



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

OSSE and Federal Privacy Laws

(Updated November 2017)

Purpose of this Document

The purpose of this document is to provide information to education stakeholders and the public about how OSSE complies with key federal laws containing provisions about student privacy, one component of how OSSE protects student data. This document discusses OSSE's data sharing responsibilities and requirements as the state education agency (SEA) under the following laws:¹

- Family Educational Rights and Privacy Act (FERPA)²
- Health Insurance Portability and Accountability Act (HIPAA)³
- Individuals with Disabilities Education Act (IDEA)⁴
- Child Nutrition Act of 1966⁵
- Freedom of Information Act (FOIA)⁶

Why This Is Important

OSSE is committed to ensuring the privacy and protection of student information in compliance with all applicable federal and local laws. At the same time, OSSE is committed to facilitating access to and use of education data so education stakeholders have high-quality information for decision making, as described in OSSE's [strategic plan](#).

This document explains OSSE's responsibilities and requirements related to federal privacy laws and is part of OSSE's robust approach to codifying policies and procedures to protect student information and build capacity around data privacy and security for itself and among all public education stakeholders. This document does not constitute legal or policy advice or guidance to local education agencies, schools or any other entities. Other previously issued documents have described OSSE policies [on data privacy and security](#) and [secure data transfer](#).

Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) is a federal law about the privacy of, and access to, student education records. FERPA and its implementing regulations⁷ apply to

educational agencies and institutions, which includes any elementary, secondary, or postsecondary institution that receives U.S. Department of Education (USED) funding or any entity authorized to direct and control elementary, secondary, or postsecondary institutions. FERPA applies to state education agencies (SEAs)⁸ such as OSSE, in their role as custodians of education records from other institutions. FERPA defines education records as:

Information recorded in any format, including, but not limited to, handwriting, print, computer, video, audio, film, that is directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.⁹

Education records that relate directly to a student may contain personally identifiable information (PII). PII is information that, alone or in combination with other data, can be linked to a specific student, including but not limited to:

- Name of student, parents, or other family members;
- Address of student, parents, or other family members;
- Personal identifier, such as a Social Security Number, unique student identifier (such as OSSE's USI), or biometric record; and
- Indirect identifiers, such as date of birth, place of birth, or mother's maiden name.¹⁰

FERPA permits the disclosure and re-disclosure of education records and student-level data under certain circumstances.¹¹ Two specific circumstances apply to OSSE as the SEA:

- Disclosure to parents, guardians, students or their representatives.
- Disclosure to third parties.

Disclosure to Parents, Guardians, Students or Their Representatives

FERPA gives parents, guardians, and adult students^a the right to inspect and review education records within 45 days of receipt of a request. The requestor may also designate another party (such as an attorney) to receive the requested records. This includes, for example, state assessments administered by LEAs and maintained by the SEA. The SEA may make the education records available to the parent either directly, by sending the education records to the local education agency (LEA) for inspection and review, or making other appropriate arrangements. OSSE's form for requesting student education records is available [here](#).

Although FERPA gives parents and students the right to challenge the contents of education records, this right applies only to records of schools and LEAs.¹² This right does not extend to

^a In this context, "adult student" refers to a student who has reached the age of 18 or who is attending a postsecondary institution at any age.

records held by an SEA, such as OSSE, or to records held by third-party entities working on behalf of an educational agency, institution, or SEA.

Disclosure to Third Parties

Under FERPA, education records may not be disclosed to a third party without the prior written consent of the parent or adult student, unless the particular disclosure has been exempted from FERPA's consent requirements.¹³

OSSE, as the SEA, generally does not generate or create student-level data. Instead, OSSE collects and stores data from schools and LEAs.¹⁴ As a result, OSSE is subject to the "re-disclosure" provisions of FERPA. FERPA allows OSSE to re-disclose student-level data to third parties under the following exceptions:

- Audit/evaluation/enforcement/compliance
- Educational researchers
- FERPA-permissible entities
- School officials
- Accrediting organizations
- Student aid
- Emergency
- Juvenile justice
- Child welfare agency
- Litigation
- Subpoena/court order
- Sex offender registry¹⁵

Disclosure for the Purposes of Audit/Evaluation/Enforcement/Compliance

FERPA permits an SEA to designate an entity as its authorized representative to carry out audit, evaluation, enforcement, or compliance activities on any federal- or state-supported program, or to carry out enforcement or compliance activities related to federal program requirements.¹⁶ Prior to disclosure, OSSE must first enter into a written agreement with any such designated authorized representative.

