

Terms for Parents Regarding Privacy Laws and Regulations

Prepared by the New York State Education Department's Privacy Office

Laws & Regulations:

FERPA: The Family Educational Rights Privacy Act. This is a federal law enacted in 1974 that applies to schools that receive federal funding, including all public schools, charter schools, and higher education institutions. FERPA provides parents with:

- The right to access their children's education records (until the student turns 18);
- The right to seek to have those records amended if necessary; and
- The right to have some control over the disclosure of their children's personally identifiable information (PII)¹.

Education Law § 2-d: Passed in 2014, New York enacted additional privacy requirements to protect PII from unauthorized disclosure and provides parents with additional rights regarding their children's PII, especially as it pertains to third party contractors or vendors used by educational agencies.

8 NYCRR Part 121: Effective January of 2020, these regulations further explain and interpret Education Law § 2-d.

IDEA: The Individuals with Disabilities Education Act. This federal law protects the rights of students with disabilities. IDEA Part B includes confidentiality provisions similar to, but broader than, FERPA, that protect the privacy of students with disabilities. The confidentiality provisions found in IDEA contain informed parental consent and notice provisions that are separate from FERPA. IDEA also prohibits the unauthorized disclosure and use of PII from the education records of students with disabilities, consistent with FERPA.

PPRA: The Protection of Pupil Rights Amendment. This is a federal law that governs the administration to students of surveys (including analysis or evaluation), that involve certain protected topics such as political affiliation, religious practices, income, sexual behavior, and mental or psychological difficulties, among others. The PPRA also requires schools to implement policies regarding the use of student information for marketing purposes, parents' access to information, and the administration of certain physical examinations to minors.

¹ <https://studentprivacy.ed.gov/faq/what-ferpa>

COPPA: The Children's Online Privacy Protection Rule, enforced by the Federal Trade Commission. This is a federal law that regulates websites, apps, and other online operators that collect data and personal information from children under the age of 13. The law requires that providers of online tools developed for children under 13 provide notice and obtain parental consent before collecting a child's information, have a "clear and comprehensive" privacy policy, and keep any information collected from children's online activities confidential and secure.

General Terms:

NYSED: The New York State Education Department (or the Department). NYSED is the State Educational Agency for New York.

Parent: A biological parent, legal guardian, or person in parental relation to the student (such as a foster or adoptive parent).

Student: Any person attending or seeking to enroll in an educational agency.

Eligible Student: A student who has reached 18 years of age or who attends a postsecondary institution at any age. FERPA rights pass from the parent to the student when they become identified as an eligible student.

Educational Agency: Defined in Education Law § 2-d as a school district, board of cooperative educational services (BOCES), school, or the New York State Education Department (NYSED or the Department).

School: Defined in Education Law § 2-d, as any:

- Public elementary, secondary, or charter school;
- Universal pre-kindergarten program authorized pursuant to Education Law § 3602-e;
- Publicly-funded (approved) provider of preschool special education;
- Publicly-funded pre-kindergarten program;
- School serving children in a special act school district as defined in Education Law § 4001;
- Publicly-funded (approved) private school for the education of students with disabilities;
- State-supported school subject to the provisions of Article 85 of the Education Law; and
- State-operated school subject to the provisions of Articles 87 or 88 of the Education Law (such as New York State Schools for the deaf and blind).

School Official: A school official is an employee of an educational agency, including but not limited to teachers, who the educational agency deems to have a legitimate educational interest (see below) in accessing a student's education record. School officials may also include third party contractors or vendors, consultants, volunteers, service providers, or other entities to which the educational agency outsourced services or functions for which the educational agency would otherwise use employees².

Third Party Contractor or Vendor: A person or entity, other than an educational agency, that receives student data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to the educational agency. Examples of services include data management and/or storage services, studies conducted on behalf of the educational agency, and the audit or evaluation of publicly-funded programs. To designate a third party contractor or vendor as a school official, the following criteria must be met:

- The third party contractor or vendor must perform an institutional service or function for which the educational agency would otherwise use employees;
- The third party contractor or vendor must meet the criteria set forth in the educational agency's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records;
- The third party contractor or vendor must be under the direct control of the school or district with respect to the use and maintenance of education records; and
- The third party contractor or vendor must use education records only for authorized purposes and may not re-disclose PII to other parties unless the third party contractor or vendor has specific authorization from the educational agency to do so and it is otherwise permitted by FERPA.³

Subcontractor: A contractor's (third party vendor's) non-employee agents, consultants, volunteers (including student interns), and/or any natural person or entity funded through an educational agency contract. Subcontractors provide services pursuant to an agreement with or at the direction of the contractor (third party vendor).

Parents Bill of Rights (PBOR): Education Law § 2-d and 8 NYCRR § 121.3 require educational agencies to adopt and publish a PBOR on their websites and to include their PBORs with every contract entered into with a third party contractor or vendor.

Supplemental Information: Education Law § 2-d and 8 NYCRR § 121.3 require each educational agency to include supplemental information for each contract entered into with a third party contractor or vendor. This information is part of the PBOR and must be published on the educational agency's website. The supplemental information must include:

² [Glossary | Protecting Student Privacy \(ed.gov\)](#)

³ Privacy Assistance Technical Center, [Responsibilities of Third Party Service Providers under FERPA](#), August 2015.

