

SECTION II.

Parents' rights under federal law to protect their children's privacy

Knowing your rights under the complicated patchwork of federal laws, state statutes, and local policies governing the use and disclosure of a student's personal information can be challenging. In this section, we briefly describe the federal laws known as **FERPA** (Family Educational Rights and Privacy Act), **NSLA** (National School Lunch Act), **IDEA** (Individuals with Disabilities Education Act), **PPRA** (Protection of Pupil Rights Amendment), and **COPPA** (Children's Online Privacy Protection Act).

Federal laws currently provide a baseline for protecting student privacy. In recent years, members of Congress have introduced many bills attempting to strengthen student privacy protections, but as of April 2017, none have passed.

Many states have passed laws in recent years that enhance student privacy. Become familiar with the student privacy laws in your state and monitor them closely for changes. For updates on federal bills, and new state student privacy laws, visit www.parentcoalitionforstudentprivacy.org and subscribe to our newsletter.

Local school districts and state departments of education can and should do their part to develop student privacy policies and procedures that reach beyond protections offered in federal or state law. We offer suggestions in Section IV.



FERPA (Family Education Rights and Privacy Act)

Passed in 1974, the **Family Educational Rights and Privacy Act (FERPA)** (20 U.S.C. § 1232g; 34 CFR Part 99) is administered by the U.S. Department of Education and applies to federally-funded schools and universities. It bars the disclosure of personally identifiable information (PII) in student education records—like grades, test scores, disciplinary records, contact and family information, and class schedules—to third parties without parental consent, but with some loopholes described below. The law has been considerably weakened through regulatory changes in the past ten years, and was written before the emergence of computerized data systems and data-collecting learning software. Both of these factors allow student PII to be easily shared with others outside of the school.

FERPA contains multiple “exceptions,” or certain circumstances under which student PII may be disclosed to parties outside of the school or district without parental consent. The most widely used is the “school official” exception, which allows student PII to be shared with vendors, consultants, contractors, and volunteers with “legitimate educational interests” who are performing “institutional services or functions” for the school. Common examples include online instruction and assessment providers, bus or cafeteria service companies, vendors that provide student information systems, and parents or other classroom volunteers. The “audit and evaluation” exception also allows disclosure without parental consent to “authorized representatives” of “Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs.” This exemption allows for the development of statewide longitudinal data systems (SLDS) where student data may be shared among various state agencies, including health and human services, corrections,

Per the U.S. Department of Education, “disclosure” means “to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.”

The U.S. Department of Education's definition of “Personally Identifiable Information (PII)” includes, but is not limited to: a student's name; the name of the student's parent or relatives; physical address; personal identifier such as a social security number or student ID number, or biometric record; other indirect identifiers such as date of birth, place of birth, mother's maiden name; or other information that, alone or in combination, is linked or linkable to a student, allowing others to identify the student.

public safety, and labor and workforce.¹ A third broad exception allows nonconsensual disclosures of student PII to organizations or individuals for research purposes or “studies.” These studies must be limited to the purpose of “developing, validating, or administering predictive tests; administering student aid programs; or improving instruction.” For more on FERPA, visit http://bit.ly/SPTK_FERPA²

What rights do parents have under FERPA?

1. PARENTS HAVE THE RIGHT to access the information in their child’s education records held by the state education department, the local district, and/or the school. The state, district, and school cannot charge parents a fee to search for or to retrieve education records, but they may apply a reasonable fee to provide copies of education records, and must provide them in a readable format within 45 days of receiving a request from parents. Note that some states have laws that require production of records within a shorter period of time. Parents may need to complete a specific form found on the state, district, or school website to access education records, or they may need to call the state, district, or school office for more information. If a form is not provided, see Appendix A for a sample.

2. PARENTS CAN REQUEST to correct information in their child’s records if they believe it is “inaccurate, misleading, or in violation of the privacy rights of the student.” If the school, district, or state refuses to correct the record, parents have the right to a formal hearing. If after the hearing, the school, district, or state still refuses to correct the record, parents have the right to amend the record by placing in it a statement setting forth their view of the contested information.