At a minimum, the agreement must include:

- The name of the entity being designated as an authorized representative;
- The specific education record elements being disclosed;
- The specific audit/evaluation/ enforcement/compliance purpose;
- A description of how the PII will be used;
- A requirement that education records be destroyed after the work concludes; and

- A requirement that any further re-disclosures comply with the re-disclosure provisions of FERPA.¹⁷

Disclosure to Educational Researchers

FERPA permits an SEA to re-disclose education records to organizations conducting studies for or on behalf of an educational agency or institution for the purpose of:

- Developing, validating, or administering predictive tests;
- Administering student aid programs, or;
- Improving instruction.¹⁸

Organizations conducting educational studies and research may be government agencies or private entities. Prior to re-disclosure, OSSE must first enter into a written agreement with any such educational researcher. The agreement must include, at a minimum:

- The purpose, scope, and duration of study;
- The data being disclosed;
- The requirement that education records be used only to further the study;
- The requirement that education records not be re-disclosed; and
- The requirement that education records be destroyed after concluding the study.

It is not necessary for the purposes of this exception that any school, LEA, or SEA initiate or agree with the study.¹⁹

Disclosure to FERPA-permissible Entities

FERPA identifies certain government entities that can receive education records for audit or evaluation of federal- or state-supported education programs or for the enforcement of or compliance with federal legal requirements that relate to those programs. These entities are the US Comptroller General, US Attorney General (for law enforcement purposes), US Secretary of Education, SEAs, and LEAs.²⁰

Disclosure to School Officials

An educational agency or institution may release education records to its own employees, contractors, consultants, and volunteers, if it determines that the recipient of the education records has a legitimate educational interest.²¹ It may also disclose education records about its current and former students to any other educational agency or institution that either provides educational services to the student or to which the student has sought to enroll so long as the disclosure is for purposes related to the student's enrollment or transfer.²² The disclosing

agency or institution must make reasonable attempts to notify the parents about the record request.

Applying this exception to an OSSE re-disclosure raises two possible scenarios:

- Re-disclosure is to the school that provided the data to OSSE; or
- Re-disclosure is to a different school than the school that provided the data to OSSE.

If the same school that provided the data requests its own data, OSSE is permitted to re-disclose the data to the school's approved officials. The school itself, however, determines whether others affiliated with the school (other employees, contractors, consultants, or volunteers) have legitimate educational interests and can receive the data.²³

OSSE will not provide student education records to a school that has no connection to that student.

Disclosure to Accrediting Organizations

OSSE may re-disclose education records to an accrediting organization to carry out accreditation functions.²⁴

Disclosure for the Purposes of Student Aid

An educational agency or institution may disclose, and OSSE may re-disclose, education records in connection with a student's application for financial aid, or in connection with a student who already receives financial aid if the education records are necessary to determine eligibility, amount, conditions of that student's existing financial aid, or enforce the terms and conditions of the aid.²⁵

Disclosure in the Event of a Health or Safety Emergency

In the event of a health or safety emergency, an educational agency or institution may disclose education records if knowledge of the education records is necessary to protect the health or safety of the student or other individuals.²⁶ For OSSE, this exception would primarily arise in the context of transportation and Early Intervention (EI), since transportation and EI services are the only direct services that OSSE employees provide to students.

Disclosure to a Juvenile Justice Agency

An educational agency or institution may disclose education records about a student to a government entity involved in the juvenile justice system to assist in serving the student within that system, if a State law enacted before Nov. 19, 1974, permits such disclosure.²⁷ The District of Columbia's juvenile justice law was enacted on Dec. 23, 1963.²⁸

While federal law authorizes OSSE to re-disclose PII to juvenile justice officials, under District of Columbia law, LEAs are responsible for establishing processes for student referrals and the provision of student records to DC entities involved in the juvenile justice system.²⁹ As a result, OSSE will forward any requests for education records received from a juvenile justice official to the appropriate LEA.

