



DATA SHARING FOR RESEARCH PURPOSES

Overlapping federal and state laws address school districts' responsibilities to protect the confidentiality of student data. This memo provides an overview of the data privacy laws that apply when districts share student information for research purposes.

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

FERPA is a federal law that governs access to and disclosure of student education records. 20 U.S.C. 1232g. FERPA applies to all local educational agencies or "LEAs" (e.g., school districts and BOCES) that receive U.S. Department of Education funds. FERPA generally prohibits LEAs from disclosing students' personally identifiable information without the parents' or eligible student's (i.e. 18 years or older) prior written consent, subject to certain limited exceptions. FERPA defines "student personally identifiable information" (PII) as to include information such as the student's social security number, date of birth, mother's maiden name and "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." 34 C.F.R. 99.3.¹

One of FERPA's exceptions to prior written consent is the studies exception. 34 C.F.R. 99.31(6). Under this exception, the LEA does not need to obtain prior parental consent before disclosing PII from student education records to a third party that is conducting a study "for, or on behalf of" the LEA in order to: (1) develop, validate or administer predictive tests; (2) administer student aid programs; or (3) improve instruction. FERPA does not define what it means for a study to be conducted "for, or on behalf of" the LEA, but does state that the LEA is not required to initiate the study or agree with or endorse the conclusions or results of the study for this exception to apply.

Under the studies exception, PII may be disclosed without prior parental consent if the following conditions are met:

- 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;
- The information is destroyed when no longer needed for the purposes for which the study was conducted; and
- The LEA 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;

¹FERPA does not require prior written consent for the disclosure of *non*-personally identifiable information. For more information, please see [Data De-identification: An Overview of Basic Terms](#), from the U.S. Department of Education's Privacy Technical Assistance Center, and [Student Data and De-Identification: Understanding De-identification of Education Records and Related Requirements of FERPA](#), from the Future of Privacy Forum.



- (2) Requires the organization to use PII from student 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 or return all PII to the LEA 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 returned or destroyed.

For more information about FERPA, visit the U.S. Department of Education’s website at: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

COLORADO’S “STUDENT DATA TRANSPARENCY AND SECURITY ACT”

HB 16-1423, titled the “Student Data Transparency and Security Act,” C.R.S. 22-16-101 *et seq.* (the Act), imposes numerous obligations regarding student data privacy on school districts and BOCES² (referred to collectively as “local education providers” or LEPs). The Act requires the LEP to include specific terms in any contract between the LEP and a “school service contract provider.” The Act also contains specific posting requirements for the LEP regarding “school service contract providers” and “on-demand school service providers.”

The Act defines a “school service” as an “Internet website, online service, online application or mobile application” that is “designed and marketed primarily for use in a preschool, elementary school, or secondary school” and is used at the direction of teachers or other employees of the LEP. C.R.S. 22-16-103(7). A “school service contract provider” is an entity, other than a public education entity or institution of higher education, that enters into a formal, negotiated contract with the LEP to provide a “school service.” C.R.S. 22-16-103(8). A “school service on-demand provider” is an entity, other than a public education entity, that provides a “school service” on occasion to the LEP, subject to the agreement by the LEP to “standard, non-negotiable terms and conditions of service.” C.R.S. 22-16-103(9).

In the context of research studies, therefore, the Act *only* applies to situations where research is being conducted by a “school service contract provider” or “school service on-demand provider.” As a general rule, most research companies that enter into a contract or memorandum of understanding with a district or BOCES pursuant to FERPA’s requirements will not fall within the Act because they aren’t providing a “school service” as defined by the Act.

Note: For a more comprehensive overview of the Act’s requirements, please see CASB’s memo, *Colorado’s Student Data Transparency and Security Act*.

² Only those BOCES that operate a “public school” are subject to the Act’s requirements. C.R.S. 22-16-103(4).



PROTECTION OF PUPIL RIGHTS AMENDMENT (PPRA) AND COLORADO'S PARENTAL CONSENT FOR SURVEYS LAW

The PPRA is a federal law applicable to the programs and activities of a local education agency (LEA) or other recipient of U.S. Department of Education funds. 20 U.S.C. 1232h. It governs the administration of student surveys, analysis, or evaluations concerning certain sensitive topics.

Parents must provide prior written consent before students are required to submit to surveys that are funded in whole or in part by U.S. Department of Education funds and relate to any of the following protected information:

- Political affiliations or beliefs of the student or the student's parent;
- Mental or psychological problems of the student or the student's family;
- Sex behavior or attitudes;
- Illegal, anti-social, self-incriminating, or demeaning behavior;
- Critical appraisals of other individuals with whom respondents have had close family relationships;
- Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- Religious practices, affiliations, or beliefs of the student or student's parent; or
- Income (other than that required by law to determine eligibility for participations in a program or for receiving financial assistance under such program).

Parents must also receive notice and an opportunity to opt their students out of any other survey of protected information, regardless of funding.

CASB sample exhibit **JLDAC-E, Notification of Rights Under the Protection of Pupil Rights Amendment (PPRA)** complies with the PPRA parent notification and consent requirements. For more information about the PPRA, visit the Family Policy Compliance Office's website: <http://familypolicy.ed.gov/ppra?src=ferpa>.

A corresponding state law requires prior written consent from a student's parent before a school or school district may require student participation in a survey, assessment (other than a state assessment), analysis, or evaluation that reveals a student's social security number or information related to any of the above-listed topics. C.R.S. 22-1-123(5). Prior written parental consent is required regardless of whether the information collected is personally identifiable. To obtain lawful consent, school districts must provide written notice of the survey, assessment, analysis or evaluation to students' parents and allow parents to obtain further information (including the means by which the information will be obtained, how it will be examined or disseminated, and the entities or person(s) who will have access to the information). Such notice must be provided to give parents at least two weeks to request further information before the survey is administered. Parental consent for a student to participate in a course, program, or school activity does not constitute sufficient consent for purposes of this state law. C.R.S. 22-1-123(7)(b). Any right accorded to the parent transfers to the student upon the student becoming 18. C.R.S. 22-1-123(8).



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