

Guidance on Research Involving Education Records Family Educational Rights and Privacy Act (FERPA)

What is FERPA?

FERPA is a federal law which regulates the disclosure of personally identifiable information from student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA stipulates that an educational institution has the authority to determine what information may be accessed from an educational record.

Who does this guidance apply to?

Investigators planning research involving data collection in schools, and/or accessing information from students' educational records, must be aware of laws which can impact their data access and collection procedures, and which can limit the IRB's ability to waive consent.

What are legally considered "educational records"?

- Graded papers
- Exams
- Class rosters
- Notes from conversations with students
- Emails containing information about students
- Athletic records
- Hand-writing samples (even if de-identified)

What are not legally considered "educational records"?

- Peer graded papers
- Online forums (e.g. Moodle chats)
- Medical records

What rights are protected under FERPA?

FERPA allows parents certain rights with respect to their children's educational records. These rights transfer to the student when the student reaches the age of 18 or attends a school beyond the high school level (referred to as "eligible students").

Can schools/teachers disclose students' personally identifiable information to third parties?

Schools must have written permission from the parent or eligible student to release information from a student's educational record. Unless research falls within FERPA qualifies for an exception under FERPA to the rules of parental/eligible student consent, the IRB cannot waive consent. School principals, teachers, clinical personnel, etc., do not have authority to give "blanket" consent for their students/patients/clients to participate in research.

Under FERPA, student records can be disclosed to school officials who have a legitimate educational interest without consent from the parent/eligible student. Educators who are also researchers must be mindful that student records they personally hold (tests, journals, written assignments, etc.) are considered official student educational records. When conducting research, educators are not considered to have a legitimate educational interest in student records they otherwise handle on a regular basis.

What must be included on consent forms?

- List of records to be disclosed
- Purpose of the disclosure
- Identified party to whom the disclosure is to be made
- Dated student signature

Are there any exceptions to parental/student consent under FERPA?

Yes, there are various exceptions to the FERPA rule that consent must be obtained for release of personally identifiable information from student educational records. Exceptions most likely to be relevant are:

1. Directory information:

FERPA allows schools to designate and disclose, without consent, s a student's name, address, telephone number as "directory information", date and place of birth, honors and awards, and dates of attendance.

Each educational institution establishes their own definition of what is considered "directory information." FERPA requires that students be given the opportunity to file a request to prevent disclosure of directory information, commonly known as "opting out." An institution will not release any information on a student, even directory information, if a student has opted out. Investigators should contact each institution from which they propose to access student records, and follow each institution's FERPA policy and procedures when accessing directory information.

2. De-identified information:

An educational institution may release information from student education records without the consent required under FERPA if all personally identifiable information has been removed from the records, provided the educational institution has made a reasonable determination that a student's identity is not personally identifiable. Thus, a school official (other than the researcher) with legitimate access may strip the records of identifying information and provide this data to the researcher.

Use of coded data:

An educational institution can release de-identified student-level data from educational records for the purpose of educational research by assigning codes to records to make them anonymous, provided the educational institution does not disclose information regarding how it generated and assigned the codes, or which would allow the researcher to identify a student based on a code. The code may not be used for any purpose other than identifying a de-identified record for purposes of educational research. The code may not be based on a student's social security number or other personal information.

3. Research conducted for or on behalf of educational institutions:

Personally identifiable information (PII) from student educational records may be disclosed by an educational institution/agency to researchers when the disclosure is to organizations conducting studies for, or on behalf of, educational institutions/agencies to: develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. If PII from student educational records will be disclosed to a researcher under this exception, the researcher must enter into a written agreement with the educational institution, which contains specific assurances on data confidentiality. See [34 CFR Section 99.31\(a\)\(6\)](#).

What documents are required by the Butler University IRB in reviewing research involving FERPA?

1. If research is conducted in schools, outside Butler University, an acknowledgment letter from the school(s) stating the research is allowed to be conducted at their site(s) is required.
2. If research involves Butler faculty/staff who are not the instructors of the classes from which the research is regarding, BU faculty/staff are not considered to have legitimate access to students' educational records. In order for them to access or collect data from students' education records, written consent and/or assent is required. Assent is required if the data collected are from individuals under 18 years old. Verbal assent is permissible.

If an institution denies an investigator access to information in an education record, the IRB cannot overrule the decision.