3. PARENTS HAVE THE RIGHT to be informed of the school and/or district’s criteria for determining who constitutes a “school official,” or other third party with a “legitimate educational interest,” to whom the school and/or district may disclose PII without parental notification or consent.

4. PARENTS HAVE THE RIGHT to opt out of “directory information” about their child being offered to third parties by the school or district. Directory information generally includes a more limited set of personal information that is not considered highly sensitive. Note that opting out of “directory information” does not prevent schools or districts from disclosing personal student data, often of an even more sensitive nature, to “school officials,” “authorized representatives,” or “organizations” under the exceptions noted above. For information on how to opt out of directory information, see Appendix B.

5. PARENTS HAVE THE RIGHT to opt out of having their child’s “contact information” provided to military recruiters. To do so, parents must submit a written request to the school. For a sample form, see Appendix C.

6. SCHOOLS OR DISTRICTS MUST INFORM PARENTS annually of their FERPA rights. The actual means of notification (e.g., email, letter, PTA bulletin, student handbook, or website) is left to the discretion of each school.

7. A STUDENT’S PERSONAL INFORMATION CANNOT BE INDISCRIMINATELY SHARED even within the school setting. Instead, disclosure should be limited to those teachers and other school employees directly responsible for the student’s education

Per the U.S. Department of Education, “education records” are records that directly relate to a student and are maintained by the school or a party acting for the school.

Education 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.”

Education records also include a record of any student personal information requested by or disclosed to:

- 1. Organizations conducting “studies” for or on behalf of the school;*
- 2. Federal, State or local educational authorities; and*
- 3. Unauthorized third parties including any instances of security breaches or hacks.³*

Schools often designate companies that host online programs or classroom apps as “school officials.”

“Directory information” includes but is not limited to the student’s name, address, telephone, email address, photo, date and place of birth, major field of study, grade level, enrollment status, date of graduation, participation in activities and sports, weight and height, degrees, honors and awards received, and the most recent school attended.

Directory information does not include a student’s social security number, or a student identification (ID) number if that number alone is enough to identify the student.

or services, who “need to know” students' information in order to be able to fulfill their professional responsibilities.

NOTE: The rights of parents under FERPA transfer to a student who reaches 18 years old or attends a postsecondary institution (e.g., college or university), or becomes an emancipated minor under state law.

If you believe that you or your child's rights under FERPA have been violated, notify your school, district Superintendent, and/or school board. If they refuse to take appropriate action, you may contact your local chapter of the American Civil Liberties Union (ACLU) to request help, or file a complaint with the U.S. Department of Education's Family Policy Compliance Office. A FERPA complaint must be in writing and contain specific instances giving reasonable cause to believe that a privacy violation has occurred; filed by the parent of a student at an elementary or secondary school under the age of 18 or an eligible student; and filed within 180 days of the alleged violation or within 180 days after the complainant knew or should have known about the violation. For more information or to file a complaint, visit <http://familypolicy.ed.gov/complaint-form>

Per the U.S. Department of Education, “[a]n ‘eligible student’ means a student who has reached the age of 18 or who is attending a postsecondary institution at any age.”



IDEA (Individuals with Disabilities Education Act)

The **Individuals with Disabilities Education Act (IDEA)** (Public Law No. 94-142) is designed to protect the rights of children with disabilities, including students with Individualized Education Programs or IEPs, to be provided with a free and appropriate education. The law is administered by the U.S. Department of Education. Children with disabilities have additional privacy rights under IDEA. For example:

To learn more about some of the additional privacy rights of children with disabilities, see http://bit.ly/SPTK_IDEA_FERPA

1. PARENTAL CONSENT IS REQUIRED before the PII of a child with disabilities can be released to participating agency officials providing or paying for secondary transition services which are designed to facilitate a student's movement from school to post-school activities.

