WEBINAR

FERPA: The Privacy Law Nobody Bothers to Hate



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CARE-Q
Consortium for Applied Research Ethics Quality

FERPA: The Privacy Law Nobody Bothers To Hate

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Disclosure

I have no relevant personal, professional, or financial relationships with respect to this educational activity.

The opinions I express during this educational activity do not represent the viewpoints or positions of my employer or clients.

Learning Objectives

1

Identify when FERPA applies

Describe varying institutional interpretations of FERPA, and identify when FERPA applies, including its limitations for both internal and external data access.

2

Support research within FERPA's limits

Consider how an HRPP can support research subject to FERPA while still protecting participants.

3

Evaluate institutional approaches

Evaluate institutional approaches to FERPA by examining how roles in compliance shape research practices and policies across diverse settings.

Acknowledging Our Current Reality

Trump Department of Education Pursues Enforcement Actions and More

Manhattan Institute

Gender Debrief

A weekly update on the debates shaping gender and identity policies

Education Department opens parental rights case against Ann Arbor schools over transgender policy

BY **KATHERINE DAILEY** - JULY 27, 2026 2:06 PM



The Lyndon Baines Johnson Department of Education Building in Washington, D.C., pictured on Nov. 25, 2024. (Photo by Shauneen Miranda/States Ne

NEWS

KCK Public Schools responds to DOJ enforcement over Title IX, FERPA violations

by: Brian Dulle
Posted: Jul 1, 2026 / 03:03 PM CDT
Updated: Jul 1, 2026 / 10:18 PM CDT

SHARE

KANSAS CITY, Mo. — Kansas City, Kansas Public Schools is responding after the Justice (DOJ) and U.S. Department of Education announced it was investigati over Title IX and Family Educational Rights and Privacy Act (FERPA) violations.

https://www.nea.org/nea-today/all-news-articles/plan-abolish-education-department-one-year-later

Evolving Status of Department and Proposed Rule Change

EDUCATION

The Education Dept. hasn't been dismantled. It's become more inefficient, staff say

SEPTEMBER 24, 2026 · 5:00 AM ET

HEARD ON ALL THINGS CONSIDERED

By Jonaki Mehta, Cory Turner

4-Minute Listen + PLAYLIST TRANSCRIPT ···



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View Rule

View EO 12866 Meetings | Printer-Friendly Version | Download RIN Data in XML

ED/OPEPD **RIN:** 1875-AA15 **Publication ID:** Spring 2025

Title: Family Educational Rights and Privacy Act

Abstract:

The Department intends to amend the Family Educational Rights and Privacy Act (FERPA) regulations, 34 CFR part 99, to update, clarify, and improve the current regulations by clarifying the definition of education record," the provisions governing non-consensual disclosure of personally identifiable information in education records to third parties (including commercial vendors), disclosures in response to law enforcement warrants or judicial subpoenas, and the complaint and investigation procedures and remedies that apply to the Department's enforcement of FERPA.

Agency: Department of Education(ED)
RIN Status: Previously published in the Unified Agenda
Major: No
EO 14192 Designation: Deregulatory
CFR Citation: 34 CFR 99
Legal Authority: 20 U.S.C. 1232g
Legal Deadline: None
Timetable:

Action	Date	FR Cite
NPRM	01/00/2026	
Final Action	05/00/2026	

Priority: Other Significant
Agenda Stage of Rulemaking: Proposed Rule Stage
Unfunded Mandates: No

Regulatory Flexibility Analysis Required: Undetermined
Small Entities Affected: No
Included in the Regulatory Plan: Yes

Government Levels Affected: Local, State
Federalism: Yes

https://studentprivacy.ed.gov/guidance

Foundations

What FERPA is, whom it binds, and the vocabulary the regulations use.

What Is FERPA, and to What Does It Apply?

FERPA applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of the U.S. Department of Education (ED), where either the educational institution provides educational services or instruction to students, or the educational agency is authorized to direct and control public elementary or secondary, or postsecondary, educational institutions.

