

Protecting Student Privacy

U.S. DEPARTMENT OF EDUCATION

Frequently Asked Questions

This section is designed to allow stakeholders easy access to all Frequently Asked Questions about student privacy. All of the questions contained on this page have been tagged for easy browsing by either topic or audience. This section is regularly updated as new questions are received. You may also search the FAQs by using the search box on the top right of the page.

Are law enforcement records considered education records?

“Law enforcement unit records” (i.e., records created by the law enforcement unit, created for a law enforcement purpose, and maintained by the law enforcement unit) are not “education records” subject to the privacy protections of FERPA. As such, the law enforcement unit may refuse to provide a parent or eligible student with an opportunity to inspect and review law enforcement unit records, and it may disclose law enforcement unit records to third parties without the parent or eligible student’s prior written consent. However, education records, or personally identifiable information from education records, which the school shares with the law enforcement unit, do not lose their protected status as education records just because they are shared with the law enforcement unit.

Are law enforcement records protected under FERPA?

“Law enforcement unit records” (i.e., records created by a law enforcement unit at the educational agency or institution, created for a law enforcement purpose, and maintained by the law enforcement unit) are not “education records” subject to the privacy protections of FERPA. As such, the law enforcement unit may refuse to provide a parent or eligible student with an opportunity to inspect and review law enforcement unit records, and it may disclose law enforcement unit records to third parties without the parent’s or eligible student’s prior written consent.

Are School Resource Officers (SROs) or other outside local law enforcement officials who serve as a school’s law enforcement unit automatically considered school officials?

No, not automatically. These officials may be considered “school officials” with “legitimate educational interests” and have access to students’ education records, but only 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;

Are subject to the requirements in § 99.33(a) that the personally identifiable information (PII) from education records may be used only for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of students, and governing the redisclosure of PII from education records; and

1. Meet the criteria specified in the school or LEA’s annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

Are there situations in which school officials may non-consensually disclose personally identifiable information from education records of students who have been disciplined for conduct that posed a significant risk to the safety of the school community?

Yes. Under FERPA, a school may share PII from education records with school officials within the school whom the school has determined to have legitimate educational interests in the behavior of a student who has been disciplined for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community. See § 99.36(b)(2) and Q&A 9 and § 99.36(b)(1) and (2).

The school may also disclose PII from education records about a student who has been disciplined for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community, to school officials at **another school** who have been determined to have legitimate educational interests in the behavior of the student, if deemed necessary.

For instance, if a school official knows that a student, who has been disciplined for bringing a gun or knife to school or threatened to hurt students and/or teachers, is planning to attend a school-sponsored activity at another high school, FERPA would allow that school official to notify school officials at the other high school who have been determined to have legitimate educational interests in the behavior of the student. See § 99.36(b)(3).

Can a school provide local or other law enforcement officials with “directory information” on students?

Yes. If the school or school district has a directory information policy under FERPA that permits this disclosure, then the directory information of those students whose parents (or the eligible students) have not opted out of such a disclosure may be disclosed.

Can a school’s law enforcement unit officials be considered schools officials with legitimate educational interests?

Yes, if certain conditions apply. These officials may be considered “school officials” with “legitimate educational interests” and have access to students’ education records, but only if they:

1. Perform an institutional service or function for which the agency or institution would otherwise use employees;
2. Are under the direct control of the agency or institution with respect to the use and maintenance of education records;
3. Are subject to the requirements in § 99.33(a) that the personally identifiable information (PII) from education records may be used only for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of students, and governing the redisclosure of PII from education records; and
4. Meet the criteria specified in the school or LEA's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

Can off-duty police officers or School Resource Officers (SROs) be considered school officials under FERPA and, therefore, have access to students' education records?

Yes, if certain conditions are met. FERPA (§ 99.31(a)(1)(i)(B)) permits schools to outsource institutional services or functions that involve the disclosure of education records to contractors, consultants, volunteers, or other third parties provided that the outside party:

1. Performs an institutional service or function for which the agency or institution would otherwise use employees;
2. Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
3. Is subject to the requirements in § 99.33(a) that the personally identifiable information (PII) from education records may be used only for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of students, and governing the redisclosure of PII from education records; and
4. Meets the criteria specified in the school or local educational agency's (LEA's) annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

Can parents be informed about students' violation of alcohol and controlled substance rules?

FERPA permits a college or university to let parents of students under the age of 21 know when the student has violated any law or policy concerning the use or possession of alcohol or a controlled substance.

Does a school have to use only employees to staff its law enforcement unit?

