

THE TEXAS A&M UNIVERSITY SYSTEM ACCESS TO EDUCATION RECORDS FOR RESEARCH

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records maintained by or on behalf of educational institutions that receive funding from programs administered by the U.S. Department of Education (DOE),¹ including most public or private elementary, secondary, or post-secondary schools. FERPA generally restricts an educational institution from disclosing education records without student consent unless an exception applies under FERPA.

All universities in The Texas A&M University System (System) are directly subject to FERPA, and System agencies may also be subject to FERPA when accessing, maintaining or disclosing education records. This document provides guidance for System members and their Registrars, Chief Research Officers, and Research Compliance Officers when evaluating research studies that include access and/or use of student education records.

Education Records and PII

FERPA regulates the disclosure of personally identifiable information (“PII”)² from education records maintained by educational institutions. “Education records” are records that (1) directly relate to a student and (2) are maintained by an educational institution or a party acting on their behalf. These records may be recorded in any format (e.g., print, videotape, audiotape, and e-mail) and include grades, transcripts, class lists, student course schedules, student financial information, and student discipline files.

Access to Education Records for Research with Student Consent

Generally, educational institutions may not disclose PII from education records without obtaining a student’s prior written consent. FERPA requires that a consent: (1) be signed and dated by the student; (2) specify the records that may be disclosed; (3) state the purpose of the disclosure; and (4) identify the party or class of parties to whom the disclosure may be made.

FERPA permits an educational institution to obtain an electronic consent as long as it identifies and authenticates the student as the signatory and indicates the student’s approval of the information contained in the consent. A System member’s IT department can assist with developing an electronic consent that identifies and authenticates students in accordance with the DOE’s guidance.³

¹ Programs administered by the DOE may be found at <https://www.ed.gov/programs/landing>.

² FERPA defines PII to include the student’s name; the name of the student’s parent or other family members; the student’s address; a personal identifier, such as the student’s social security, student identification number, or biometric record; other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name; or other information which can be used to distinguish or trace the student’s identity either directly or indirectly through linkages with other information.

³ The DOE’s guidance on identity authentication may be found at https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Identity_Authentication_Best_Practices.pdf.

Access to Education Records for Research without Student Consent

In the limited circumstances described below, educational institutions are permitted – but not required – to disclose PII from education records to researchers without student consent. If an educational institution denies a researcher’s request to obtain PII from education records without student consent, an Institutional Review Board (IRB) cannot overrule that decision. The applicable IRB is responsible for approving the informed consent for research, while the applicable System Registrar is responsible for determinations relating to accessing education records without student consent.

A. Directory Information

FERPA permits educational institutions to designate certain information as “directory information” if it would not be harmful or an invasion of privacy to disclose such information without student consent. Directory information typically includes the student’s name, address, telephone number, email address, dates of attendance, and program of study. Students have the ability to “opt-out” of the disclosure of their directory information, and educational institutions may only release directory information for students who have not opted out. The applicable System Registrar is responsible for determinations relating to the disclosure of directory information.

B. Studies to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction

FERPA allows educational institutions to disclose PII from education records without student consent to organizations conducting studies for, or on behalf of, the educational institution to (1) develop, validate, or administer predictive tests; (2) administer student aid programs; or (3) improve instruction. Educational institutions disclosing PII from education records under this exception must enter into a written agreement with the research organization that includes specific provisions delineated in the FERPA regulations.

C. School Official with a Legitimate Educational Interest

FERPA permits educational institutions to disclose PII from education records without student consent to school officials who have a “legitimate educational interest” in the information. A System university may determine that one of its researchers has a legitimate educational interest in PII from education records if the research is necessary for the System researcher to fulfill his or her professional responsibilities, and the research is designed to study the effectiveness of an instructional technique, curricula, or classroom management method in a System university course.

The school official exception does not permit a System researcher to obtain education records from an institution other than their own institution. It also does not permit a System university to disclose PII from education records to an external researcher. The applicable System Registrar is responsible for determinations relating to the disclosure of education records under this exception.

Access to De-identified Information for Research

Educational institutions may disclose information from education records without student consent if all PII has been removed from the records prior to their disclosure. As described above, PII not only includes direct identifiers (such as names, student IDs or social security numbers), but also any other sensitive and non-sensitive information that, alone or combined with other information that is linked or linkable to a specific individual, would allow identification. The DOE has advised that the simple removal of direct identifiers from the data to be released (e.g., a student's name) does not constitute adequate de-identification.

Properly performed de-identification involves removing or obscuring all identifiable information until all data that can lead to individual identification have been expunged or masked. When making a determination as to whether the data has been sufficiently de-identified, educational institutions must take into consideration cumulative re-identification risk from all previous data releases and other reasonably available information, including publicly-available directory information and de-identified data releases from education records.

Educational institutions may attach a code to each de-identified record that allows researchers engaged in education research (i.e., a study to (1) develop, validate, or administer predictive tests, (2) administer student aid programs, or (3) improve instruction) to match information received from the same source, provided that (1) the educational institution does not disclose any information about how it generated and assigned the code, or that would allow the researcher to identify a student based on a code; (2) the code is not used for any purpose other than identifying a de-identified record for purposes of education research and cannot be used to ascertain PII about a student; and (3) the code is not based on a student's social security number or other personal information.

Each System university decides in its sole discretion whether to de-identify education records to provide to researchers.

QUESTIONS

System members may contact Kate Pharr, Assistant General Counsel, in the Office of General Counsel (kpharr@tamus.edu) with questions regarding conducting research with education records.