U.S. Department of Education

Data Sharing Under FERPA

January 11, 2012

(updated May 2013)

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Today's Presentation

- One hour
- Questions
- Presentation available after the webinar:
  - PTAC: http://ptac.ed.gov
  - FPCO: www.ed.gov/fpco

Poll: Who's in the Audience?

Question: Which answer best describes your connection to the educational community?

- I work with early childhood education
- I work with K-12 education
- I work with postsecondary education
- I don't work in the education field

Poll: Prior FERPA Experience

Question: Which answer best characterizes your prior experience with FERPA?

- I'm a pro! I work with the statute and regs all the time
- I work with FERPA, but find it confusing
- I know what FERPA is, but don't work with it often
- FERPA? What's FERPA?

Presentation Overview

- Overview of FERPA provisions relating to data sharing
- Key FERPA regulatory changes
- Mandatory provisions and best practices
  - Written agreements
  - Reasonable methods
- Examples
- Resources
  - Privacy Technical Assistance Center
  - Family Policy Compliance Office

“You know how sometimes FERPA can tie your brain in a knot trying to think through it all?”

[Quotation from an email to PTAC]

Under FERPA, What is Required for Disclosure of Personally Identifiable Information of Education Records?

Disclosure of PII from Education Records under FERPA

- Definition of PII
- Education Records
- Requirement for written consent
- Parents and eligible students
- Exceptions to consent
  - Studies
  - Audit or evaluation
  - Other (e.g., court order, health or safety emergency)

Studies Exception

- "For or on behalf of" schools, school districts, or postsecondary institutions
- Studies must be for the purpose of
  - Developing, validating, or administering predictive tests; or
  - Administering student aid programs; or
  - Improving instruction
- Written Agreements

Audit/Evaluation Exception

Allows PII from education records to be shared without consent with

- "Authorized representatives" of
- "FERPA-permitted entities"
  - Comptroller General of U.S.,
  - U.S. Attorney General,
  - U.S. Secretary of Education, and
  - State or Local Educational Authorities

34 CFR Section 99.31(a)(3)

Audit/Evaluation

- Data can only be shared in order to
  - Audit or evaluate a Federal- or State-supported education program, or
  - Enforce or comply with Federal legal requirements that relate to those education programs
- Education program – broad, but not limitless

Poll Results:

Poll: Experience with Data Sharing

Question: Which answer best describes your experience sharing data?

- I have extensive experience with data sharing
- I have some experience with data sharing
- I have never tried to engage in data sharing

How do FERPA Amendments Affect Data Sharing?

Recent FERPA Amendments

- Final FERPA regulatory changes
  - Published in Federal Register on December 2, 2011
  - Effective January 3, 2012
  - Not all changes relate to data sharing
- Expanded requirements for written agreements and enforcement mechanisms to help
  - Ensure program effectiveness
  - Promote effectiveness research
  - Increase accountability

Key FERPA Regulatory Changes

- Written agreements now required for data sharing under the audit/evaluation exception
- Under the audit/evaluation exception, the entity disclosing PII must use “reasonable methods”
- New definition*: Authorized Representative*
- New definition*: Education Program*

Definitions

- Authorized Representative
  - Any entity or individual designated by a State or local educational authority or an agency headed by an official… 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 (FERPA regulations, § 99.3).

Definitions

- Education Program
  - 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 (FERPA regulations § 99.3).
  - Under the audit/evaluation exception, PII can only be disclosed to audit/evaluate a Federal- or State-supported “education program”

Written Agreements

- Mandatory when sharing data without consent under both exceptions
- Many names for the same document:

  Written agreement, contract, memorandum of understanding, data exchange agreement, etc.
- "Guidance for Reasonable Methods and Written Agreements"

What are the Requirements for Written Agreements?

Written Agreements—Studies Exception

- Written agreements <u>must</u>
  - Specify the purpose, scope, and duration of the study and the information to be disclosed, and
  - Require the organization to
    - use PII only to meet the purpose(s) of the study
    - limit access to PII to those with legitimate interests
    - destroy PII upon completion of the study and specify the time period in which the information must be destroyed

Written Agreements—Audit/Evaluation Exception

- Written agreements <u>must</u>
  - Designate an authorized representative
  - Specify what PII will be disclosed and for what purpose
    - under the audit/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/evaluation exception

Written Agreements—Audit/Evaluation Exception

- Written agreements must
  - Require an authorized representative to destroy PII upon completion of the evaluation and specify the time period in which the information must be destroyed
  - Establish policies and procedures, consistent with FERPA and other Federal and State confidentiality and privacy laws, to protect PII from further disclosure and unauthorized use

Written Agreements—Best practices

"FERPA represents the floor for protecting privacy, not the ceiling."