Disclosure to a Child Welfare Agency

On Jan. 14, 2013, Congress enacted the Uninterrupted Scholars Act³⁰ (USA) to amend FERPA and facilitate the disclosure of education records to child welfare agencies. Federal law requires child welfare agencies to ensure that children in their care are enrolled in school and that their school placements are as stable as possible, which requires access to education records.³¹

The federal law permits OSSE to provide education records, without first obtaining consent, to a child welfare agency caseworker or other representative who has the right to access a student's case plan when a child welfare agency is legally responsible, in accordance with State law, for the care and protection of the student.³²

The child welfare agency is prohibited from re-disclosing education records that it receives unless re-disclosure of education records is made to an individual or entity engaged in addressing the student's education needs and is authorized by the child welfare agency to receive such disclosure, consistent with local law.³³

Under District of Columbia law, the Child and Family Services Agency (CFSA) and/or the Department of Youth Rehabilitation Services (DYRS) become legally responsible for the care and protection of a child or youth upon issuance of a disposition by the Family Division of the D.C. Superior Court transferring legal custody of a child to CFSA or DYRS.³⁴

Under this exception, OSSE may re-disclose education records to a representative of CFSA or DYRS that is authorized by that agency to access the child or youth's case.³⁵ CFSA and DYRS may re-disclose these records to their own contractors that provide educational services to committed children and youth.

Disclosure for the Purposes of Litigation

When an educational agency or institution initiates legal action against a parent, the educational agency or institution may disclose any relevant education records to the court without a subpoena or court order. In addition, when a parent or eligible student initiates legal action against an educational agency or institution, the educational agency may disclose any relevant education records to the court without a subpoena or court order.³⁶

Under this exception, OSSE may re-disclose to the court any relevant education records within the context of a lawsuit filed by OSSE against a parent or filed against OSSE by a parent or eligible student.

In any legal action where the opposing party is not a parent or eligible student, OSSE would not be permitted to re-disclose education records under this exception. In those cases, a subpoena/court order or written prior consent of the parent/eligible student would be required (see “Subpoena/Court Order” section, below).

Disclosure Subject to Subpoena

An educational agency or institution may disclose, and OSSE may re-disclose, education records subject to a lawfully issued subpoena. Before responding to the subpoena, OSSE must first determine whether the parent or student whose education records are ordered by the court to be re-disclosed is a party to the case, and if the subpoena limits notice of the disclosure.

If the student/parent whose education records are ordered by the subpoena to be disclosed is not a party to the case, OSSE has the obligation to make reasonable efforts to notify the parent or eligible student before re-disclosure. This gives the parent or eligible student the opportunity to file a protective order against the re-disclosure. If the parent or eligible student is a party to the case, OSSE is not obligated to notify the parent or eligible student prior to re-disclosing the records required under the subpoena.

Additionally, OSSE will not provide notice to the parent or student where the subpoena explicitly prohibits such notice.

Disclosure for Compliance with Sex Offender Registry Laws

An educational agency or institution may disclose, and OSSE may re-disclose, any PII necessary to comply with applicable sex offender registry laws.

When No Exception Applies

Any education record maintained by OSSE that does not meet one of the above exceptions will not be re-disclosed without the prior written consent of the parent or eligible student. An entity (including an SEA) that is found by the US Secretary of Education to have improperly re-disclosed data received originally from an educational agency or institution may be banned by that agency or institution from accessing education records for five years. In addition, USED may require an education agency to cease and desist from a pattern or practice of unauthorized disclosure, and may withhold federal funding if it finds that OSSE has failed to comply with FERPA.

Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act of 1996³⁷ (HIPAA) and its implementing regulations³⁸ protect the privacy of health information.

The HIPAA Privacy Rule implemented by the US Department of Health and Human Services applies to covered entities, such as health care providers, health care clearinghouses, and health plans.³⁹ Typically OSSE does not provide or pay for the cost of medical services,⁴⁰ or process nonstandard health information into standard format within the terms of HIPAA, and it is not a covered entity for HIPAA purposes.

