New for 2018!
Privacy & Security Guidance from the U.S. Department of Education

Stats DC

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The U.S. Department of Education's Role in Protecting Student Privacy

- Administering and enforcing federal laws governing the privacy of student information
  - Family Educational Rights and Privacy Act (FERPA)
- Raising awareness of privacy challenges
- Providing technical assistance to schools, districts, and states
- Promoting privacy & security best practices

Updates from 2017

- Guidance on the Use of Financial Aid Information for Program Evaluation and Research
- Integrated Data Systems and Student Privacy
- Letter to Agora Cyber Charter Schools

and more recently…

Technical Assistance on Student Privacy for State and Local Educational Agencies When Administering College Admissions Examinations

Issued in May 2018

https://studentprivacy.ed.gov/admissions-exams

Background

Then…

- Students/parents independently registered with testing companies
- Students/parents paid the companies
- No FERPA, IDEA, or PPRA implications

Now…

- Some SEAs and LEAs administer and pay for all students to take college admissions exams to promote college access efforts
- Some States administer college admission exams to meet ESEA requirements for assessment in reading/language arts and mathematics
- Implicates FERPA, IDEA, PPRA

In the Document

- Discuss potential legal issues under FERPA, IDEA, and PPRA
- Advise SEAs and LEAs about how to remain compliant with the statutes when contracting with testing companies and administering the tests and pretest surveys
- Provide best practice recommendations to encourage transparency and parental involvement

FERPA and IDEA

- Education records are those records maintained by an educational agency or institution and directly related to a student
- Both statutes prohibit the unauthorized disclosure and use of PII from education records
- Both statutes require prior written consent from parents or eligible students before disclosing PII from education records, unless one of FERPA's exception applies
- If a disclosure of PII from a student's education record is made under one of FERPA's exceptions to consent, then any redisclosure would generally require consent under both statutes

PPRA and Third Party Surveys

- LEAs administering third party surveys are required to develop and adopt policies, in consultation with parents, regarding:
  - The right of parents to inspect the survey before it is administered
  - The procedure for granting an inspection request
- If the third party survey asks students to reveal information from a PPRA-protected category, the LEA must also provide parents with:
  - Specific or approximate dates of the survey
  - The opportunity to opt-out of having their children participate
- Reasonable notice of LEA policies on third party surveys must be provided directly to parents, at least annually or if these policies have changed

Recommendations for SEAs and LEAs when Contracting with Testing Companies

- Ensure that the contract with the testing companies specifies the FERPA exception under which PII from students' education records is to be disclosed to the testing company;
- Include specific prohibitions in the contract governing unauthorized use of PII and re-disclosure of PII from education records (including biographic or demographic information provided by the SEA or LEA and students' test scores or test score ranges) without written consent of the parent or eligible student;
- Include specific requirements on how the testing companies should safeguard student PII; and
- Include any additional requirements that may be mandated by your State.

Recommendations for LEAs Relating to the Administration of the Pre-Test Surveys

- Develop PPRA required policies in consultation with parents regarding the administration or distribution of surveys, notification of survey administration or distribution to parents
- Make pre-test survey questions available for review by parents and students, and available on the school or district's website; a best practice would be to post them on the school or district's website
- Be explicit with faculty, staff, parents, and students about the voluntary nature of the pre-test survey
- If the pre-test survey contains PPRA-protected topics, provide parents with notice of the survey administration date and their right to opt out of taking the pre-test survey as required under PPRA
- If PII from education records (including test scores or test score ranges) will be included in the information provided by the testing companies to third parties for college recruiting purposes, obtain prior written consent as required under FERPA and IDEA from the parent or eligible student for the disclosure

Student Privacy and Ed Tech Workshop

- Joint workshop between the Department of Education and Federal Trade Commission on December 1, 2017
- Navigating the intersectionality between FERPA and COPPA
- Issues under consideration:
  - Under what circumstances is it appropriate for a school to provide consent under COPPA?
  - How should requirements concerning notice, deletion, and retention of records be handled?
  - What are the appropriate limits on the collection and use of PII collected from students by Ed Tech Vendors?
  - How do schools maintain "direct control" over Ed Tech providers when using the 'School Official' exception?
  - Level of FERPA/COPPA awareness and understanding by Ed Tech Providers?

FAQs on Photos and Videos under FERPA

Guidance was released April of 2018 and covers:

- ✓ When photos/videos are considered education records
- ✓ Clarifies who can inspect and review records
- ✓ When redaction/segregation is necessary for records of multiple students
- ✓ Law Enforcement provisions

So when are videos and photos education records?

a) directly related to a student; and

b) maintained by an educational agency or institution or by a party acting for the agency or institution

What do we mean by directly related?

Directly related is context specific considering the following factors…

- Used for disciplinary action or other official purposes
- Depictions of activities that:
  1. Resulted in disciplinary action
  2. Shows a violation of the law
  3. Shows an occurrence of student injury, attack, illness or health emergency
- Intent to make a specific student the subject
- Audio or visual contains content that includes PII from a student's education record.

When Videos and Photos are NOT Education Records

- Students in the background
- Photos or videos without a focus on a specific student
- Records maintained by a law enforcement unit of an educational agency or institution for a law enforcement purpose
  - however, if unit provides a copy to the school, that copy may become an education record

Videos and Photos that are Records of Multiple Students

- A video can be the education record of multiple student (e.g. fights)
- In such an instance, educational agencies and institutions are required to allow a parent or eligible students, upon request, the opportunity to inspect and review the record without the consent of the other parent/ eligible student.
  a) Prior to providing access institutions are required to redact or segregate when reasonable if it does not destroy the meaning of the video
  b) Schools cannot charge for the redaction or segregation
  c) Copies are allowed but not required

Legal Representatives

- Nothing in FERPA prohibits parents and eligible students are permitted from bringing their attorney or legal representative with them when they exercise their right to inspect and review their education records.

Disclosures to Law Enforcement

Educational agencies and institutions may disclose videos that directly relate to a student to law enforcement under the following circumstances:

- If the video is a law enforcement unit record;
- If the school obtained written consent from the parent or eligible student; or
- If the disclosures is made under an exception to the general consent requirement, including:
  - If the disclosure is made in connection with a health or safety emergency
  - When a law enforcement officer has presented a judicial order or a lawfully issued subpoena for the record

United States Department of Education, Privacy Technical Assistance Center

Resources and Contact Information

- https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa
- Technical Assistance on Student Privacy for State and Local Educational Agencies When Administering College Admissions Examinations
- Best Practice Recommendations for SEA Websites

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