



UNIVERSITY *of* MARYLAND  
BALTIMORE

# FERPA and Research Protecting Student Privacy

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# FERPA – The Other Privacy Law

- The Family Education Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) was enacted in 1974
- US Department of Education amended the FERPA regulations in 2012 (Title 34, Part 99 – Family Educational Rights and Privacy)
- Applies to all educational entities that receive federal funds
  - From Pre-K to PhD

# FERPA – The Other Privacy Law

- FERPA protects the privacy of student records. Student records cannot be released to third parties without written consent from the student (or their legal guardian if underage) unless under an exception.
  - Educational records include:
    - Files, documentation, and information (written, electronic, verbal) directly related to a student (class rosters, transcripts, grades/papers, emails containing student information)
    - Student personally identifiable information (PII) including:
      - Direct (name, social security number, address, email, etc.)
      - Indirect (parents'/guardians' information, date of birth, place of birth)
  - Educational records do not include:
    - Campus police records
    - Medical records (other privacy laws may apply)
    - Alumni records
    - Online forums

# FERPA – Directory Information

- Directory Information is:
  - Information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed
  - TYPICALLY includes:
    - Name
    - Address
    - Telephone Number/Email address
    - Dates of Attendance
    - School activities/Program
  - NEVER includes:
    - Social Security Number

# FERPA – Consent

- To access FERPA protected information, a researcher must obtain consent from the student (or guardian) that includes:
  - The records to be disclosed
  - The purpose of the disclosure
  - The individual to whom the information will be disclosed
  - Date
  - Signature

# FERPA – Research Exception

- PII can be disclosed by an educational entity without consent to organizations conducting research on its behalf *IF*:
  - To improve instruction
  - Administer financial aid; or
  - Develop, validate, or administer predictive tests
- Written contract is required

# FERPA – Non-Excepted Research

- Researchers must receive approval (and enter into a written contract) from the educational entity:
  - Educational entity must de-identify the information to provide educational record information without consent
  - If the information is not de-identified, written consent is needed for each eligible student (educational record) whose information is being shared

# FERPA – Contracting for PII

- Written Contract must include:
  - Purpose of the study
  - Scope of the study
  - Duration of the study
  - Identify specifically the PII being disclosed
    - Limit PII being disclosed
  - Require research entity:
    - Limits access
    - Protects confidentiality of all PII (all stages INCLUDING any final reports or publications)
    - Destroy PII after study concluded (based on duration contracted)



# FERPA – IRB

- Protocols including FERPA protected information:
  - PI is responsible for entering into the required contracts with the educational entity
  - PI is responsible for getting consent for identifiable information from educational records (each student)
- Guidance for FERPA officers
  - HRPP Toolkit – Worksheet 330
    - Checklist for Disclosure

# FERPA – IRB Review

- When reviewing an IRB application that includes the use of student records, the IRB /HRPO will review the submission to ensure it addresses the following items:
  - purpose, scope, and duration of study;
  - use and disclosure of personally identifiable information; • plans to protect personally identifiable information from disclosure to any other party (other than representatives of UMB with legitimate interests) without prior consent of parent or eligible student;
  - included parental or eligible student consent form, or written determination from source educational institution that the data from the student record is provided pursuant to an exception under FERPA ; and

# FERPA – IRB Review

- Plan to return or destroy personally identifiable information when it is no longer needed;
- Any necessary approvals from the educational institution and compliance with the educational institution's FERPA policies

# FERPA – FERPA v. IRB

- IRB approval does not supersede FERPA
  - IRB cannot override an educational entity's decision to deny approval or enter into a contract
  - If the educational entity limits information sharing or places conditions on the researchers, IRB approval cannot amend/alter that approval
  - IRB approval cannot change any conditions included in the written contract (including study duration and destruction of information)
- IRB cannot waive need for the educational entity to have Consent for disclosure
- IRB approved changes to a protocol does not waive the need for potential revised Consent

# FERPA – Faculty Researchers

- Legitimate Education Interest
  - Use PII from educational record to conduct instruction or educational program activities
- Research
  - Unless under the research exception, faculty cannot use information obtained as legitimate interest as faculty member for research without contracts (both de-identified and identified) and consent (if identifiable)

# FERPA – Scenarios

- A faculty researcher wants to conduct research to determine if their new classroom management technique is increasing educational attainment. They want to conduct a survey and pre-test before and a survey and post-test after implementing the new technique.
  - Is this permissible under FERPA? Why?
- A researcher obtains FERPA covered information under a contract with Baltimore City Public Schools, then conduct the research and finalize the results. They then give the data set to another researcher.
  - Is this permissible under FERPA?
    - If the other researcher is at UMB? If they are at another institution?
    - Does it matter if the information is identifiable/de-identified?

# FERPA – Working with PII

- Protect Confidentiality
  - Limit access
  - Data records management and security plan
  - Plan to destroy PII when no longer needed for the purposes of the study or the duration of the study has expired
  - REPORT any breaches of confidentiality
    - Have a reporting plan
    - If HSR – this would include an RNI (reportable new information)

# Privacy – Beyond FERPA

- PPRA: Protection of Public Rights Amendment (20 USC § 1232h)
  - Provides parents right to inspect any survey materials
  - Limits surveys, analysis, or evaluations of students without consent
- HIPPA: Health Insurance Portability and Accountability Act (Public Law No. 104-191)
  - Privacy protections for health information



# FERPA (and Beyond) Resources

- Department of Education:
  - FERPA Regulations <https://studentprivacy.ed.gov/node/548/>
  - Privacy and Data Sharing <https://studentprivacy.ed.gov/privacy-and-data-sharing> (includes “Cheat Sheet”)
  - Dept. of Education Privacy Technical Assistance Center: <https://studentprivacy.ed.gov>
  - Protecting Student Privacy: Researchers <https://studentprivacy.ed.gov/audience/researchers>
    - FAQ
    - Checklists (Written Agreement, Data Breach)
    - Case Studies
    - Technical Assistance Responses
    - Webinars

# FERPA – Additional Specific Guidance

- Best Practices for Data Destruction:  
[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/Best%20Practices%20for%20Data%20Destruction%20%282019-3-26%29.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Best%20Practices%20for%20Data%20Destruction%20%282019-3-26%29.pdf)
- Guide for Reasonable Methods and Written Agreements:  
[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/Guidance\\_for\\_Reasonable\\_Methods%20final\\_0\\_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Guidance_for_Reasonable_Methods%20final_0_0.pdf)
- Written Agreement Checklist:  
[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/Written\\_Agreement\\_Checklist.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Written_Agreement_Checklist.pdf)
- Case Study – Enforcement (Researcher):  
[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/CaseStudy3\\_Enforcement\\_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/CaseStudy3_Enforcement_0.pdf)

Thank you!

