



The Family Educational Rights and Privacy Act (FERPA): Data Sharing by Schools

Denise Chrysler, JD
Director, Mid-States Region
Network for Public Health Law
University of Michigan School of Public Health

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Overview

» FERPA Basics

» FERPA's impact on sharing student information

- Information that can be shared
- Information that cannot be shared

» Opportunities to share data to improve school success consistent with FERPA

FERPA Basics

- » **Federal statute: 20 U.S.C. § 1232g**
- » **Dept of Education Regulations: 34 CFR Part 99**
- » **Protects privacy students' education records**
- » **Grants parents rights regarding education records (rights belong to student 18 or older or attending post-secondary school)**
- » **Applies to schools and educational programs that receive U.S. Department of Education funds**
- » **Does not limit what public health or health care providers can disclose to schools**

Education Records

Records that are

- Directly related to a student; and
 - Maintained by a school or a party acting for the school, (includes employees and contractors)
- » **Includes student records such as transcripts, disciplinary records, and similar records.**
- » **Includes immunization and other medical or health related records.**

Exceptions to Education Records

» **School-based health clinics (K-12)**

- Outside party provides health care services directly to students and is not acting on behalf of the school.
- Examples: public health department operates a school-based clinic; public health nurse provides health services to students on school grounds.

» **University student health centers**

- Medical and psychological treatment records that are made, maintained, and used only in connection with treatment of the student and disclosed only to professionals providing the treatment.
- FERPA would apply if data regarding students provided to public health department (public health not a treatment provider).

Privacy of student records and information in student records

FERPA allows disclosure of:

- » **De-identified data**
- » **Data shared with written consent**
- » **Data shared under a FERPA exception**

De-identifying records

- » **Remove personally identifiable information (PII) including:**
 - Names & Addresses
 - Personal identifiers such as. social security or student numbers
 - Personal characteristics that would make student's identity easily traceable
 - Other information that would make student's identity easily traceable
- » **Determine: Could a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, identify the student with reasonable certainty?**
- » **Might use “data masking” techniques to conceal identities**

Consent to disclosure

- » **Generally, written consent required before school discloses PII**
- » **Consent must:**
 - Specify records that may be disclosed
 - State purpose of disclosure
 - Identify party or class of parties to whom disclosure may be made
- » **Electronic consent permitted**

Common FERPA exceptions to share data without consent

- » **Designated directory information**
- » **Outsourcing school functions or services**
- » **Conducting a study**
- » **Health or safety emergency**

Exception to Consent: Designated Directory Information

- » **Generally, not considered sensitive**
- » **Includes student's name, address, email, telephone number, date of birth, grade, similar information**
- » **School must tell parents about directory information and allow them reasonable amount of time to opt out (usually covered in the required annual notice)**
- » **This exception allows schools to provide class rosters and updated student contact information**

Exception to Consent: Other School Officials

- » **Can share information with “school officials” in the same school**
- » **School officials must have a “legitimate educational interest” in the information**
- » **Might include school nurses, teachers, administrators, counselors, bus drivers**
- » **Might include volunteers or contractors if certain criteria met**
- » **Educational interest: Need to know the information to fulfill his or her professional responsibility**
- » **School must cover in the required annual notice**

Exception to Consent: To Improve Educational Efforts

- » **Schools may disclose student information to public health agencies and others to evaluate and improve health education programs and health accommodations in schools**
- » **Example: school may provide asthma information to public health agency to evaluate and improve efforts regarding students' attendance and performance**
- » **Key: Public health is assisting school with its mission; data recipient must use and protect information consistent with data sharing agreement**

Exception to Consent: Health & Safety Emergency

- » **Disclosure must be necessary to protect the health or safety of the student or others**
- » **Must be related to an actual, impending, or imminent emergency**
- » **Limited to period of the emergency**
- » **School must make case-by-case determination, taking into account the totality of circumstances**
- » **Determination must be based on “an articulable and significant threat”**

Health & Safety Emergency, continued

- » **Disclosure must be made to “appropriate parties”**
- » **If rational basis for school’s determination, the U.S. Department of Education will not substitute its judgment for that of the school**
- » **Health emergency might include disease outbreaks and urgent environmental threats; does not include routine nonemergency reporting**
- » **Recordkeeping: School must record in the student’s education record the articulable and significant threat that formed the basis for the disclosure and the parties to whom the information was disclosed**

FERPA Resources

» U.S. Department of Education Family Policy Compliance Office

- Regulations, guidance, training materials, model notifications and other information
- Data-Sharing Tool Kit for Communities: How to Leverage Community Partnerships While Protecting Student Privacy

<http://www2.ed.gov/policy/gen/guid/fpco>

Thank you!

dchrysler@networkforphl.org