Who holds the rights

- FERPA gives full rights to either parent, allowing a parent to request and receive education records or personally identifiable information (PII) from the education record without the student's prior written consent.

When the rights transfer

- When a student reaches the age of 18, the rights transfer to the student.
- Rights also transfer at any age once the student attends an institution of postsecondary education.

Why Is FERPA Important?

1

It protects rights, not just data

FERPA is intended to protect the rights of parents and students with respect to education records — access, amendment, and control over disclosure.

2

ED can sanction

The Department of Education can sanction individuals or entities that violate FERPA.

3

Federal funds are the lever

Suspension, revocation, or termination of federal education dollars may result from a FERPA violation. The threat carries weight even though it is rarely carried to conclusion.

4

Institutional exposure is real

Findings of non-compliance are published, and they travel. Reputational and relationship costs often arrive long before any funding consequence.

Key Definitions: The People

Student

Any individual who is or has been in attendance at an educational agency or institution, and about whom that agency or institution maintains education records.

Eligible student

A student who has reached 18 years of age or is attending an institution of postsecondary education. At that point all FERPA rights transfer from the parent to the student.

Parent

A parent of a student, including a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

Attendance

Attendance in person or by paper correspondence, videoconference, satellite, internet, or other electronic and telecommunications technologies for students who are not physically present in the classroom; and the period during which a person is working under a work-study program.

Key Definitions: The Records

Education records

Records directly related to a student and maintained by an educational agency or institution, or by a party acting for that agency or institution. Excludes, among other things, law enforcement unit records, employment records, records made for another purpose, treatment records made by a physician or psychiatrist for a student over 18, and peer-graded papers before they are collected and recorded by the teacher.

Record

Any information recorded in any way, including handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

Personally identifiable information (PII)

Includes name, parent and other family names, address, SSN, student number, biometric record, and other information that alone or in combination can be linked to a specific student, or would allow a reasonable person in the school community without personal knowledge of the circumstances to identify the student with reasonable certainty. Also covers information requested by someone who knows the student's identity.

Biometric record

A record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual — fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting.

Key Definitions: Programs and Disclosure

Education program

Any program principally engaged in the provision of education, including early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education — and any program administered by an educational agency or institution.

Disclosure

Permitting access to, or the release, transfer, or other communication of, PII contained in education records by any means — oral, written, or electronic — to any party except the party that provided or created the record.

Authorized representative

Any entity or individual designated by a State or local educational authority or agency to conduct any audit or evaluation, or any compliance or enforcement activity, in connection with federal legal requirements related to federal or state supported education programs.

Institution of postsecondary education

An institution that provides education to students beyond the secondary school level, where "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

Note the breadth of "education program" — it names settings well outside the traditional K–12 and university picture.

What Is — and Is Not — Part of an Education Record?

PART OF THE EDUCATION RECORD

- Institutional or student ID number, Social Security number, date of birth, street address
- Race or ethnicity, country of citizenship, veteran status
- Graded assignments and exams
- Student transcripts
- Class rosters
- Financial aid information and billing statements
- Emails containing any of the above
- Health data, including immunization records, the Individualized Education Program (IEP), and most student health center and student athlete records

GENERALLY NOT PART OF IT

- Peer-graded papers, before collection and recording by the teacher
- Online forums and chats in learning management systems
- Law enforcement unit records
- Employment records, unless employment is based on student status
- Alumni records
- Self-reported information
- Directory information
- Potentially, records that are otherwise covered by HIPAA

What Rights Does FERPA Confer on Parents and Students?

Four core rights

- To inspect and review the education record
- To request that a school correct records believed to be inaccurate or misleading
- To privacy with respect to disclosure of their education records
- To file a complaint with the Department of Education

What the privacy right requires

- The parent or eligible student must provide signed and dated written consent before an educational agency or institution discloses PII from the student's education record; or
- The requested access to the education records must meet the criteria for an exception.
- There is no third path. If neither condition is satisfied, the disclosure is not permitted.

FERPA and the Common Rule

Where the two frameworks meet — and where Exemption 1 has drifted past FERPA's edge.

