



A Guide for Student Records Confidentiality 2020

PLEASE SEE YOUR TECHNICAL COLLEGE DISABILITY SERVICES STAFF FOR
ADDITIONAL INFORMATION AND ASSISTANCE. THIS GUIDE IS
AVAILABLE IN ALTERNATIVE FORMATS UPON REQUEST.

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You may use the 2020 WTCS Guide for Student Records Confidentiality in whole or in part, make copies, and distribute to others to assist the accommodation process for persons/students with disabilities.

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Background and Acknowledgement

The original guidelines were crafted in 2003 by a group of Student Services professionals for the purpose of helping colleges create policies to uphold student confidentiality. The following guidelines were updated in 2020 by a work group from the WTCS Disability Services Committee and representatives from the System Office to assist WTCS colleges in implementing these policies and maintaining confidentiality of student records.

It is recommended that college staff familiarize themselves with the laws and guidance below pertinent to student confidentiality:

Federal:

[Family Educational Rights and Privacy Act 34 CFR Part 99](#)

State:

[Wisconsin Pupil Records Law \(118.125\)](#)

[Open Records Law \(19.35\)](#)

Wisconsin Department of Public Instruction:

[DPI Student Records and Confidentiality](#)

Association on Higher Education and Disability (AHEAD):

[Program Standards and Performance Indicators-Section 6.4](#)

The guidelines included in this document have been reviewed by Disability Services staff, Student Services administrators, and Registration staff. It is hoped that this information will be useful to the districts in serving our constituents.

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Purpose

The purpose of this document is to support WTCS Colleges in understanding and upholding their responsibilities around student confidentiality.

This document provides examples of three categories of student records with varying degrees of access. The three categories are:

- I. Directory Information
- II. Information Available to Persons with Legitimate Educational Interest
- III. Restricted Information Requiring Student or Parent/Guardian Consent

Each college maintains discretion and responsibility regarding interpretation and implementation of records confidentiality and release of information.

This document also includes an FAQ specifically regarding questions related to confidentiality for students with reported disabilities.

Recommendations to WTCS Districts

1. Student educational records should be kept confidential in appropriately assigned departments, in separate locked files, with limited access, and shared on a need-to-know basis only.
2. Establish an internal institutional confidentiality statement (policy) for your institution approved through appropriate levels that protects sensitive, potentially inflammatory or discriminatory student information in a way college officials deem appropriate.
3. List and identify the custodian of records by position and name, i.e., Registrar, Disability Services Manager, Affirmative Action, etc., and communicate this information to all district staff.
4. Establish policies and procedures that support the confidentiality of information about all students in both hard copy and electronic records (i.e., fax, computer). These policies should clearly address and include the following items:
 - Clear definitions and policy about who has a ‘legitimate educational interest’ and thus can access student records at the college.
 - The small group size for aggregate reporting (e.g., 10 students) that would result in silencing records/data/information. Please consult the SLDS Technical Brief on [‘Statistical Methods of Protecting Personally Identifiable Information in Aggregate Reporting’](#) for more information.
 - Policies for educational technology (e.g., cloud computing, online tools or applications, etc.) and student records. For instance, if the college has a vendor for textbooks (e.g., Cengage) or predictive analytics (e.g., Civitas Learning), then how is the student information protected, secure and still maintained and owned by the college? See the Privacy Technical Assistance Center’s [‘Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices’](#) for more information.
 - Processes in case of a data breach (who is involved in the response, plan to communicate with stakeholders, etc.). Know that data breach law is specific to the state of residence of the student and thus distance-learners may require different data breach responses (e.g., timing or method of notice of data breach; see [‘The Definitive Guide to the US State Data Breach Laws’](#)). To find a listing of all state data breach laws, visit the National Conference of State Legislators website page on [‘Security Breach Notification Laws’](#).
 - Policy for sharing educational records and data with external groups (community-based organizations, research groups, etc.).

- Data retention policies and destruction of educational records. See the Privacy Technical Assistance Center's '[Best Practices for Data Destruction](#)' for more information.
5. List sources and review and update policies and procedures annually based on new or amended federal and state laws. Additional protections are required for medical records, criminal background checks, disability documentation, AODA, and "Homeland Security" records. Sources of policy statements may include: Student handbook, college catalog, Disability Services forms, college website, seasonal college course brochures, and Student Rights' Handbook.
 6. Maintain a recording system for requests of personally identifiable information that is not included in the directory information, requested by students themselves, or requested by school officials. This recording system should include names and addresses of requestor and their indicated interest in the records unless such information cannot be obtained under state law.
 7. Requests for third-party documentation (e.g., medical documentation, high school IEPs) not created by the institution should never be granted
 8. Districts may choose to be more restrictive than the guidelines suggest.