In addition, the definition of “protected health information” in HIPAA’s Privacy Rule explicitly excludes any information that would also meet the definition of an “education record” under FERPA. Generally, medical information contained within OSSE’s special education records (such as in an individualized education program (IEP) or health and wellness records falls within the definition of education records under FERPA, and therefore is not subject to the requirements of HIPAA.⁴¹

Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) is a federal civil rights law that ensures students with disabilities receive a free appropriate public education (FAPE) tailored to the individual needs of the student and children with certain developmental delays or disabilities receive Early Intervention (EI) services tailored to the needs of the child and family. IDEA⁴² and its implementing regulations⁴³ require that states implement policies and procedures that comply with IDEA confidentiality requirements.⁴⁴ [OSSE’s Confidentiality of Student Records Policy](#) serves to protect the confidentiality of students with disabilities and children receiving EI services by establishing procedures for the collection, storage, disclosure, and destruction of personally identifiable information in educational and EI records collected, used, or maintained under IDEA Parts B and C.

Some notable differences include:

- While FERPA applies to students generally, IDEA Part B’s confidentiality requirements apply to eligible students with disabilities and IDEA Part C’s confidentiality requirements apply to eligible infants and toddlers with disabilities and their families.
- IDEA cross-references FERPA’s exceptions and requirements, and IDEA Part C regulations convert FERPA terms into terms used in the EI context.⁴⁵

IDEA’s confidentiality provisions apply only to special education and EI records. As a result, where IDEA has requirements that exceed FERPA, those requirements apply only to special education and EI data. Basic or demographic information collected about students generally and not specifically for IDEA purposes, such as name or address, are governed by FERPA even if

special education students are included among the students about whom the information is collected. Records produced or possessed only for the purposes of IDEA, such as medical records, individualized family service plans (IFSPs), or IEPs, are governed by IDEA's confidentiality provisions.

IDEA requires SEAs to give a parent notice of its responsibilities under IDEA, including the kinds of information maintained, the agency's data policies, and the parent's rights under IDEA and FERPA.⁴⁶ A parent has the right to inspect and review any education records relating to their child that are collected, maintained, or used for the purposes of IDEA.⁴⁷ When OSSE receives a parent request to review or challenge special education records, the requested data must be provided prior to any IEP meeting, due process hearing,⁴⁸ or resolution session, and in no case more than 45 days after the request. When OSSE receives a parent request to review or challenge EI records, the requested data must be provided prior to any IFSP meeting or any due process hearing, and in no case more than 10 days after the request.

OSSE must also keep a record of all requests for access to a child's special education or EI records.⁴⁹ As with such requests made under FERPA, challenges to the content of a student's special education records must be made at the school or LEA level, rather than at the SEA level, because such records are created by the school or LEA and are merely maintained by OSSE.⁵⁰ In contrast, challenges to the content of a child's EI records must be made at the SEA level because OSSE is the lead agency that administers the Strong Start program, and records created by the program, including by EI providers, belong to OSSE.

IDEA generally requires the consent of the parent or adult student prior to disclosure of PII.⁵¹ There are some limited exceptions to this general prohibition on disclosure, which permit OSSE to disclose student records *without* the written consent of the parent or adult student.⁵²

In addition to the FERPA exceptions incorporated by reference in the IDEA regulations, IDEA generally permits disclosure without parental consent to IDEA-participating agencies for purposes of meeting IDEA requirements. Participating agencies are individuals, agencies, entities or institutions that collect, maintain, or use PII to implement the requirements of the IDEA, or from which PII is obtained under the IDEA.

Parent consent is required for the disclosure of PII to a participating agency, however, when the participating agency is responsible for providing or paying for transition services or when the disclosure is to a private school LEA that is not located in the LEA of the parent's residence.⁵³ With regard to EI records, in addition to authorized representatives, officials or employees of participating agencies, OSSE may disclose PII without parental consent as part of the child's transition to Part B or the extended options programs. As with IDEA Part B, FERPA exceptions also apply in the IDEA Part C context to permit disclosure of EI records without consent in certain cases. In all cases, where all PII has been removed from the records, parental consent is not required prior to disclosure.