How Does FERPA Relate to Exemption Category 1?

> *"Research, conducted in established or commonly accepted educational settings, that specifically involves normal educational practices that are not likely to adversely impact students' opportunity to learn required educational content or the assessment of educators who provide instruction. This includes most research on regular and special education instructional strategies, and research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods."*

THE OVERLAP

Activities eligible for exemption under category 1 may, generally speaking, also fall under the jurisdiction of ED — which would typically afford them the basic privacy protections for educational records that FERPA provides.

The Limitations of FERPA and the Ever-Expanding Read of Exemption 1

1. **Exemption 1 is not textually tied to FERPA** Exemption category 1 is not explicitly limited in scope to research that FERPA would apply to.

2. **Contemporary use is broad** Exemption 1 is now applied well beyond the ED-jurisdiction settings its structure appears to contemplate.

3. **No clarifying guidance** There is no published OHRP guidance establishing that the structure of Exemption 1 is meant to apply to educational settings under ED's jurisdiction.

4. **Other exemptions carry backstops** Nearly all exemptions dealing with private information have other measures to protect that information, or are subject to other regulatory requirements offering those protections — for example, Exemption 4 and the Privacy Act. Exemption 1 lacks an equivalent.

5. **The result** Applied broadly, Exemption 1 is the only exemption containing neither privacy protections nor any requirement for notice or voluntary participation.

The Exceptions

Directory information, school officials, and studies — the three routes most research travels.

What Are the Exceptions Under FERPA?

1

Directory information

§ 99.37

- May only include PII that is generally not considered harmful or an invasion of privacy.
- The institution must have a policy stating what it designates as directory information.
- Parents and eligible students must be given the chance to opt out.

2

School officials

§ 99.31(a)(1)

- The institution's annual FERPA notification must explain what "school official" means and what constitutes "legitimate educational interest."
- Covers access that employees require as part of their job duties.
- Governs internal use.

3

Studies

§ 99.31(a)(6)

- Allows disclosure of PII to an entity conducting a study for or on behalf of the school.
- Requires a written agreement with the organization conducting the study.
- Governs external use.

Other exceptions exist at § 99.31 — health or safety emergencies, judicial orders, accrediting organizations, and more.

What Is Directory Information?

How it works

- Institutions determine for themselves what they consider directory information.
- The designation must be clearly posted and included in the annual FERPA notification.
- Parents and eligible students must be given a reasonable period to opt out of disclosure.
- Social Security numbers are never directory information.
- A student ID or user ID counts only if it cannot be used to gain access to education records without a second authenticating factor — a PIN, a password, or something else known or possessed only by the authorized user. The same test applies to an identifier printed on a student ID badge.

Commonly designated elements

- Student's name and institutional email address
- Photograph
- Major field of study and grade level
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Degrees, honors, and awards received
- Most recent educational agency or institution attended

What Is Legitimate Educational Interest?

The term is not specifically defined in the regulations and must be specified by each institution. A common formulation: a school official has a legitimate educational interest if the official needs to review an education record in order to fulfill their professional responsibilities for the institution.

- Simply being a school official does not mean a person may access student records or access them for a purpose other than performing their job duties.
- Having access to education records does not grant authority to share that data with others who lack access under the institution's policy.
- Research — and QA or QI projects — may fit within this exception, depending on how the institution has drawn it.

Scope limit: this exception applies only to internal use of FERPA-protected data.

The institution defines the term. Two institutions can reach opposite conclusions on identical facts, and both can be right.

What Are “Studies” Under FERPA?

The studies exception applies to projects conducted for, or on behalf of, the institution that holds the records. Those projects may or may not meet the Common Rule definition of research.

A QUALIFYING STUDY MUST HAVE AN INTENDED PURPOSE OF ONE OF THE FOLLOWING

Improving instruction

The most common route for education research, and the one most often stretched past its edges.

Developing, validating, or administering predictive tests

Assessment and placement instrument work, including validation studies.

Administering student aid programs

Frequently forgotten. It sits in the same provision as the other two.

