



Written Agreement Checklist

Overview

The U.S. Department of Education established the Privacy Technical Assistance Center (PTAC) as a “one-stop” resource for education stakeholders to learn about data privacy, confidentiality, and security practices related to student-level longitudinal data systems. PTAC provides timely information and updated guidance on privacy, confidentiality, and security practices through a variety of resources, including training materials and opportunities to receive direct assistance with privacy, security, and confidentiality of longitudinal data systems. More PTAC information is available on <http://ptac.ed.gov>.

Purpose

The purpose of this document is to summarize the requirements for the written agreements under the studies exception and the audit or evaluation exception as specified in the Family Educational Rights and Privacy Act (FERPA). The FERPA regulations on the studies exception requires that the educational agency or institution or the State or local educational authority or agency headed by an official listed in [34 CFR §99.31\(a\)\(3\)](#) execute a written agreement with the organization conducting the study when disclosing *personally identifiable information from education records* without consent. See [34 CFR §99.31\(a\)\(6\)\(iii\)\(C\)](#). The FERPA regulations on the audit or evaluation exception require that the State or local educational authority or agency headed by an official listed in [34 CFR §99.31\(a\)\(3\)](#) must use a written agreement to designate any *authorized representative* other than an employee. See [34 CFR §99.35\(a\)\(3\)](#). The mandatory elements of that agreement vary slightly between the two exceptions. The following checklist delineates the minimum requirements under the studies and the audit or evaluation exceptions. The list of the mandatory elements is followed by best practice suggestions that may help to further enhance the transparency and effectiveness of the agreements.

It is important to keep in mind that individual State privacy or procurement laws may contain more stringent requirements for data sharing written agreements and that other Federal privacy laws, such as the Individuals with Disabilities Education Act and the Health Insurance Portability and Accountability Act, may be applicable depending on the type of data being shared and the entities with whom the data are shared. Therefore, parties entering into an agreement are advised to always consult with their procurement staff and/or legal staff to ensure compliance with all applicable Federal, State, and local laws and regulations. See Glossary for definitions of the italicized terms.

Written Agreements—Mandatory Elements

Studies Exception allows for the disclosure without consent of personally identifiable information from education records (PII) to organizations conducting studies “for, or on behalf of,” schools, school districts, or postsecondary institutions. These studies can only be for the purpose of developing, validating, or administering predictive tests; administering student aid programs; or improving instruction.

Under this exception, written agreements **must**

- Specify the following elements:
 - purpose of the study to be conducted,
 - scope of the proposed study,
 - duration of the study, and
 - information to be disclosed.

- Require the organization to
 - use PII only to meet the purpose(s) of the study,
 - limit access to PII to those with legitimate interests, and
 - destroy all PII when the information is no longer needed for the purposes for which the study was conducted and within a specified time period.

Please see [34 CFR §99.31\(a\)\(6\)\(iii\)\(C\)](#) for more information.

Audit or Evaluation Exception allows for the disclosure of PII without consent to authorized representatives of the FERPA-permitted entities (i.e., Comptroller General of U.S., U.S. Attorney General, U.S. Secretary of Education, and State or local educational authorities). PII must be used to audit or evaluate a Federal- or State-supported *education program*, or to enforce or comply with Federal legal requirements that relate to those education programs (audit, evaluation, or enforcement or compliance activity).

Under this exception, written agreements **must**

- Designate an authorized representative of a FERPA-permitted entity;

- Specify what PII will be disclosed and for what purpose
 - Note: Under the audit or evaluation exception, the purpose of data sharing can only be to carry out an audit or evaluation of Federal- or State-supported education programs, or to enforce or to comply with Federal legal requirements that relate to those programs;
- Describe the activity to make clear that it falls within the audit or evaluation exception;
- Require an authorized representative to destroy PII upon completion of the audit or evaluation and specify the time period in which the information must be destroyed; and
- Establish policies and procedures, consistent with FERPA and other Federal, State, and local confidentiality and privacy laws, to protect PII from further disclosure and unauthorized use.