The manner in which a school establishes its law enforcement unit is outside the scope of FERPA. Accordingly, FERPA does not require a school to use only employees to staff its law enforcement unit. Local police officers and other law enforcement personnel employed by local or state authorities also may serve as the “law enforcement unit” of an educational agency or institution.

Does FERPA distinguish between School Resource Officers (SROs) and other local police officers who work in a school?

No. An SRO typically serves as an on-site law enforcement officer and as a liaison with the local police or sheriff’s department. An SRO also works with teachers and school administrators to promote school safety and to help ensure physical security. An SRO may be designated by the school as a “law enforcement unit” official under FERPA (§ 99.8). However, in order for a school to disclose personally identifiable information (PII) from education records to an SRO, the SRO must be considered a “school official” under FERPA in accordance with § 99.31(a)(1)(i)(B) concerning outsourcing. A school may only non-consensually disclose PII from students’ education records to its law enforcement unit if those individuals in the law enforcement unit meet the requirements set forth in FERPA’s school official exception or if some other FERPA exception to the general consent rule applies.

A school must have direct control over an SRO’s maintenance and use of education records in providing SRO services in order for the SRO to be considered a school official. Further, under the school official exception (as well as any FERPA exception to consent), SROs may only use the PII from education records for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of the students. See §§ 99.31(a)(1)(i)(B)(3) and 99.33(a)(2). In addition, SROs are subject to the redisclosure requirements of § 99.33(a). This means that an SRO who is serving as a “school official” under FERPA may not disclose PII from education records to others, including other employees of his or her local police department who are not acting as school officials, without consent unless the redisclosure fits within one of the exceptions to FERPA’s consent requirement.

Does FERPA permit educational agencies and institutions turn over videos to the police upon request or following an incident that may warrant police involvement?

If the law enforcement unit of an educational agency or institution creates and maintains videos for a law enforcement purpose, then the videos would not be education records and FERPA would not prohibit the law

enforcement unit of an educational agency or institution from disclosing the videos to the police. If the videos are education records, however, educational agencies and institutions may not turn over videos to the police upon request without having first either obtained the written consent of the parent or eligible student or determined that the conditions of an exception to the general requirement of consent have been met, such as if the disclosure is made in connection with a health or safety emergency (20 U.S.C. 1232g(b)(1)(I) and 34 CFR §§ 99.31(a)(10) and 99.36) or the law enforcement officer has presented the educational agency or institution with a judicial order or a lawfully issued subpoena (20 U.S.C. 1232g(b)(1)(J) and (b)(2) and 34 CFR § 99.31(a)(9)).

Does FERPA permit legal representatives of parents or eligible students to inspect and review videos with the parent or eligible student?

Yes. FERPA permits legal representatives of a parent or an eligible student to inspect and review videos with the parent or eligible student. While FERPA does not require educational agencies and institutions to allow parents or eligible students to bring their attorney or other legal representative with them when they exercise their right to inspect and review the student’s education records, nothing in FERPA prevents educational agencies and institutions from allowing parents or eligible students to bring their attorney or other legal representative with them when they exercise their right to inspect and review the student’s education records under FERPA.

Does FERPA permit the disclosure of personally identifiable information (PII) from education records to officials of a state’s juvenile justice system?

FERPA permits schools to non-consensually disclose PII from education records to state and local officials or other authorities if the disclosure is allowed by a state law adopted after November 19, 1974, and if the disclosure concerns the juvenile justice system and its ability to serve, prior to adjudication, the student whose records are disclosed. See §§ 99.31(a)(5) and 99.38. The officials and authorities to whom such information is disclosed must certify in writing to the school that the information will not be provided to any other party, except as provided for under state law without written consent.

Does FERPA permit the sharing of education records with outside law enforcement officials, mental health officials, and other experts in the community who serve on a school’s threat assessment team?

Yes. Under FERPA, a school or school district may disclose personally identifiable information (PII) from education records without consent to threat assessment team members who are not employees of the school or school district if they qualify as “school officials” with “legitimate educational interests.”

In establishing a threat assessment team, the school must follow the FERPA provisions in § 99.31(a)(1)(i)(B) concerning outsourcing this function if team members will be privy to PII from students' education records. While not a requirement of FERPA, one way to ensure that members of the team do not redisclose PII obtained from education records would be to have a written agreement with each of the team members specifying their requirements and responsibilities.

Schools are reminded that members of the threat assessment team may only use PII from education records for the purposes for which the disclosure was made, i.e., to conduct threat assessments, and must be subject to FERPA's redisclosure requirements in § 99.33(a). For example, a representative from the city police who serves on a school's threat assessment team generally could not give the police department any PII from a student's education records to which he or she was privy as a member of the team. However, if the threat assessment team determines that a health or safety emergency exists, then the police officer may disclose, on behalf of the school, PII from a student's education records to appropriate officials under the health or safety emergency exception under §§ 99.31(a)(10) and 99.36, as discussed below.