The institution holding the records decides whether a project qualifies. The researcher does not, and neither does the IRB.

The Studies Exception: Conditions and Safeguards

1. **A written agreement is required** The disclosing institution must enter into a written agreement with the organization conducting the study, specifying the purpose, scope, and duration of the study and the information to be disclosed.

2. **Identification must be controlled** The study must be conducted so that PII is not identified by anyone other than representatives of the organization with legitimate interests in the information.

3. **Access is limited to those who need it** Only members of the research team who need to access the identifiable data may do so.

4. **Destruction is not optional** The information must be destroyed when it is no longer needed for the purposes for which the study was conducted, and the agreement must specify the time period.

5. **Protected status travels with the data** FERPA-protected data accessed or copied as part of such a project does not lose its protected status, and the redisclosure limits at § 99.33 follow it.

Research Across Educational Settings

FERPA and the conduct of human research

Research in Educational Settings

1

The record holder carries the obligation

The official record holder — the school — is responsible for compliance with FERPA. The IRB or HRPP reviewing the study is not.

2

Your approval criteria still bind you

Approving a study that violates FERPA would be inconsistent with the criteria for approval, and with the principles of the Belmont Report.

3

Each district draws its own lines

Each school or district is responsible for determining what qualifies as legitimate educational interest, and for determining when a project meets the criteria for the studies exception. Their definitions may differ from those at your institution.

4

Get the determination in writing

Where a researcher has been granted an exception, it should be clear which exception was determined to apply, and documentation to that effect should be included in the submission.

"The principal said it was fine" is not documentation.

FERPA Reaches Further Than “Schools”

The trigger has two parts: an educational agency or institution, receiving funds under a program administered by the Secretary of Education. Nothing in that test mentions K–12 or college — and § 99.3 defines “education program” to include early childhood education, special education, job training, career and technical education, and adult education.

SETTINGS THAT ARE ROUTINELY OVERLOOKED

Early and alternative pathways

- State pre-K and early childhood programs administered by an educational agency
- Charter schools and fully virtual schools
- Adult education and literacy programs

Career and proprietary

- Career, technical, and vocational schools
- Proprietary and for-profit institutions participating in Title IV
- Job training programs administered by an educational agency

Federal and specialized systems

- Correctional and juvenile justice education programs
- Tribally controlled and Bureau of Indian Education schools
- Department of Defense Education Activity (DoDEA) schools

Informed Consent vs. FERPA Authorization.

What the IRB can reach

- Parental or guardian permission can be altered or waived by the IRB.
- If eligible for exemption from the requirements for IRB review and approval, under exempt category 1 research does not require parental permission.

What the IRB cannot reach

- A FERPA release cannot be waived by an IRB.
- Where an exception criterion is not met, permission to access records must be obtained.
- Where a FERPA release is required, the IRB cannot justify a waiver of parental permission — the release is needed regardless.
- Once a student turns 18, all rights related to educational records that once belonged to their parents belong to the student.

Obtaining Permission to Access Education Records

PERMISSION HAS FIVE REQUIRED ELEMENTS

- What records may be disclosed — for example, course grades, test scores, counseling records
- To whom the records may be disclosed
- The purpose of the disclosure
- The time period or event to which the permission pertains
- The signature of the parent or student, and the date it was signed

There is no requirement for the release to be on paper, and a FERPA release can be incorporated into a consent form.

What Might Be Outside of FERPA Protection?

Where FERPA Doesn’t Apply — and What Fills the Gap

Generally outside FERPA

- Private K–12 schools or postsecondary programs that receive no funds under an ED-administered program
- Homeschool arrangements and unaffiliated co-ops
- Employer and professional training programs; certification and credentialing bodies
- Standalone commercial platforms and online programs operating outside any covered institution
- Museum, library, and community education programs run outside an educational agency

What might apply

- State student privacy statutes, which frequently reach further than FERPA and carry their own enforcement
- Contracts, data use agreements, and platform terms of service, which create obligations the IRB can and should read
- Rules that include provisions to protect privacy and maintain confidentiality
- Ethical obligation to protect privacy of persons and confidentiality of their data.

