

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) FAQs

What definitions apply to these regulations?

Authorized representative means any entity or individual designated by a State or local educational authority or an agency headed by an official listed in Sec. 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.

Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

(a) 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; enrollment status (e.g., undergraduate or graduate, full-time or part-time); 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.

(b) Directory information does not include a student's--

(1) Social security number; or

(2) Student identification (ID) number, except as provided in paragraph (c) of this definition.

(c) In accordance with paragraphs (a) and (b) of this definition, directory information includes--

(1) A student ID number, user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password or other factor known or possessed only by the authorized user; and

(2) A student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.

Education program means any program that is 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.

Under what conditions is prior consent not required to disclose information?

Nothing in the Act prevents a State or local educational authority or agency headed by an official listed in Sec. 99.31 (a)(3) from entering into agreements with organizations conducting studies and redisclosing personally identifiable information from education records on behalf of educational agencies and institutions that disclosed the information to the State or local educational authority or agency headed by an official listed in paragraph (a)(3) in accordance with the requirements of Sec. 99.33(b).

An educational agency or institution may disclose personally identifiable information, and a State or local educational authority or agency headed by an official listed in paragraph (a)(3) may redisclose personally identifiable information, only if--

(a) The educational agency or institution or the State or local educational authority or agency headed by an official listed in paragraph (a)(3) enters into a written agreement with the organization that requires the organization to destroy all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be destroyed.

An educational agency or institution or State or local educational authority or Federal agency headed by an official listed in paragraph (a)(3) is not required to initiate a study or agree with or endorse the conclusions or results of the study.

What conditions apply to disclosure of information for Federal or State program purposes?

The State or local educational authority or agency headed by an official listed in Sec. 99.31(a)(3) is responsible for using reasonable methods to ensure to the greatest extent practicable that any entity or individual designated as its authorized representative--

- (a) Uses personally identifiable information 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;
- (b) Protects the personally identifiable information from further disclosures or other uses, except as authorized; and
- (c) Destroys the personally identifiable information in accordance with the written agreement.

The State or local educational authority or agency headed by an official listed in Sec. 99.31(a)(3) must use a written agreement to designate any authorized representative, other than an employee. The written agreement must--

- (a) Designate the individual or entity as an authorized representative;
- (b) Specify--
 - (1) The personally identifiable information from education records to be disclosed;
 - (2) That the purpose for which the personally identifiable information from education records is disclosed to the authorized representative is to carry out an audit or evaluation of Federal- or State-supported education programs, or to enforce or to comply with Federal legal requirements that relate to those programs; and
 - (3) A description of the activity with sufficient specificity to make clear that the work falls within the exception of Sec. 99.31(a)(3), including a description of how the personally identifiable information from education records will be used;
- (c) Require the authorized representative to destroy personally identifiable information from education records when the information is no longer needed for the purpose specified;
- (d) Specify the time period in which the information must be destroyed; and
- (e) Establish policies and procedures, consistent with the Act and other Federal and State confidentiality and privacy provisions, to protect personally identifiable information from education records from further disclosure (except back to the disclosing entity) and unauthorized use, including limiting use of personally identifiable information from education records to only authorized representatives with legitimate interests in the audit or evaluation of a Federal- or State-supported education program or for compliance or enforcement of Federal legal requirements related to these programs.

Information that is collected must--

- (a) Be protected in a manner that does not permit personal identification of individuals by anyone other than the State or local educational authority or agency headed by an official listed in Sec. 99.31(a)(3) and their authorized representatives, except that the State or local educational authority or agency headed by an official listed in paragraph (a)(3) may make further disclosures of personally identifiable information from education records on behalf of the educational agency or institution in accordance with the requirements of Sec. 99.33(b); and
- (2) Be destroyed when no longer needed for the purposes listed.

What conditions apply to disclosing directory information?

A parent or eligible student may not use the right to opt out of directory information disclosures to—

- (a) Prevent an educational agency or institution from disclosing or requiring a student to disclose the student's name, identifier, or institutional email address in a class in which the student is enrolled; or

(b) Prevent an educational agency or institution from requiring a student to wear, to display publicly, or to disclose a student ID card or badge that exhibits information that may be designated as directory information and that has been properly designated by the educational agency or institution as directory information in a public notice.

In its public notice to parents and eligible students in attendance at the agency or institution, an educational agency or institution may specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both. When an educational agency or institution specifies that disclosure of directory information will be limited to specific parties, for specific purposes, or both, the educational agency or institution must limit its directory information disclosures to those specified in its public notice.

What responsibility does an educational agency or institution, a recipient of Department funds, or a third party outside of an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act due to a conflict with State or local law, it must notify the Office within 45 days, giving the text and citation of the conflicting law. If another recipient of Department funds under any program administered by the Secretary or a third party to which personally identifiable information from education records has been non-consensually disclosed determines that it cannot comply with the Act or this part due to a conflict with State or local law, it also must notify the Office within 45 days, giving the text and citation of the conflicting law.