Please see [34 CFR §99.35\(a\)\(3\)](#) for more information.

Written Agreements—Best Practices

In addition to the absolute minimum mandatory requirements, there are a number of best practices that organizations should consider when entering into written agreements. (For details, see [Guidance for Reasonable Methods and Written Agreements](#) issued by the Family Policy Compliance Office.) These practices represent general suggestions and may be applied under either of the two exceptions to assist with FERPA compliance efforts.

Disclosing entities are encouraged to examine the list provided below and tailor the practices as necessary and appropriate to their specific circumstances.

- Bind individuals to the agreement
- Agree on limitations on use of the PII, including any methodological restrictions, such as linking to other data sets
- Specify points of contact and data custodians
- Mention Institutional Review Board review and approval
- State ownership of PII
- Identify penalties for inappropriate disclosure
- Set terms for data destruction
- Include funding terms

- Maintain the right to audit
- Identify and comply with all applicable legal requirements, including maintaining the data in a secure manner by applying appropriate technical, physical, and administrative safeguards to properly protect the PII, both at rest and in transit
- Have plans that are in accordance with any applicable State and Federal laws for responding to a data breach, including, when appropriate or required, responsibilities and procedures for notification and mitigation
- Review and approve reported results
- Define terms for conflict resolution
- Specify modification and termination procedures, including approved destruction methods for each specific type of media (e.g., data wiping, degaussing, shredding, etc.)
- Inform the public about written agreements
 - Note: Parties are encouraged to review and redact, prior to publication, any data security provisions that may aid those seeking unauthorized access to systems. In some cases, a separate confidential IT Security Plan may be appropriate.

Additional Resources

Below are several links that provide more detailed discussions on requirements and best practices that should be considered when disclosing PII.

- Data Stewardship: Managing Personally Identifiable Information in Student Education Records (NCES 2011-602): <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2011602>
- Federal regulations resources webpage at the U.S. Department of Education: www.ed.gov/policy/gen/reg/edpicks.jhtml?src=ln
- FERPA regulations amendment released in 2011: www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf
- Guidance for Reasonable Methods and Written Agreements by the Family Policy Compliance Office: www.ed.gov/policy/gen/guid/fpco/pdf/reasonablemtd_agreement.pdf
- Privacy Technical Assistance Center website: <http://ptac.ed.gov>

Glossary

Authorized Representative is defined any entity or individual designated by a State or local educational authority or an agency headed by an official listed in 34 CFR §99.31(a)(3) [i.e., Comptroller General of U.S., U.S. Attorney General, U.S. Secretary of Education, and State or local educational authorities] to conduct—with respect to Federal- or State-supported education programs—any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs. For more information, see the Family Educational Rights and Privacy Act regulations, [34 CFR §99.3](#).

Early Childhood Education Program is defined as

(a) A Head Start program or an Early Head Start program carried out under the Head Start Act, including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(b) A State licensed or regulated child care program; or

(c) A program that (1) Serves children from birth through age six that addresses the children’s cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and (2) Is a state prekindergarten program; a program authorized under section 619 or part C of the Individuals with Disabilities Education Act; or a program operated by a local educational agency. For more information, see the Family Educational Rights and Privacy Act regulations, [34 CFR §99.3](#).

Education Program is defined as any program principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution. For more information, see the Family Educational Rights and Privacy Act regulations, [34 CFR §99.3](#).

Education Records are those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. For more information, see [20 U.S.C. §1232g\(a\)\(4\)\(A\)](#) and the Family Educational Rights and Privacy Act regulations, [34 CFR §99.3](#).

Personally identifiable information from education records (PII) refers to information, such as a student’s name or identification number, that can be used to distinguish or trace an individual’s identity either directly or indirectly through linkages with other information. See Family Educational Rights and Privacy Act regulations, [34 CFR §99.3](#), for a complete definition of PII specific to education data and for examples of education data elements that are defined to constitute PII.