

Family Educational Rights and Privacy Act

Overview:

This document provides a brief summary of the Family Educational Rights and Privacy Act (FERPA; 20 U.S.C. § 1232g; 34 CFR Part 99) and provides guidance for researchers and IRB members on accessing educational records.

The Family Educational Rights and Privacy Act (FERPA) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):

Conditions for Which Student Records Can Be Disclosed without Consent:

- School officials with legitimate educational interest
- Other schools to which a student is transferring
- Specified officials for audit or evaluation purposes
- Appropriate parties in connection with financial aid to a student
- Organizations conducting certain studies for or on behalf of the school
- Accrediting organizations
- To comply with a judicial order or lawfully issued subpoena
- Appropriate officials in cases of health and safety emergencies
- State and local authorities, within a juvenile justice system, pursuant to specific state law

- The Researcher will receive a completely de-identified data set from the educational institution

Schools may disclose, without consent, “directory” information such as a student’s name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

Description:

It is important that researchers follow FERPA and human subject protection regulations when accessing educational records. Generally FERPA and IRB requirements are met if a student or parent signs a consent form to participate in a study and authorizes release of his/her educational records for research purposes. In instances where a researcher requests to waive the informed consent process, the following conditions must be met:

1. Generally, FERPA allows a researcher to access and release information in an educational record for any of the items listed in the section above entitled: “Conditions for Which Student Records Can Be Disclosed without Consent”. Please note that the University of Pittsburgh IRB will forward any requests to access information without a consent form to Pitt’s legal counsel. Legal counsel will make the final determination if the study meets the criteria to release educational information without a signed consent form.
2. Researchers must have permission from the University of Pittsburgh Registrar to access educational records at the University of Pittsburgh.
3. If researchers propose to access student records at institutions other than Pitt, researchers should contact each institution and follow that institution’s FERPA policy when accessing directory information. Each educational institution designates what information is considered directory information. The investigator should describe the procedures they will undertake to be compliant with the external institution’s FERPA policies within their Pitt IRB protocol.
4. In accordance with FERPA, an educational institution has the authority to determine what information may be accessed from an educational record. If an institution denies an investigator access to information in an educational record, the IRB cannot overrule the decision.
5. According to the IRB federal regulations, for non-exempt studies, an IRB cannot waive informed consent or documentation of informed consent unless specific conditions are met. Consequently, researchers should include their rationale for waiver requests in the IRB application, even in circumstances where FERPA allows access without prior consent.
6. FERPA and the Health Insurance Portability and Accountability Act (HIPAA) regulations provide conflicting requirements for medical records. In some situations, FERPA is more restrictive than HIPAA. Researchers should contact each educational institution and follow that institution’s applicable policies when accessing student medical records.

Additional Information:

Family Educational Rights and Privacy Act (FERPA) regulations

<http://www2.ed.gov/policy/gen/reg/ferpa/index.html>

Office of the University Registrar: <http://www.registrar.pitt.edu/ferpa.html>

For additional information, you may call 1-800-USA-LEARN (1-800-872-5327) (voice). Individuals who use TDD may call 1-800-437-0833.

Or you may contact us at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520