6. Does FERPA permit legal representatives of parents or eligible students to inspect and review videos with the parent or eligible student?

Yes. FERPA permits legal representatives of a parent or an eligible student to inspect and review videos with the parent or eligible student. While FERPA does not require educational agencies and institutions to allow parents or eligible students to bring their attorney or other legal representative with them when they exercise their right to inspect and review the student's education records, nothing in FERPA prevents educational agencies and institutions from allowing parents or eligible students to bring their attorney or other legal representative with them when they exercise their right to inspect and review the student's education records under FERPA.

7. Does FERPA permit educational agencies and institutions turn over videos to the police upon request or following an incident that may warrant police involvement?

If the law enforcement unit of an educational agency or institution creates and maintains videos for a law enforcement purpose, then the videos would not be education records and FERPA would not prohibit the law enforcement unit of an educational agency or institution from disclosing the videos to the police. If the videos are education records, however, educational agencies and institutions may not turn over videos to the police upon request without having first either obtained the written consent of the parent or eligible student or determined that

the conditions of an exception to the general requirement of consent have been met, such as if the disclosure is made in connection with a health or safety emergency (20 U.S.C. 1232g(b)(1)(I) and 34 CFR §§ 99.31(a)(10) and 99.36) or the law enforcement officer has presented the educational agency or institution with a judicial order or a lawfully issued subpoena (20 U.S.C. 1232g(b)(1)(J) and (b)(2) and 34 CFR § 99.31(a)(9)).

[1] The Individuals with Disabilities Education Act (IDEA) also contains privacy protections that apply to children with disabilities. 20 U.S.C. 1417(c) and 34 CFR §§ 300.610-300.626 and 34 CFR §§ 303.401-303.416. Under the IDEA, participating agencies must protect the personally identifiable information (PII), data, or records that are collected, maintained, or used by the participating agency. While the definition of “education record” under Part B of the IDEA cross-references the FERPA definition in 34 CFR § 99.3, the application of IDEA requirements may raise different questions.

[2] If circumstances effectively prevent the parent or eligible student from otherwise exercising their right to inspect and review the student’s education records (e.g., if the parent lives outside of commuting distance to the school), then the educational agency or institution would be required to either provide a copy of the records or to make other arrangements for the parent or eligible student to inspect and review the records. 34 CFR § 99.10(d)

How long does an educational agency or institution have to comply with a request to view records?

FERPA requires that educational agencies and institutions comply with a request by a parent or eligible student for access to education records within a reasonable period of time, but not more than 45 days after receipt of a request. Some States have laws that may require that parents and eligible students be granted access in a shorter time period. 34 CFR § 99.10(b).

What constitutes a crime of violence or a non-forcible sex offense?

The offenses that constitute a crime of violence or a non-forcible sex offense include arson, assault offenses, burglary, criminal homicide (manslaughter by negligence), criminal homicide (murder and nonnegligent manslaughter), destruction/damage/vandalism of property, kidnapping/abduction, robbery, forcible sex offenses, statutory rape, and incest.

What constitutes de-identified records and information?

Records and information are de-identified once all personally identifiable information has been removed, including, but not limited to, any information that, alone or in combination is linkable to a specific student that a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances,

to identify the student with reasonable certainty.

What constitutes the final results of a disciplinary proceeding?

"Final results" means a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution.

What does "articulable and significant threat" mean?

The phrase "articulable and significant threat" means that a school official is able to explain, based on all the information available at the time, what the significant threat is under § 99.36 when he or she makes and records the disclosure. For instance, if a school official believes that a student poses a significant threat, such as a threat of substantial bodily harm to any person, including to the student, then, under FERPA, the school official may disclose personally identifiable information (PII) from the student's education records without consent to any person whose knowledge of the information will assist in protecting a person from that threat. This is a flexible standard under which school administrators may bring appropriate resources to bear on the situation. If, based on the information available at the time of the determination, there is a rational basis for the educational agency's or institution's decisions about the nature of the emergency and the appropriate parties to whom the information should be disclosed, the Department will not substitute its judgment for that of the school in evaluating the circumstances and making its determination.

What is a "law enforcement unit record"?

Law enforcement unit records are records that are: (1) created by a law enforcement unit; (2) created for a law enforcement purpose; and (3) maintained by the law enforcement unit.(34 CFR § 99.8(b)(1)) Law enforcement unit records are not protected by FERPA because they are specifically excluded from the definition of "education records" and, thus, from the privacy protections afforded to parents and eligible students by FERPA.(34 CFR § 99.3, "Education Records") Therefore, investigative reports and other records created and maintained by law enforcement units that meet this definition are not considered "education records" subject to FERPA and may be released subject to school policy, State law, and other applicable laws.