2. PARENTAL CONSENT MUST BE OBTAINED if a public school child enrolls in a private school in a different district from the parents' residence before the child's PII can be disclosed to the district in which the private school is located.

3. PARENTS MUST GIVE PRIOR WRITTEN CONSENT each year before the district can disclose a child's special education service records to the State Medicaid agency for the purposes of claiming reimbursement from the federal government. Parents can withdraw their consent for this disclosure at any time, and the district must provide the child with mandated services whether or not consent is given.

NOTE: For more information, contact your school district, local special education director, or state special education director or visit the IDEA website at http://bit.ly/SPTK_IDEA⁵

If you believe that you or your child's privacy rights under IDEA have been violated, notify your school, district Superintendent, and/or school board. If they refuse to take appropriate action, you should contact your state education department. You may also contact your local chapter of the American Civil Liberties Union (ACLU) to request help, or file a complaint

with the U.S. Department of Education's Family Policy Compliance Office. For more information or to file a complaint, visit <http://familypolicy.ed.gov/complaint-form>



NSLA (National School Lunch Act)

The **National School Lunch Act (NSLA)** of 1946 (79 P.L. 396, 60 Stat. 230) is administered by the U.S. Department of Agriculture (USDA). It applies to all schools receiving federal education funds, and protects confidential eligibility and income information collected by schools to determine whether a child may receive free or reduced-priced lunch (FRL) or free milk under the National School Lunch Program. For more on NSLA, visit http://bit.ly/SPTK_NSLA ⁶

What rights do parents have under NSLA?

1. PARENTS MUST PROVIDE prior consent before the disclosure of FRL eligibility information to: 1) local education and health programs; and 2) State and Federal health programs other than Medicaid or the State Children's Health Insurance Program (SCHIP). Parents must also be given prior notice and the opportunity to decline to have eligibility information disclosed to Medicaid or SCHIP.

2. A STUDENT'S ELIGIBILITY information cannot be made available to all school employees; rather, disclosure should be limited to the teachers, tutors, or other school officials directly responsible for a child's education and care. Additionally, a school's student information system (SIS) and/or computer screens or rosters used in the cafeteria must mask or otherwise de-identify a student's eligibility status to prevent others from accessing or viewing it — especially other students.

3. "OVERT IDENTIFICATION" of FRL students is prohibited by NSLA, including:

- Publicizing or announcing eligible families' or children's names;
- Having separate dining areas, service times, or serving lines; or
- The use of meal cards, tickets, tokens, or other methods to obtain reimbursable meals (e.g., coded or colored) in a manner that would overtly identify FRL eligible children.

4. SCHOOLS MAY DISCLOSE aggregate information that does not identify individuals (e.g., a report on the number of children eligible for FRL in a school district) without written consent of the students' parents.

NOTE: Confidential eligibility information collected from children and families applying to other USDA Child Nutrition Programs is also protected from unauthorized disclosure, including the School Breakfast Program (SBP),⁸ Special Milk Program (SMP),⁹ the Summer Food Service Program,¹⁰ and the Child and Adult Care Food Program.¹¹

If you believe that your child's rights under NSLA have been violated, notify your school, district Superintendent and/or school board. If they refuse to take appropriate action, you may contact your local chapter of the American Civil Liberties Union (ACLU) to request help, or file a complaint with the USDA. For more information and to access the form, visit http://www.ascr.usda.gov/complaint_filing_cust.html.

"Eligibility information" generally includes but is not limited to personal information about household size and family income; versus "eligibility status" which designates whether a child is eligible or not eligible for FRL.

For example, if a local non-profit organization or recreation program would like to offer free textbooks or summer athletic classes based on a child's FRL status, parents must first consent to allow their school to disclose their children's eligibility information.