What information must an educational agency or institution or other recipient of Department funds submit to the Office?

The Office may require an educational agency or institution, other recipient of Department funds under any program administered by the Secretary to which personally identifiable information from education records is non-consensually disclosed, or any third party outside of an educational agency or institution to which personally identifiable information from education records is non-consensually disclosed to submit reports, information on policies and procedures, annual notifications, training materials, or other information necessary to carry out the Office's enforcement responsibilities under the Act.

What is the investigation procedure?

A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act has occurred. A complaint does not have to allege that a violation is based on a policy or practice of the educational agency or institution, other recipient of Department funds under any program administered by the Secretary, or any third party outside of an educational agency or institution.

The Office investigates a timely complaint filed by a parent or eligible student, or conducts its own investigation when no complaint has been filed or a complaint has been withdrawn, to determine whether an educational agency or institution or other recipient of Department funds under any program administered by the Secretary has failed to comply with a provision of the Act. If the Office determines that an educational agency or institution or other recipient of Department funds under any program administered by the Secretary has failed to comply with a provision of the Act, it may also determine whether the failure to comply is based on a policy or practice of the agency or institution or other recipient. The Office also investigates a timely complaint filed by a parent or eligible student, or conducts its own investigation when no complaint has been filed or a complaint has been withdrawn, to determine whether a third party outside of the educational agency or institution has failed to comply with the provisions of Sec. 99.31(a)(6)(iii)(B) or has improperly redisclosed personally identifiable information from education records in violation of Sec. 99.33.

What is the content of the notice of investigation issued by the Office?

The Office notifies in writing the complainant, if any, and the educational agency or institution, the recipient of Department funds under any program administered by the Secretary, or the third party outside of an educational agency or institution if it initiates an investigation under Sec. 99.64(b). The written notice—

- (a) Includes the substance of the allegations against the educational agency or institution, other recipient, or third party; and
- (b) Directs the agency or institution, other recipient, or third party to submit a written response and other relevant information, as set forth in Sec. 99.62, within a specified period of time, including information about its policies and practices regarding education records.

What are the responsibilities of the Office in the enforcement process?

The Office reviews a complaint, if any, information submitted by the educational agency or institution, other recipient of Department funds under any program administered by the Secretary, or third party outside of an educational agency or institution, and any other relevant information. The Office may permit the parties to submit further written or oral arguments or information.

Following its investigation, the Office provides to the complainant, if any, and the educational agency or institution, other recipient, or third party a written notice of its findings and the basis for its findings.

If the Office finds that an educational agency or institution or other recipient has not complied with a provision of the Act, it may also find that the failure to comply was based on a policy or practice of the agency or institution or other recipient. A notice of findings issued to an educational agency or institution, or other recipient that has not complied with a provision of the Act or this part--

- (a) Includes a statement of the specific steps that the agency or institution or other recipient must take to comply; and
- (b) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution or other recipient may comply voluntarily.

If the Office finds that a third party outside of an educational agency or institution has not complied with the provisions of Sec. 99.31(a)(6)(iii)(B) or has improperly redisclosed personally identifiable information from education records in violation of Sec. 99.33, the Office's notice of findings --

- (a) Includes a statement of the specific steps that the third party outside of the educational agency or institution must take to comply; and
- (b) Provides a reasonable period of time, given all of the circumstances of the case, during which the third party may comply voluntarily.

How does the Secretary enforce decisions?

If an educational agency or institution or other recipient of Department funds under any program administered by the Secretary does not comply during the period of time set under Sec. 99.66(c), the Secretary may take any legally available enforcement action in accordance with the Act, including, but not limited to, the following enforcement actions available in accordance with part D of the General Education Provisions Act--

- (a) Withhold further payments under any applicable program;
- (b) Issue a complaint to compel compliance through a cease and desist order; or
- (c) Terminate eligibility to receive funding under any applicable program.

If, after an investigation under Sec. 99.66, the Secretary finds that an educational agency or institution, other recipient, or third party has complied voluntarily with the Act, the Secretary provides the complainant and the agency or institution, other recipient, or third party with written notice of the decision and the basis for the decision.

If the Office finds that a third party, outside the educational agency or institution, violates Sec. 99.31(a)(6)(iii)(B), then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the violation of Sec. 99.31(a)(6)(iii)(B) access to personally identifiable information from education records for at least five years.

If the Office finds that a State or local educational authority, a Federal agency headed by an official listed in Sec. 99.31(a)(3), or an authorized representative of a State or local educational authority or a Federal agency headed by an official listed in paragraph (a)(3), improperly rediscloses personally identifiable information from education records, then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the improper redisclosure access to personally identifiable information from education records for at least five years.

If the Office finds that a third party, outside the educational agency or institution, improperly rediscloses personally identifiable information from education records in violation of Sec. 99.33 or fails to provide the notification required under Sec. 99.33(b)(2), then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the violation access to personally identifiable information from education records for at least five years.