

FERPA Loopholes

Link to Federal Regulations

<http://www2.ed.gov/policy/gen/guid/fpco/pdf/2012-final-regs.pdf>

Link to the Obama Executive Order to change FERPA: [https://](https://www.federalregister.gov/documents/2011/04/08/2011-8205/family-educational-rights-and-privacy#h-22)

www.federalregister.gov/documents/2011/04/08/2011-8205/family-educational-rights-and-privacy#h-22

(Authority: 20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5))

"Biometric record," as used in the definition of "personally identifiable information," means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples **include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.**

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally Identifiable Information"

The term includes, but is not limited to--

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or **biometric record;**
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates

Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

§ 99.31 Under what conditions is **prior consent not required** to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure one or more of the following conditions:

(1)(i)(A) **The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.**

(B) A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph 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; and

(3) Is subject to the requirements of

§ 99.33(a) governing the use and re-disclosure of personally identifiable information from education records.

(ii) An educational agency or institution must use **reasonable methods** to ensure that school officials obtain access to only those education records in which they have legitimate educational interests.

An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it

remains in compliance with the legitimate educational interest requirement in paragraph (a)(1)(i) (A) of this section.

(ii) Paragraph (a)(5)(I) of this section **does not prevent a State** from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) **The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:**

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) Nothing in the Act or this part prevents a State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section from entering into agreements with organizations conducting studies under paragraph (a)(6)(i) of this section and redisclosing personally identifiable information from education records on behalf of educational agencies and institutions that disclosed the information to the State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section in accordance with the requirements of § 99.33(b).

(iii) An educational agency or institution may disclose personally identifiable information under paragraph (a)(6)(i) of this section, and a State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section **may re-disclose personally identifiable information** under paragraph (a)(6)(i) and (a)(6)(ii) of this section, only if –

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization that have legitimate interests in the information;

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted; and

(C) The educational agency or institution or the State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section **enters into a written agreement with the organization that –**

(1) Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;

(2) Requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the **written agreement;**

(3) Requires the organization to conduct the study in a manner that does not permit personal identification of parents and students, as defined in this part, by anyone other than representatives of the organization with legitimate interests; and

(4) Requires the organization to destroy all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be destroyed.

(iv) An educational agency or institution or State or local educational authority or Federal agency headed by an official listed in paragraph (a)(3) of this section is not required to initiate a study or agree with or endorse the conclusions or results of the study.

(v) For the purposes of paragraph (a)(6) of this section, the term "**organization**" **includes, but is not limited to, Federal, State, and local agencies, and independent organizations.**

Document: Whitehouse "Unlocking" Data 2012

<https://drive.google.com/open?id=0B6zikOSdV-TAekpmbW9ZeiRvX2M>