A Kansas school district reportedly allowed unauthorized employees to illegally view the eligibility status of students via the district's student information system. Teachers later publicly posted this information on "data walls" in apparent violation of NSLA and FERPA.⁷



PPRA (Protection of Pupil Rights Amendment)

The **Protection of Pupil Rights Amendment (PPRA)** (20 U.S.C. § 1232h; 34 CFR Part 98) is administered by the U.S. Department of Education and was enacted in 1978. PPRA applies to the administration of student surveys, analyses, or evaluations that deal with highly sensitive issues. It also concerns marketing surveys, parental access to instructional materials, and certain physical examinations of students by schools. For more information about PPRA, visit <http://familypolicy.ed.gov/ppra>

What rights do parents have under the PPRA?

1. PARENTAL CONSENT IS REQUIRED before children are required to participate in any survey, analysis or evaluation funded by the U.S. Department of Education that concerns the following sensitive areas:

- Political affiliations or beliefs of the student or the student's parent;
- Mental and psychological problems of the student or the student's family;
- Religious affiliations and beliefs;
- Sex behavior and attitudes;
- Illegal, anti-social, self-incriminating, and demeaning behavior;
- Critical appraisals of close family members;
- Legally recognized privileged relationships, such as those of lawyers, physicians, and ministers; or
- Income (other than that required by law to determine eligibility for a program).

2. IF A SURVEY, analysis, or evaluation administered to students that deals with issues listed above is not federally-funded, written consent is not required — but parents must be notified in advance and have the right to opt their children out of participating.

3. UPON REQUEST, parents may inspect “any instructional material used as part of the educational curriculum for the student.” Some schools use “character enrichment” curricula which may violate student and family privacy. Under PPRA, parents are given the specific right to review these materials.

4. PPRA REQUIRES schools to directly notify parents, at least annually at the beginning of the school year, when the following activities may occur, and grants parents the right to opt their children out of:

- The administration of any survey containing one or more sensitive items listed above;
- Any non-emergency, invasive physical exam or screening administered by the school unnecessary to protect the immediate health and safety of a student, except for hearing, vision, or scoliosis screenings; and
- Activities involving collection, disclosure, or use of personal information obtained from students for marketing or to sell or otherwise distribute the information to others.

NOTE: The rights of parents under PPRA transfer to a student who reaches 18 years old or becomes an emancipated minor under State law.

PPRA allows parents to inspect: “All instructional materials, including teacher’s manuals, films, tapes, or other supplementary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program.”

Instructional materials include, “instructional content that is provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.”

Your state may allow or require your school to perform a physical examination or screening without parent notification or consent. To become familiar with your state’s applicable law, be sure to ask your principal or counselor.

If you believe that you or your child's rights under PPRA have been violated, notify your school, district Superintendent and/or school board. If they refuse to take appropriate action, you may contact your local chapter of the American Civil Liberties Union (ACLU) to request help, or file a complaint similar to FERPA with the U.S. Department of Education's Family Policy Compliance Office at:

Email: FERPA.customer@ed.gov
Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520
Phone: 1-800-USA-LEARN (1-800-872-5327)
Fax: 202-260-9001



COPPA (Children's Online Privacy Protection Act)

Congress enacted the **Children's Online Privacy Protection Act (COPPA)** (15 U.S.C. 6501-6505) in 1998. It is enforced by the Federal Trade Commission (FTC).

The primary goal of COPPA is to allow parents to control what personal information is collected online from their children under age 13. The law applies to any vendors or operators of child-directed websites, online services including web-based testing, and programs or applications ("apps") that collect, use, or disclose children's personal information, whether at home or at school. Personal information can include a child's name, email, phone number, screen name, geolocation, photo, voice recording, or other persistent unique identifier. But it's important to note that COPPA only applies to personal information collected online directly from children; it does not cover information collected by adults that pertains to children. For more on COPPA, visit http://bit.ly/SPTK_COPPA¹²

What rights do parents have under COPPA?