- Bind individuals to the agreement
- Specify points of contact/data custodians
- Mention Institutional Review Board review and approval
- State ownership of PII
- Identify penalties

Written Agreements—Best practices

- Include funding terms
- Maintain right to audit
- Identify and comply with all legal requirements
- Have plans to handle a data breach
- Review and approve reported results
- Define terms for conflict resolution
- Specify modification and termination procedures
- Inform the public about written agreements
  - In some cases, a separate confidential IT Security Plan may be appropriate

What to Do if Your Representative Violates a Written Agreement

- Look to the terms of the agreement in addition to ED enforcement
  - Contract remedies can be more flexible
- Contact the Family Policy Compliance Office for any questions

What are Reasonable Methods?

Reasonable Methods

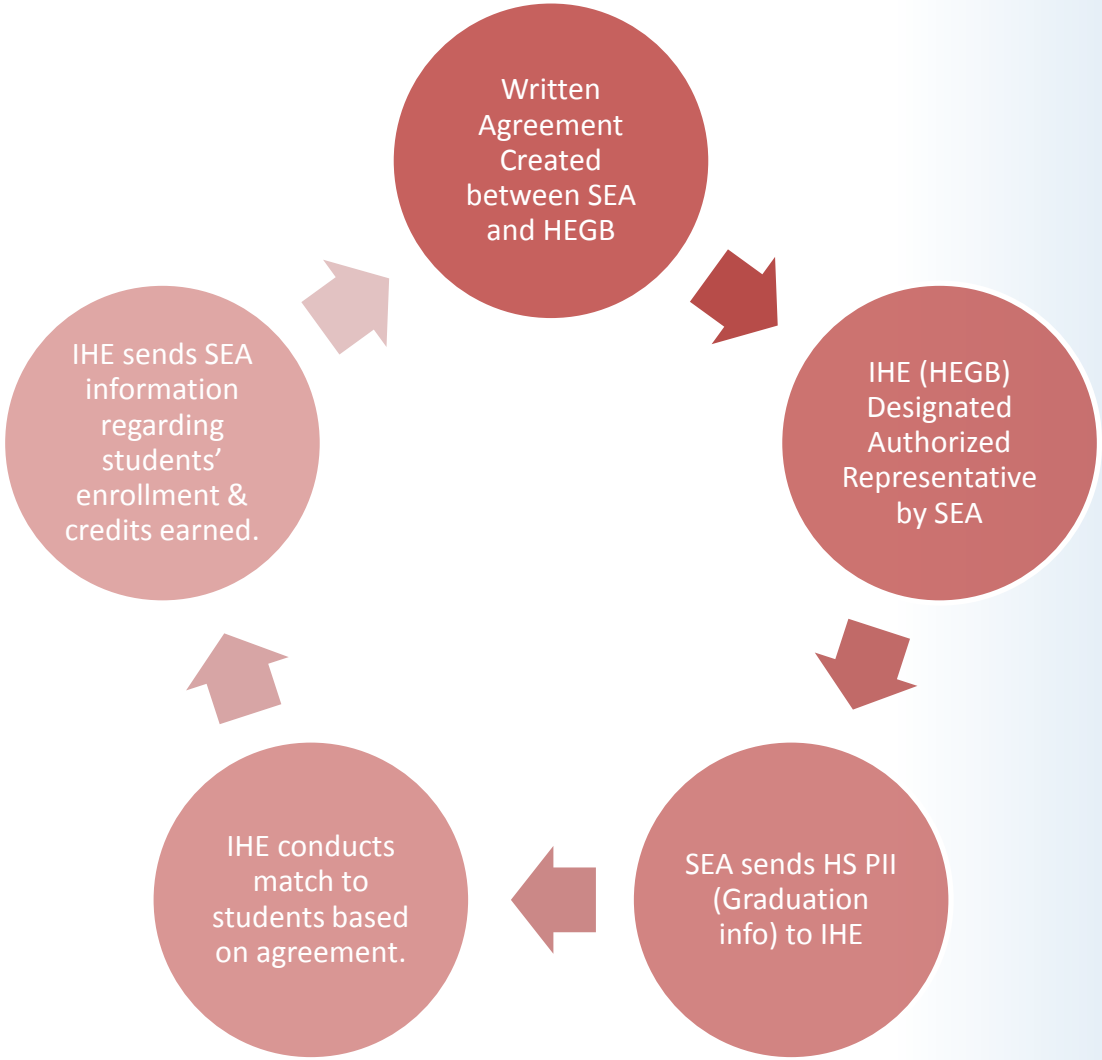
- Ensure to the greatest extent practicable that an authorized representative
  - Uses PII only to carry out an audit or evaluation of education programs, or for the enforcement of or compliance with, Federal legal requirements related to these programs
  - Protects the PII from further disclosures or any unauthorized use
  - Destroys the PII records when no longer needed for the audit, evaluation, or enforcement or compliance activity

This is Complicated! Can You Give Me Some Examples?