“FERPA doesn't apply” answers one question and opens several others.

Questions to Ask in Any Non-Traditional Setting

1. **Who is the official record holder, and are they ED-funded?**
   Site access and record custody are different things, and the entity offering you the data is often neither.

2. **Is this an education record in that holder's hands?**
   Self-reported data, law enforcement unit records, and employment records sit outside. The classification belongs to the holder, not the researcher.

3. **Which exception is claimed, and who made the determination?**
   Get the exception named and the determination documented, from someone with authority to make it.

4. **Is there a written agreement with the required terms?**
   Purpose, scope, duration, PII to be disclosed, redisclosure limits, and destruction requirements.

5. **If FERPA does not apply, what does?**
   State law, contract terms, platform terms of service, § 46.111(a)(7), and Belmont.

6. **Does the permission document carry FERPA's five elements?**
   A consent form is not automatically a FERPA release, and the IRB cannot supply what is missing.

Related Rules

The Neighboring Statutes

PPRA 20 U.S.C. § 1232h; 34 CFR Part 98	Surveys, analyses, and evaluations administered to students by ED-funded programs. Applies whether or not the IRB deems the study exempt.
IDEA Part B 34 CFR §§ 300.610–300.627	Special education records, with consent, access, and destruction requirements layered on top of FERPA.
HIPAA 45 CFR Parts 160, 164	Education records and treatment records are excluded from the definition of PHI. Campus health and counseling records usually sit on the FERPA side.
COPPA 16 CFR Part 312	Online collection from children under 13. School-provided consent is limited to the educational context and does not extend to commercial reuse.
State student privacy laws Varies by jurisdiction	Frequently stricter than FERPA and separately enforceable — New York Education Law § 2-d and California's student data statutes are common examples.

PPRA: The One Researchers Miss

Where a survey is funded by ED and touches any of the eight protected areas, prior written parental consent is required. For surveys not funded by ED, the LEA must have a policy and provide notice and an opt-out. PPRA operates independently of the Common Rule — an exempt determination does not displace it.

THE EIGHT PROTECTED AREAS

1. Political affiliations or beliefs of the student or the student's parent
2. Mental or psychological problems of the student or the student's family
3. Sex behavior or attitudes
4. Illegal, antisocial, self-incriminating, or demeaning behavior
5. Critical appraisals of others with whom the respondent has a close family relationship
6. Legally recognized privileged or analogous relationships — lawyers, physicians, ministers
7. Religious practices, affiliations, or beliefs of the student or the student's parent
8. Income, other than as required by law to determine program eligibility

Resources

Things to Read

Primary sources

- FERPA statute: 20 U.S.C. § 1232g · Regulations: 34 CFR Part 99
- PPRA statute: 20 U.S.C. § 1232h · Regulations: 34 CFR Part 98
- IDEA Part B confidentiality: 34 CFR §§ 300.610–300.627
- Common Rule exemptions: 45 CFR § 46.104
- ED Student Privacy Policy Office: studentprivacy.ed.gov/ferpa
- ED FERPA Exceptions handout: studentprivacy.ed.gov (Resources)
- NCES privacy FAQ: nces.ed.gov/pubs2004/privacy

Interpretive material

- SACHRP, Recommendations on Interpretation of Exempt Categories 1 and 2 as Revised in the 2018 Common Rule (Attachment B, November 13, 2018), at hhs.gov/ohrp

Unless explicitly adopted as such, SACHRP recommendations should not be conflated with OHRP guidance.

- SPPO Dear Colleague Letters and letters of finding, published at studentprivacy.ed.gov — the most useful window into how ED currently reads the regulations.
- Your own institution's annual FERPA notification and directory information designation.

Confirm URLs and citations before distribution.

DISCUSSION

Questions?

Continuing Education

To receive certificate(s), please complete the evaluation. See link below (also posted in the Zoom chat)

https://ucsd.co1.qualtrics.com/jfe/form/SV_brS6H34fItOVUvc

Questions? Email us at info@care-q.org

Thank you!