In addition to the confidentiality requirements, IDEA imposes procedural requirements above and beyond FERPA for special education and EI records, as follows:

- One official at each participating agency must be responsible for ensuring the confidentiality of PII;
- All persons collecting or using PII must receive training on state policy and procedure regarding the confidentiality of student records under IDEA and FERPA; and
- Each participating agency must maintain and allow public inspection of a list of current employees who may have access to PII.⁵⁴

Finally, unlike general education records maintained pursuant to FERPA, special education and EI records (with the exception of the agency's permanent record) must be destroyed upon request of the parents when the records are no longer needed for the purpose of providing services to the child or student.⁵⁵

Child Nutrition Act of 1966

The Child Nutrition Act of 1966⁵⁶ and its implementing regulations⁵⁷ created the National School Lunch Program (NSLP), which provides free and reduced price meals to students. The US Department of Agriculture is the federal agency responsible for administering child nutrition programs, including NSLP. In the District of Columbia, families apply for benefits through their LEA, while OSSE administers the program and reimburses for meals provided.

OSSE has issued separate guidance about the privacy and disclosure requirements of school meals data. That guidance is available [here](#).

Freedom of Information Act (FOIA)

The District of Columbia Freedom of Information Act (FOIA) is a statute that is designed to facilitate public access to full and complete information regarding governmental affairs.⁵⁸ Unless records are specifically exempted from disclosure under FOIA (or another federal or local law), a person has the right to inspect public records, subject to FOIA procedures.⁵⁹

OSSE cannot release student-level education records to anyone under FOIA because those records are not public and such release would be an unwarranted invasion of personal privacy and violation of FERPA. As a result, the only process by which a requester may access student-level data is if the request meets other requirements detailed in this guidance.

More information about OSSE's FOIA process is available at: <http://osse.dc.gov/service/osse-open-government-and-foia>.

For More Information

For questions or more information about this guidance, please email OSSE.datasharing@dc.gov.

Endnotes

¹ The privacy of student data is also protected under the Elementary and Secondary Education Act (ESEA) (29 U.S.C. § 7908), as amended by the Every Student Succeeds Act (P.L. 114-95).

² 20 U.S.C. § 1232g.

³ 42 U.S.C. § 1320d *et seq.*

⁴ 20 U.S.C. § 1400 *et seq.*

⁵ 42 U.S.C. § 1771 *et seq.*

⁶ D.C. Code §§ 2-531 *et seq.*

⁷ 20 U.S.C. § 1232g, 34 C.F.R. § 99 *et seq.* (2011).

⁸ In its final rulemaking adopting changes to FERPA, USED stated that an SEA is neither an educational institution nor an educational agency, since both definitions require student enrollment. 76 *Fed. Reg.* 75604 (Dec. 2, 2011).

⁹ 20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R. 99.3. FERPA specifically excludes the following from the definition of education records: personal notes of teachers, principals, and administrative school staff; generally law enforcement records; an educational agency's personnel records; and medical treatment records of adult students or students attending a postsecondary institution.

¹⁰ Privacy Technical Assistance Center, <http://ptac.ed.gov/glossary/personally-identifiable-information-education-records>

¹¹ 34 CFR § 99.30-39.

¹² 20 U.S.C. § 1232g(a)(2), 5E DCMR § 2602 *et seq.*

¹³ 34 CFR § 99.31.

¹⁴ Or from vendors, for example, for student-level assessment results.

¹⁵ See 20 U.S.C. § 1232g(b)(7), <https://www2.ed.gov/policy/gen/guid/fpco/hottopics/ht10-24-02.html> (Disclosure of Education Records Concerning Registered Sex Offenders).

¹⁶ 34 CFR § 99.31(a)(3) and 34 CFR § 99.35.

¹⁷ 34 CFR § 99.35(b)(1).

¹⁸ 34 CFR § 99.31(a)(6)(i)(C).

¹⁹ 34 CFR § 99.31(a)(6)(iii)(C)(4)(iv).