Example: High School Feedback Report: Basic Scenario

- SFSF requirement: publish data on student success in college
- Assume functional K-12 SLDS
- Assume Higher Education Governing Board with public postsecondary information

High School Feedback Report: How It Works



High School Feedback Report: How to Accomplish

- Audit/evaluation exception
- Reasonable methods
- Written agreement
- Best practices

Example: Head Start Program: Basic Scenario

- Local community action organization operates “XYZ Head Start”
- XYZ Head Start gets funding from HHS, not ED
- XYZ Head Start wants to evaluate how well it is preparing children for school in K-3
- Assume functional K-12 SLDS

Head Start Program: How to Accomplish

- XYZ Head Start is a federally funded "education program" under FERPA regs
- Audit/evaluation exception
- Recordation
- Written agreement
- Reasonable methods
- Best practices
- Guidance for reasonable methods and written agreements

Example: Enforcement: Basic Scenario

- Research organization obtains data from SEA in State X
- Evaluation: comparison of effectiveness of AP versus IB in LEAs across the State
- But then … SEA becomes aware the research organization has shared the data with another researcher
- SEA notifies FPCO (best practice)

Enforcement: What Happens Next?

- FPCO investigates: Did SEA use “reasonable methods”?
- Mitigating factors
- FPCO determines that SEA took reasonable methods but that research organization breached written agreement
- FPCO imposes 5-year ban on research organization
- Ban against SEA sharing data with the research organization
- Don’t forget: SEA can pursue contract remedies

Transparency—Best Practices

- Post your agreements on your websites
- Be clear how you are using student data
- Publish results

What Additional Resources are Available?

Family Policy Compliance Office

Administers FERPA, the Protection of Pupil Rights Amendment (PPRA), and the military recruiter provisions in the Elementary and Secondary Education Act (ESEA), including:

- Investigates alleged violations of these laws.
- Issues guidance documents.
- Coordinates with PTAC.

Privacy Technical Assistance Center

- Mission: To be a “one-stop" resource for educational data system stewards for information about privacy, confidentiality, and security assistance
- Audience: Local Educational Agencies, Postsecondary Institutions, and State Educational Agencies
- Resources: Regional Meetings and Lessons Learned Forums, Issue Briefs, Trainings, Webinars, Technical Assistance Site Visits, Help Desk

Available Resources on the Web

- Technical Briefs, Issue Briefs, and White Papers
- Case studies
- Security Checklists
- Frequently Asked Questions
- Webinars, Presentations, and Training Materials

Upcoming Webinars

- February 9, 2012, 2:00 pm (EST): FERPA for Colleges and Universities will provide FERPA basics and is geared toward a postsecondary audience. It is not specifically about the recent regulation changes; rather it will provide a high level overview of FERPA and how it applies in the postsecondary context. For more information, visit: https://edinfoevents.webex.com/edinfoevents/onstage/g.php?t=a&d=666846567

- March, 2012 (Date TBD): Special Education: The Intersection of FERPA and IDEA Confidentiality Provisions

Questions

We solicited questions from the State Support Team:

1. Question 1: *I'd like more guidance on the written agreement requirement. Do you have a template agreement I can use? Or will you review a draft agreement for us?*
2. Question 2:*Does FERPA permit data to be shared across state lines? I want to get wage data for former students from another state.*
3. Question 3:*Your high school feedback reports shows an SEA getting data about students attending public colleges. But what about students at private colleges and universities?*

Poll Results:

Poll: Future Case Studies

Question: ED plans to produce additional case studies. Please review the following list and select the one that you anticipate will be most helpful to you.

- A case study illustrating what is and is not an education program.
- A case study illustrating schools receiving PII about former students.
- A case study illustrating the intersection of FERPA and IDEA.
- A case study illustrating how a SLDS can receive workforce data.
- Nice try, but I have another case study in mind.

How Did We Do?

Question: How helpful did you find today's webinar?

- Very helpful!
- Somewhat helpful.
- Not at all helpful.

Contact Information

Privacy Technical Assistance Center

Family Policy Compliance Office

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Email: FERPA@ed.gov

FAX: (202) 260-9001

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