If under-13 children use a website or app that fits the description above, the vendor or operator must obtain parental consent and provide clear and prominent notice of its use and disclosure practices on its website, including the following:

1. **THE NAME**, address, telephone number, and email address of all other vendors or operators collecting or maintaining personal information through the site or service;
2. **A DESCRIPTION** of what personal information the vendor or operator is collecting, including whether the website or program enables children to make their personal information publicly available, how the vendor or operator uses such information, and the operator's disclosure practices for such information; and
3. **NOTICE** that upon request, parents can review and/or have deleted the child's personal information and refuse to permit its further collection or use, and a description of the procedures for doing so.

Per the FTC, whether a website or online service is "directed to children" is determined by "subject matter of the site or service, its visual content, the use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the website or online service, or whether advertising promoting or appearing on the website or online service is directed to children."

Per the FTC, COPPA "also applies to websites or online services that have actual knowledge that they are collecting personal information directly from users of ANOTHER website or online service directed to children."

Notice must be located on the "home or landing page or screen of its Web site or online service, and, at each area of the Web site or online service where personal information is collected from children."

What rights do parents have under COPPA in schools?

1. SCHOOLS CAN CONSENT on behalf of parents to create accounts and enter students' personal information into online programs that children may then use in school or at home — whether for instruction, testing, or other purposes — but only where the vendor or operator of the online program collects personal information for the use and sole benefit of the school, and for no other commercial purpose. If the student's personal information is used for targeted ads, for example, or building user profiles for commercial purposes, the school CANNOT consent on behalf of the parent.

If a child-directed online program or website intends to use or disclose any personal information provided by under 13 students for its own or other commercial purposes, the school may not provide consent on behalf of parents.

2. WHEN SCHOOLS CONSENT on behalf of parents, COPPA transfers parental rights to the school. In this case, 1) a vendor or operator must provide the school — not parents — the clear and prominent notice of its use and disclosure practices on its website or elsewhere, as described above; and 2) schools — not parents — have the right to request that the vendor or operator delete students' personal information and cease further collection or use.

Before a school may consent to its students using online programs that collect personal information, the vendor of the website must provide the school with full notice of its how it collects, uses, and discloses student information.

If you believe a vendor or operator is in violation of COPPA, first notify your school, or district Superintendent. You may also contact your local chapter of the American Civil Liberties Union (ACLU) to request help; or contact the FTC to ask questions or file a complaint at <https://www.ftccomplaintassistant.gov>, email CoppaHotLine@ftc.gov or call toll free at (877) FTC-HELP.

Disclaimer: While the goal of the Parent Coalition for Student Privacy and the Campaign for a Commercial-Free Childhood is to provide valuable resources to help you protect student privacy, our suggestions should not be used in place of legal advice from an attorney. For questions on how federal, state, and local laws and policies may apply to your situation, you may wish to seek the advice of a licensed attorney by contacting your local bar association's referral service.

Questions? Visit www.studentprivacymatters.org/toolkit for more information, including free webinars on how to use the resources in this toolkit.

REFERENCES

1. <https://nces.ed.gov/programs/slids/>
 2. <https://ed.gov/policy/gen/guid/fpco/ferpa/index.html>
 3. http://ptac.ed.gov/sites/default/files/checklist_data_breach_response_092012.pdf
 4. <https://www2.ed.gov/policy/gen/guid/ptac/pdf/idea-ferpa.pdf>
 5. <https://www2.ed.gov/about/offices/list/osep/osep-idea.html>
 6. <https://www.fns.usda.gov/nslp/national-school-lunch-program-nslp>
 7. <http://cjonline.com/news-education-local-state/2014-08-19/usd-501-admits-student-privacy-violations-says-breach>
 8. <https://www.fns.usda.gov/sbp/school-breakfast-program-sbp>
 9. <https://www.fns.usda.gov/smp/special-milk-program>
 10. <https://www.fns.usda.gov/sfsp/summer-food-service-program>
 11. <https://www.fns.usda.gov/cacfp/child-and-adult-care-food-program>
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