Summary of Family Education Rights and Privacy Act (FERPA)

What is FERPA?

The Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. 1232g, 34 C.F.R. § 99.1 et seq.

1. Applies to educational agencies or institutions that receive federal funds (K-12, colleges and universities through graduate school). A pattern or practice of FERPA violations at a college can lead to the loss of federal funding.
2. FERPA protects the privacy of student education records and personally identifiable information.
3. Three broad categories of rights created:
 - a. Right of access to student’s education records (inspect and review)
 - b. Right to control disclosure of information from records without prior consent (subject to enumerated exceptions)
 - c. Right to challenge inaccurate or misleading information and request amendment to records
 - d. Rights vest in parents until student **EITHER** turns 18, **OR** attends postsecondary institution.
 - e. The postsecondary institution must provide annual notification to students of their FERPA rights. See [examples of these annual notices](#) on the U.S. Department of Education website.

Who Enforces FERPA?

This act is enforced by the [Family Policy Compliance Office](#), U.S. Department of Education, Washington, DC.

What are “education records” under FERPA? [34 C.F.R. 99.3]

“Education records”

1. The term means those records that are:
 - a. Directly related to a student; and
 - b. Maintained by an educational agency or institution or by a party acting for the agency or institution.
2. The term does **not** include:
 - a. Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

- i. Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
- ii. Made, maintained, or used only in connection with treatment of the student; and
- iii. Disclosed only to individuals providing the treatment. For the purpose of this definition, “treatment” does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and
- iv. Other exceptions for sole possession records, law enforcement records, some employment records, and alumni records.
- v. Personal notes by faculty/staff which are not shared with others (memory joggers). See [FERPA FAQ guidance on exempt records](#).

Examples of ‘education records’, include course records, GPA, personally identifiable information (e.g., student ID, birth date, SSN, etc.), disability-related accommodations information, disciplinary proceedings at the college, financial aid, etc. See [FERPA FAQ guidance on education records](#).

Also, note the distinction of **Directory Information** that ‘would not generally be considered harmful or an invasion of privacy if disclosed’ and can be disclosed without student (or parent) consent provided that students are given annual public notice of this and provided the opportunity to opt out of directory information items.

Who can have access to the educational records for the student(s) at the college?

Access to student records all comes down to ‘legitimate educational interest’, which is not clearly defined within FERPA and each college needs to provide clear guidance and policy to define this in a case-by-case situation. See the ‘[Defining “Legitimate Educational Interest”](#)’ guidance from the National Center of Education Statistics for more information.

Some examples of definitions, include:

1. “A person employed by the agency or school in an administrative, counseling, supervisory, academic, student support services, or research position, or a support person to these positions”
2. “The information requested is necessary for that official to perform appropriate tasks that are specified in his or her position description or by a contract agreement”
3. “The information is relevant to the accomplishment of some task or to a determination about the student”
4. “The information is to be used within the context of official agency or school business and not for purposes extraneous to the official’s areas of responsibility or to the agency or school”

5. “Legitimate educational interest means a campus official, acting in the student's educational interest, who needs the information in the course of performing advisory, instructional, supervisory, or administrative duties for the college.”

What are the Student Rights under FERPA?

FERPA gives the student five rights:

1. The right to inspect and review education records within 45 days of their request;
2. The right to seek the amendment of education records;
3. The right to consent to the disclosure of education records;
4. The right to obtain a copy of the school's FERPA policy; and
5. The right to file a complaint with the FERPA office in Washington, DC.

What about Releasing Student Information to Their Parents?

