



## FERPA Exceptions—Summary

This Privacy Technical Assistance Center (PTAC) document is designed to assist State and local educational agencies (SEAs and LEAs) and educational institutions with determining under what conditions the Family Educational Rights and Privacy Act (FERPA) permits the disclosure of personally identifiable information (PII) from education records to third parties, such as researchers, contractors, volunteers, and journalists.

Generally, FERPA requires written consent from parents or “eligible students” (students who are at least 18 years of age or attending a postsecondary institution) in order to release PII from education records. In the absence of the written consent, FERPA permits an educational agency or institution to disclose PII from an education record of a student if the disclosure meets one or more of the conditions outlined in 20 U.S.C. § 1232g(b) and (h) – (j) and 34 CFR § 99.31. Below is a high-level overview of the four most commonly used exceptions to the FERPA written consent requirement, including applicable recordation requirements. For a more detailed explanation of these and other FERPA exceptions, please visit <https://studentprivacy.ed.gov>.

Directory Information*	School Official (Schools and LEAs only)	Studies	Audit or Evaluation
<b>Conditions that must be met</b>			
<ol style="list-style-type: none"> <li>1. A school and/or LEA must properly designate “directory information”:</li> <li>a. Directory information may only include PII that is generally not considered harmful or an invasion of privacy if disclosed.</li> <li>b. The policy must clearly detail the types of PII that have been designated as directory information, the parent’s or eligible student’s right to refuse to let any or all of these types of PII be designated as directory information, and the period of time that the parent or eligible student has to opt out of such a disclosure of directory information.</li> </ol>	<ol style="list-style-type: none"> <li>1. A school and/or LEA must               <ol style="list-style-type: none"> <li>a. Establish criteria in the annual notification of FERPA rights about who is a “school official” and what constitutes a “legitimate educational interest”;</li> <li>b. Determine that the disclosure is to a school official who has a legitimate educational interest in the education records; and</li> <li>c. Use reasonable methods to ensure that school officials obtain access to only those education records in which they have a legitimate educational interest.</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. The disclosure of PII from student education records must be for, or on behalf of, an educational agency or institution, in order to               <ol style="list-style-type: none"> <li>a. Develop, validate, or administer predictive tests;</li> <li>b. Administer student aid programs; or</li> <li>c. Improve instruction.</li> </ol> </li> <li>2. An educational agency or institution may disclose PII from education records, and a “FERPA-permitted entity” may redisclose PII only if               <ol style="list-style-type: none"> <li>a. The disclosing educational entity enters into a written agreement with the organization;</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. The disclosure of PII from education records must be to               <ol style="list-style-type: none"> <li>a. Audit or evaluate a Federal- or State-supported education program; or</li> <li>b. Enforce or comply with Federal legal requirements related to the program.</li> </ol> </li> <li>2. The receiving entity must be a State or local educational authority or other FERPA-permitted entity or must be an authorized representative of a State or local educational authority or other FERPA-permitted entity.</li> <li>3. The party disclosing the PII from education records               <ol style="list-style-type: none"> <li>a. Must enter into a written agreement to designate anyone other than its employee as its authorized representative (each new audit, evaluation, or enforcement effort requires an agreement); and</li> <li>b. Is responsible for using reasonable methods to ensure to the greatest extent practicable that the authorized representative                   <ol style="list-style-type: none"> <li>i. Uses the PII only for the authorized purpose;</li> <li>ii. Protects the PII from further unauthorized disclosures or other uses; and</li> </ol> </li> </ol> </li> </ol>

\* While FERPA does not require that schools implement a directory information policy, if they do so, certain conditions must be met.

Directory Information	School Official (Schools and LEAs only)	Studies	Audit or Evaluation
<p>2. A school and/or LEA must give a public notice to parents of students in attendance and eligible students in attendance prior to disclosing directory information.</p> <p>3. Subject to a few exceptions, parents or eligible students must not have opted out of the disclosure of directory information.</p>	<p>2. If outsourcing institutional services or functions to a third party, outside parties may be considered “school officials” if the outside party</p> <p>a. Performs an institutional service or function for which the school would otherwise use employees;</p> <p>b. Is under the direct control of the school with respect to the use and maintenance of education records; and</p> <p>c. Complies with the PII from education records use and redisclosure requirements.</p>	<p>b. The study does not permit identification of individual parents and students by anyone other than representatives of the organization with legitimate interests in the information; and</p> <p>c. The information is destroyed when no longer needed for the study purposes.</p>	<p>iii. Destroys the PII when no longer needed for the authorized purpose and in accordance with any specified time period set forth in a written agreement.</p> <p>4. State and local educational authorities and other FERPA-permitted entities may redisclose the PII on behalf of the educational agency or institution. In particular,</p> <p>a. The disclosure must meet the requirements of an exception to consent in § 99.31 and either the educational agency or institution or other FERPA-permitted entity has complied with the recordkeeping requirements.</p> <p>5. Authorized representatives of the FERPA-permitted entities may only redisclose the PII when expressly authorized in the parties’ written agreement (assuming that the redisclosure by the authorized representative on behalf of the FERPA-permitted entity would be permissible under FERPA).</p>
<b>Legal references</b>			
34 CFR §§ 99.3, 99.31(a)(11), and 99.37.	34 CFR §§ 99.31(a)(1) and 99.7(a)(3)(iii).	34 CFR § 99.31(a)(6).	34 CFR §§ 99.31(a)(3) and 99.35.
<b>Other notes</b>			
<p><u>Recordation:</u> FERPA does not require educational agencies and institutions to record disclosures of appropriately designated directory information (§ 99.32(d)(4)).</p>	<p><u>Recordation:</u> FERPA (§ 99.32(d)(2)) does not require educational agencies and institutions to record disclosures of PII from education records to school officials under § 99.31(a)(1).</p>	<p><u>Recordation:</u> FERPA requires educational agencies and institutions to record all disclosures of PII from education records to organizations made under the studies exception (§ 99.32).</p>	<p><u>Recordation:</u> FERPA requires educational agencies and institutions to record all disclosures of PII from education records made under the audit or evaluation exception (§ 99.32).</p> <p>➤ State and local educational authorities (and other FERPA-permitted entities listed in § 99.31(a)(3)) redisclosing PII on behalf of the educational agency or institution must record disclosures according to the requirements in § 99.32(b)(2).</p>

See PTAC website for Additional Resources and Glossary: <https://studentprivacy.ed.gov>