- The exclusive purposes for which the student or teacher/principal data will be used by the third party contractor or vendor;
- How the third party contractor or vendor will ensure subcontractors abide by the legal requirements for data privacy and protection;
- The duration of the contract and what will happen to the data provided to the third party upon expiration;
- How parents and eligible students can access their data and challenge its accuracy if necessary;
- Where the data will be stored and a description of the security protections in place; and
- How the data will be protected by encryption at rest and in transit.

RIC: Regional Information Center. RICs are a division of NYS Boards of Cooperative Educational Services (BOCES). The RICs provide educational and related information technology services to support BOCES and school districts' technology and data needs.

What is Protected:

PII: Personally Identifiable Information. This is a term used in FERPA and adopted in Education Law § 2-d and 8 NYCRR Part 121. In FERPA and Education Law § 2-d, PII refers to identifiable information that is maintained in a student's education record. The term includes any information that can directly identify a student (such as name, ID number, or date of birth), or information that could be used to indirectly identify a student by tracing the student's identity through linkages with other information.

Education Record/Student Record: An education record, sometimes referred to as a student record, is information that relates to a student and is maintained by an educational agency/school (definitions above), or any contractors, individuals, or organizations that have been provided access to that information to perform services for the educational agency.

Student Data: PII from student records of an educational agency and PII regarding a student provided to a third party contractor or vendor.

Terms Associated with the Sharing of Student Data:

Directory Information: FERPA defines directory information as information contained in a student's education record that would not generally be considered harmful or an invasion of personal privacy if disclosed. It is important to note that PII that is designated directory information remains PII. Directory is an exception to the requirement to seek parental consent before releasing PII in certain circumstances usually associated with school awards, honors, or programs. Typically, the PII released includes information such as name, grade, address, date of birth, and officially recognized activities and sports.

Educational agencies may disclose directory information to third parties without parental or eligible student consent if:

- The educational agency has given public notice of the types of information it has designated as “directory information”;
- The parent or eligible student is notified that they have the right to restrict the disclosure of such information; and
- The parent or eligible student is provided with the period of time within which they have to notify the educational agency in writing if they do not want any or all of those types of information designated as directory information⁴.

Legitimate Educational Interest: Although this term is not defined in FERPA, educational agencies are required to ensure that school officials only obtain access to educational records in which they have a legitimate educational interest. The educational agency’s annual notification of rights under FERPA must state the criteria it uses to determine who is a “school official” and what the educational agency considers to be a “legitimate educational interest.” Typically, a school official has a legitimate educational interest if they need to review an education record to fulfill their professional responsibility⁵. For example, a school employee browsing educational records with no educational interest in those students, may constitute a violation of FERPA.

Access: The ability to view or otherwise obtain—but not copy or save—student data from the on-site use of an information system or from a personal meeting.

Breach: The unauthorized access, acquisition, disclosure, or use of student data that is:

- Not permitted by New York State and federal laws, rules, and regulations, or in a manner that compromises the security or privacy of the student data; or
- Executed by or provided to a person not authorized to acquire, access, use, or receive the student data; or
- A breach of an educational agency’s, contractor’s, or subcontractor’s security that leads to the access to or alteration, destruction, loss, or disclosure of student data.

Commercial or Marketing Purpose: The disclosure, sale, or use of student data for the purpose of directly or indirectly receiving compensation, including its use for advertising purposes, or to develop, improve, or market products or services to students. Education Law § 2-d and 8 NYCRR §121.2 (a) prohibit the sale of PII or the use of PII for commercial or marketing purposes.

Disclose or Disclosure: The intentional or unintentional communication, release, or transfer of student data by any means, including oral, written, or electronic.

⁴ [Glossary | Protecting Student Privacy \(ed.gov\)](#) and 34 CFR § 99.37.

⁵ [A Parent Guide to the Family Educational Rights and Privacy Act \(FERPA\) | Protecting Student Privacy.](#)

DPA/DUA: A Data Protection Agreement or Data Use Agreement, sometimes referred to as an Education Law § 2-d Agreement. In accordance with Education Law § 2-d, educational agencies in New York State must enter into a DPA with third party contractors and vendors that receive student data. This protects student data, as well as certain teacher and principal data (such as protected Annual Professional Performance Review (APPR) data). A DPA is used to address federal (FERPA) and state (Education Law § 2-d) privacy law requirements.

Terms Used in Data Security:

Encrypt or Encryption: A method of PII protection using an algorithmic process to transform PII into an unusable, unreadable, or indecipherable form in which there is a low probability of assigning meaning to it without use of a confidential process or key. Education Law § 2-d and 8 NYCRR § 121.9(a)(7) require educational agencies and third party contractors and vendors to keep PII encrypted at rest and in transit.

NIST Cybersecurity Framework (CSF): A set of guidelines published by the US National Institute of Standards and Technology for mitigating an organization's cybersecurity risks, including minimizing the risk of data breaches and other forms of inadvertent disclosure. In accordance with 8 NYCRR § 121.5 (a), NYSED has adopted the NIST CSF as the standard for data security and privacy for educational agencies. Educational agencies must adopt and publish a data security and privacy policy that aligns with NIST CSF.