²⁰ 34 CFR § 99.31(a)(3).

²¹ 34 CFR § 99.31(a)(1)(i)(A).

²² 34 CFR § 99.31(a)(2).

²³ 34 CFR § 99.31(a)(1)(i)(B)(3)(ii).

²⁴ 34 CFR § 99.31(a)(7).

²⁵ 34 CFR § 99.31(a)(4).

²⁶ 34 CFR § 99.31(a)(10).

²⁷ 34 CFR 99.31(5)(i).

²⁸ Pub. L. 88-241, 77 Stat. 478 (Dec. 23, 1963). D.C. Code § 16-2315(a)(3).

²⁹ DCMR Title 5A §§ 2103.5, 2103.6 (2009).

³⁰ Pub. L. 112-278, 126 Stat. 2480 (Jan. 14, 2013).

³¹ 20 U.S.C. § 6311(g)(1)(E).

³² 20 U.S.C. § 1232g(b)(1)(L).

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- ³³ *Id.*
- ³⁴ D.C. Code § 16-2320.
- ³⁵ See 20 U.S.C. § 1232g(b)(1)(L).
- ³⁶ 34 C.F.R. § 99.31(a)(9)(iii) (2012).
- ³⁷ Pub. L. 104-191, 110 Stat. 1936 (Aug. 21, 1996), as codified at 42 U.S.C. § 1320d *et seq.*
- ³⁸ 45 C.F.R. §§ 160, 164 (2010).
- ³⁹ 45 C.F.R. part 160; 45 C.F.R. part 164(A) & (E).
- ⁴⁰ OSSE's Strong Start program does provide or pay for EI services that may be considered medical.
- ⁴¹ HIPAA privacy protections may apply where OSSE contracts to provide a direct service, such as with Strong Start human care agreements, or in other contracts where Part C information (which is HIPAA-protected) cannot be separated from the Part B information (which is FERPA-protected). Additionally, HIPAA privacy protections may apply where OSSE discloses data to obtain reimbursement for Medicaid-eligible students and children.
- ⁴² Pub. L. 108-446, 118 Stat. 2647 (Dec. 3, 2004), as codified at 20 U.S.C. § 1400 *et seq.*
- ⁴³ 34 C.F.R. § 300 *et seq.*, 34 C.F.R. § 303 *et seq.*
- ⁴⁴ 34 C.F.R. § 300.626 and 34 C.F.R. § 303.400.
- ⁴⁵ 34 C.F.R. 303.414(b)(2) and 303.29.
- ⁴⁶ 34 C.F.R. 300.612(a) and 34 CFR 303.404.
- ⁴⁷ 34 CFR 300.613 and 34 CFR 303.405. Parent rights regarding the confidentiality of information under IDEA Part B are also detailed in OSSE's Part B Procedural Safeguards (available at: <https://osse.dc.gov/publication/rights-parents-students-disabilities-idea-part-b-notice-procedural-safeguards>).
- ⁴⁸ Due process hearings include a hearing regarding discipline.
- ⁴⁹ 34 CFR 300.614 and 34 CFR 303.406.
- ⁵⁰ Under 5-E DCMR § 3021.3, the LEA must develop a process for a parent to correct information in a child's record. An exception may be made with regard to the student's transportation records created and maintained by OSSE's Division of Student Transportation.
- ⁵¹ 34 CFR 300.622(a) and 34 CFR 303.414(a).
- ⁵² 34 CFR 300.622(b) and 34 CFR 303.414(b).
- ⁵³ 34 CFR 300.622(b)(2) and (3).
- ⁵⁴ 34 CFR 300.623 and 34 CFR 303.415.
- ⁵⁵ 34 CFR 300.624 and 34 CFR 303.416.
- ⁵⁶ Pub. L. 89-642, 80 Stat. 885 (Oct. 11, 1966), as amended, as codified at 42 U.S.C. § 1758(b)(6) (2011).
- ⁵⁷ 7 C.F.R. § 210 *et seq* (2012).
- ⁵⁸ D.C. Code § 2-531 (2001).
- ⁵⁹ D.C. Code § 2-532(a) (2006 Supp.).