FERPA 101

December 4, 2017

Michael Hawes
Director of Student Privacy Policy
U.S. Department of Education
The U.S. Department of Education’s Role in Protecting Student Privacy

- Administering and enforcing federal laws governing the privacy of student information
  - Family Educational Rights and Privacy Act (FERPA)
  - Protection of Pupil Rights Amendment (PPRA)
- Raising awareness of privacy challenges
- Providing technical assistance to schools, districts, and states
- Promoting privacy & security best practices
Family Educational Rights and Privacy Act (FERPA)

- Gives parents (and eligible students) the right to access and seek to amend their children’s education records
- Protects **personally identifiable information** (PII) from **education records** from unauthorized disclosure
- Requires **written consent** before sharing PII — unless an exception applies
To which educational agencies and institutions does FERPA apply?

- **Elementary**
- **Secondary**
- **Postsecondary**
Just what is an Education Record?

“Education records” are 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.
Personally Identifiable Information (PII)

- **Direct Identifiers**
  - e.g., Name, SSN, Student ID Number, etc.
  - *(1:1 relationship to student)*

- **Indirect Identifiers**
  - e.g., Birthdate, Demographic Information
  - *(1:Many relationship to student)*

- “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.” *(§ 99.3)*
Exceptions to FERPA’s Written Consent Requirement
Directory Information Exception

• May include:
  ✓ name, address, phone number, and e-mail address
  ✓ photograph
  ✓ date and place of birth
  ✓ Most recent school attended; grade level and major field of study
  ✓ dates of attendance (e.g., year or semester)
  ✓ participation in officially recognized sports and activities; height and weight of athletes,
  ✓ degrees, honors, and awards received, and

• Can never include social security number
• Can’t disclose non-directory information with directory information
Directory Information Exception

• Annual notice must be given to parents
• Students may choose to “opt-out” of the disclosure of directory information
• Schools may adopt a limited directory information policy that allows for the disclosure of directory information to specific parties, for specific purposes, or for both.
FERPA: School Official Exception

PII may only be disclosed from education records without consent to other school officials within institution or to third parties acting as school officials, if they:

• Perform an institutional service or function for which the agency or institution would otherwise use employees;

• Are under the direct control of the agency or institution with respect to the use and maintenance of education records;

• Only use PII from education records for the purposes for which the disclosure was made;

• Meet the criteria specified in the school’s annual notification of FERPA rights
Health or Safety Emergencies Exception

• Disclosure is necessary to protect the health or safety of the student or others.
• There is an articulable and significant threat to the health or safety of a student or other individuals.
• Appropriate parties typically means local, State, or federal law enforcement, trained medical personnel, public health officials, and parents.
• Must be related to an actual, impending, or imminent emergency.
• School makes determination on case-by-case basis.
Research & Evaluation under FERPA

FERPA does not have a “research” exception to the parental consent requirement.

Instead, research and evaluation using PII from education records is typically performed using either FERPA’s:

• Studies Exception, or the
  • Audit and Evaluation Exception

to the requirement for parental consent.
Audit/Evaluation Exception

Allows PII from education records to be shared without consent, for certain audits or evaluations, with:

- “Authorized representatives” of certain FERPA-permitted entities:
  - Comptroller General of U.S.,
  - U.S. Attorney General,
  - U.S. Secretary of Education, and
  - State or Local Educational Authorities;
- Must be to audit or evaluate a federal- or state-supported education program, and

  if there is a written agreement that meets certain requirements.

  34 CFR Section 99.31(a)(3)
FERPA: Studies Exception

PII from education records may be disclosed in connection with certain studies conducted “for or on behalf of” schools, school districts, or postsecondary institutions if:

• Studies must be for the purpose
  - Developing, validating, or administering predictive tests;
  - Administering student aid programs; or
  - Improving instruction

• There is a written agreement with the individual/organization performing the study that meets certain requirements.
How should you obtain the student data you need for your grants?

Directory Information

Audit and Evaluation

CONSENT

Studies

School Official
Will you be publishing data?

Remember: FERPA’s definition of PII includes anything linked or linkable to the student...

Aggregate data may still contain PII!
Integrated Data Systems

PTAC Guidance on Integrated Data Systems and Student Privacy (January 2017)
PTAC Resources

https://studentprivacy.ed.gov/

Help Desk (privacyTA@ed.gov)

Guidance and Best Practice Documents
  o Data Sharing under FERPA
  o Data Security
  o Data Governance
  ...and much, much more.

Videos
  o FERPA for Parents and Students
  o Designing a Privacy Program
  ...and many others.
CONTACT INFORMATION

United States Department of Education,
Privacy Technical Assistance Center

(855) 249-3072
(202) 260-3887
privacyTA@ed.gov
student.privacy.ed.gov
(855) 249-3073
Overview of HIPAA

Healthy Students, Promising Futures
Learning Collaborative

December 4, 2017

Lara Cartwright-Smith, JD, MPH
## HIPAA Privacy Rule Basics

| **Applies to records held by** | Covered Entities (CEs)  
| | • mainly health care providers and insurers/plans  
| | Business Associates (BAs)  
| | • who work on behalf of CEs and use or maintain PHI  
| **Information covered** | Protected Health Information (PHI)  
| | • individually identifiable health information held or transmitted by CE or BA  
| | • Includes a limited data set (LDS)  
| | • Partially de-identified by excluding 18 identifiers, such as name, address, SSN.  
| **Not covered** | Health information in records that are governed by FERPA; de-identified information.  
| **Consent for disclosures** | In general, CEs may not disclose PHI without written authorization by the person who is the subject of the information.  
| | • For minors, state law re: parental consent applies.  
| **Permissive disclosures** | Treatment, Payment, Healthcare Operations (TPO); Required by state law (inc. health and safety); For research, public health practice, and quality improvement, but only LDS (partially de-identified).  
| | Minimum necessary standard applies in most cases (except treatment).  
| **Required disclosures** | To individual or their designated recipient.  

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**Milken Institute School of Public Health**  
**THE GEORGE WASHINGTON UNIVERSITY**  
**www.healthinfolaw.org**
Where FERPA applies, HIPAA doesn’t

• Under HIPAA, “protected health information” (PHI) does not include:
  – Employment or education records held by a CE;
  – Information in records subject to FERPA; or
  – De-identified information.

• Health records maintained a school that are “education records” or “treatment records” of eligible students under FERPA are excluded from the definition of PHI.

• Therefore, neither the HIPAA Privacy Rule nor the HIPAA Security Rule applies to schools where the only records kept meet the definition of education or treatment records under FERPA.
Schools typically will only have to comply with FERPA, not HIPAA

• Student health records maintained by a person or entity acting on behalf of a school subject to FERPA are education records, not PHI.

• If FERPA applies, its stricter standards govern, even if HIPAA would allow disclosure.

• Schools may receive information from HIPAA-covered entities, such as a provider or health plan. Once the information is added to a student’s school record, it’s covered by FERPA, not HIPAA.
  – Receiving such information does not make the school a business associate under HIPAA.