if release does not infringe on students' rights to privacy. However, each school district policy defines directory information differently. The district's definition of directory information may be more restrictive than law. In addition, parents/eligible students have the right to opt out of disclosure of directory information absent consent.

8. A teacher from one of your student's former schools contacts you to request the student's grades to determine if her school's response to intervention (RTI) program is working.

☐ Directory Information ☐ PII

Answer and explanation: PII. A specific student's grades are considered PII.

School Board Consent

Under state law, school boards must approve release of student data to third parties. Local policy clarifies that student data is limited to directory information, other than or in addition to name, and PII.

Is school board consent required to release student educational records under the following scenarios?

1. You are using a new app that requires students to submit their names and email addresses to a third-party developer. Is approval required?

☐ Yes ☐ No

Answer and explanation: Yes. Policy requires that any third-party receiving directory information, other than or in addition to student names, or PII must be approved by the school board. School boards are required to create a master list of all third parties who have been approved to receive student information. NDSBA advises consulting this list before submitting an information sharing request to the school board to avoid duplicative requests.

2. A parent requests names and addresses of all the students in your classroom for purposes of holding a classroom computer fundraiser.

☐ Yes ☐ No

Answer and explanation: Yes. Policy requires that any third-party receiving directory information, other than or in addition to student names, or PII must be approved by the school board. School boards are required to create a master list of all third parties who have been approved to receive student information. We advise consulting this list before submitting an information sharing request to the school board to avoid duplicative requests.

3. You would like your students to complete a classroom survey on their opinions about e-cigarettes for your health class.

☐ Yes ☐ No

Answer and explanation: No. The survey is for classroom purposes only, and this information will not be shared with a third party.

When is Parental Consent Required to Release PII?

School districts are required to obtain parental consent to release PII unless an exception applies under FERPA. Such exceptions include, but are not limited to:

1. In connection with a health or safety emergency under the conditions described in 34 C.F.R. 99.36;²
2. To a school official who has a legitimate educational interest in the education records if the following conditions are satisfied:

² 34 CFR 99.36

- a. Access shall be limited to only information the school official has a legitimate need to know;
 - b. School officials shall use the information only for the purposes for which the disclosure was made and shall not redisclose the information to any other party without proper consent or legal authority;
 - c. Titles of individuals and entities considered school officials shall be included on the district's master list of individuals and entities having access to student information³;
- 3. To an organization conducting a study for the District to develop, validate, or administer a predictive test; administer student aid programs; or improve instruction so long as the organization has entered into a written agreement with the Board in accordance with law; if the organization is conducting a survey of students, the District shall ensure parents are notified in compliance with policy GCC and shall obtain parental consent, if applicable⁴;
 - 4. To another school in which the student seeks, intends to, or is already enrolled⁵; and
 - 5. To the parents of a student who is under 18 or a student who is over 18 and is a "dependent student" as defined in IRS Section 152⁶.

Is parental consent required in the following scenarios?

- 1. A school board member contacts you to request documentation on a student disciplinary incident that led to suspension. The board member states that he needs this information to prepare to serve as a hearing officer at the student's expulsion hearing.

Is parental consent required to release this information?

☐ Yes ☐ No

Answer and explanation: Yes, based on the timing of the request. A school official must have a reasonable need to know to be granted access to PII. In this case, the school board member's request appears to meet this criterion; however, the school board member is not privy to this information from the student's education record prior to the expulsion hearing. All the facts should be presented during the hearing and expulsion decisions should be based solely on the facts as presented.

- 2. You are approached at the grocery store by the aunt of one of your students. She indicates that she helped her nephew prepare for his English exam and asks how he did.

³ 34 CFR 99.31(a)(1)

⁴ 34 CFR 99.31(a)(6)

⁵ 34 CFR 99.31(a)(2)

⁶ 34 CFR 99.31(a)(8)

Is parental consent required to release this information? ☐ Yes
☐ No

Answer and explanation: Yes. The student's aunt does not meet FERPA's definition of parent. Under FERPA, parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

3. One of your students was the victim of bullying, and the victim's parents contact you to inquire about the outcome of the bullying investigation. They specifically want to know if the bully was disciplined. You received a copy of the investigation report and consequently know that the bully was suspended, and an expulsion hearing is currently being scheduled.

Is parental consent required to release this information? ☐ Yes
☐ No

Answer and explanation: Yes. FERPA does not permit you to inform the victim's parents about specific discipline given to another child except for information needed to protect the health and safety of other students or individuals.

4. You coach football, and one of your students is injured during practice. When first responders arrive, they ask you if the student has any known allergies or medical conditions.

Is parental consent required to release this information? ☐ Yes
☐ No

Answer and explanation: No. "If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals."

End of Ashley School District #9 Exhibit FGA-E7

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