When members of a school's law enforcement unit are school officials with access to students' education records (or to PII contained in those records), they may not re-disclose the records or PII they receive as school officials under FERPA without appropriate consent or except as permitted under FERPA (34 CFR § 99.33), such as if the re-disclosure is to other school officials, or under the health and safety emergency exception. It is, therefore,

advisable for law enforcement units to maintain law enforcement unit records separately from education records.

What is a “law enforcement unit”?

Under FERPA, “law enforcement unit” means any individual, office, department, division, or other component of a school, such as a unit of commissioned police officers or noncommissioned security guards, that is officially authorized or designated by that school or school district to (1) enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state, or federal law against any individual or organization other than the agency or institution itself; or (2) maintain the physical security and safety of the agency or institution. See 34 CFR § 99.8(a)(1).

Schools vary in who they authorize or designate to be their law enforcement unit, usually depending upon their size and resources. Some larger school districts have their own fully equipped police units, while others have smaller security offices. Other schools designate a vice principal or other school official to act as the law enforcement unit officer. And other schools may utilize local police officers and SROs as their law enforcement officials.

What is a threat assessment team?

A threat assessment team is a group of officials that convene to identify, evaluate, and address threats or potential threats to school security. Threat assessment teams review incidents of threatening behavior by students (current and former), parents, school employees, or other individuals. Some schools may need assistance in determining whether a health or safety emergency exists in order to know whether a disclosure may be made under FERPA’s health or safety emergency provision. Accordingly, members of a threat assessment team might include officials who can assist in making such decisions, such as school principals, counselors, school law enforcement unit officials, as well as outside medical and mental health professionals and local law enforcement officers.

What is an education program?

“Education program” is defined as any program 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. 34 CFR § 99.3

What is an education record?

"Education records" are records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for or on behalf of the agency or institution. These records include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial information (at the postsecondary level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail.

Source: 34 CFR § 99.2

What is FERPA?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student"). The FERPA statute is found at 20 U.S.C. § 1232g and the FERPA regulations are found at 34 CFR Part 99.

What is the Protection of Pupil Rights Amendment (PPRA)?

The Protection of Pupil Rights Amendment (PPRA) applies to the programs and activities of a state education agency (SEA), local education agency (LEA), or other recipient of funds under any program funded by the U.S. Department of Education. It governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following 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, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or student's parent; or

8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

PPRA also concerns marketing surveys and other areas of student privacy, parental access to information, and the administration of certain physical examinations to minors. The rights under PPRA transfer from the parents to a student who is 18 years old or an emancipated minor under state law.

What must a consent to disclose education records contain?

FERPA requires that a consent for disclosure of education records be signed and dated, specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom the disclosure may be made. 34 CFR § 99.30. As such, oral consent for disclosure of information from education records would not meet FERPA's consent requirements.

When can law enforcement unit officials serve as “school officials”?

In order for law enforcement unit officials to be considered school officials, they must meet the criteria for who constitutes a school official that are set forth in the school's or LEA's annual notification to parents and eligible students of their rights under FERPA. See § 99.7(a)(3)(iii). This notification must be distributed by a school or LEA every year through a forum that is likely to be viewed by parents and eligible students, such as a student handbook, school website, a direct letter to parents, or a combination of methods, and must inform parents and eligible students of their rights under FERPA. These officials may be considered “school officials” with “legitimate educational interests” and have access to students' education records, but only if they:

1. Performs an institutional service or function for which the agency or institution would otherwise use employees;
2. Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
3. Is subject to the requirements in § 99.33(a) that the personally identifiable information (PII) from education records may be used only for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of students, and governing the redisclosure of PII from education records; and
4. Meets the criteria specified in the school or local educational agency's (LEA's) annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

Exclusion for Law Enforcement Unit Records

The FERPA statute and regulations (20 U.S.C. 1232g(a)(4)(B)(ii) and 34 CFR §§ 99.3 and 99.8) exclude from the definition of education records those records created and maintained by a law enforcement unit of an educational agency or institution for a law enforcement purpose. Thus, if a law enforcement unit of an educational agency or institution creates and maintains the school's surveillance videos for a law enforcement purpose, then any such videos would not be considered to be education records. If the law enforcement unit provides a copy of the video to another component within the educational agency or institution (for example, to maintain the record in connection with a disciplinary action), then the copy of the video may become an education record of the student(s) involved if the video is not subject to any other exclusion from the definition of "education records" and the video is: (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.