Institutions may disclose information about students to their parents by any of three procedures:

1. By obtaining the student's written consent.
2. By having the parents establish the student's dependency as defined by Internal Revenue Code of 1986, Section 152.
3. By exercising its disclosure option on any students under age 21 regarding a violation of an institutional rule or federal, state, or local law regarding the use of alcohol or a controlled substance if state law permits such disclosure.
4. When a student reaches the age of 18 or begins attending a postsecondary institution regardless of age, FERPA rights transfer to the student.
5. Parents may obtain directory information only at the discretion of the institution.
6. Parents may obtain non-directory information (grades, GPA, etc.) only at the discretion of the institution and after it has been determined that their child is legally their dependent for tax purposes under the IRS rules (see [FERPA FAQ guidance on disclosing information to parents](#)).
7. Parents may obtain non-directory information by obtaining a signed consent from their child.

FERPA Exceptions:

1. **Health or safety emergency exception:** colleges can disclose student education records and personally identifiable information to protect the health or safety of the student or other individuals (See [FERPA FAQ on when is it permissible to utilize FERPA's health or safety emergency exception for disclosures](#)). This disclosure should be to 'appropriate parties', which may include law enforcement officials, public health officials, trained medical personnel, and parents (see [FERPA FAQ on 'appropriate parties'](#)).

2. **Studies exception:** “The studies exception allows for the disclosure of PII from education records without consent to organizations conducting studies for, or on behalf of, schools, school districts, or postsecondary institutions. Studies can be for the purpose of developing, validating, or administering predictive tests; administering student aid programs; or improving instruction.” See Department of Education’s [Guidance for Reasonable Methods and Written Agreements](#) for more information. Also see the [FERPA Exceptions Summary Sheet](#).
3. **Audit or evaluation exception:** “The audit or evaluation exception allows for the disclosure of PII from education records without consent to authorized representatives of the Comptroller General of the U.S., the Attorney General, the Secretary of Education, and State or local educational authorities (FERPA-permitted entities). Under this exception, PII from education records 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).” See Department of Education’s [Guidance for Reasonable Methods and Written Agreements](#) for more information. Also see the [FERPA Exceptions Summary Sheet](#).
4. For instance, federal reporting for [Perkins](#) and the Adult Education and Family Literacy Act (AEFLA) both fall into this category.

Education records may also be shared in these circumstances:

1. To provide information for a student’s **financial aid application** (see [FERPA FAQ on financial aid](#))
2. To provide educational records to state or local officials/authorities in connection with proceedings in the **juvenile justice system** (See [FERPA FAQ on juvenile justice proceedings](#)).
3. To provide information to **accrediting organizations** (See [FERPA FAQ on accrediting organizations](#)).
4. To provide information to **law enforcement with a warrant/court order** (see USA Patriot Act information on page 10) or a subpoena is served from a Federal grand jury for the information.
5. To provide information to a **child welfare agency or tribal organization** who has the right to access a student’s case plan (see [FERPA FAQ on child welfare or tribal organization disclosures](#)). Note, this would primarily pertain to dual enrollment students (younger than 18).
6. To provide information about **disciplinary records**, e.g., ‘an institution may disclose to anyone - not just the victim - the final results of a disciplinary proceeding’ in which a student is an alleged perpetrator (see [Balancing Student Privacy and School Safety guidance](#) from Department of Education)
7. To provide timely warnings about **crimes on campus** that threaten the safety of students or employees (see [Balancing Student Privacy and School Safety guidance](#) from Department of Education)
8. To provide student records to an institution that the student is transferring to (see [Balancing Student Privacy and School Safety guidance](#) from Department of Education)

Note, that disclosure of student educational records that are outside of these exceptions (e.g., sharing information with a community-based organization) requires written consent and authorization from the student. [Guidance on Sharing Information with Community-Based Organizations](#)

Examples of FERPA violations (not a comprehensive list)

1. Education technology (EdTech) vendor issues:
 - a. Be wary of the terms of use for various EdTech that students have to accept so that they can then participate in the course (e.g., online textbook/homework platforms). Some terms of use will include text that allows the vendor ‘to use, reproduce, display, perform, adapt, modify, distribute, have distributed, and promote the [student data] in any form, anywhere and for any purpose...’. This is a FERPA violation since it forces the student to waive their privacy and data rights just to participate in the course. Also, the broad potential for how the EdTech vendor could use the student data is a FERPA concern as well. See the [FERPA FAQ on using an online tool or application as part of a class](#) and a [Model Terms of Service contract](#).
 - b. Be wary of ‘free’ EdTech platforms. These platforms typically provide a ‘free’ service/product so that they can mine and harvest student data, which is a FERPA violation. See ‘[The Unintentional Ways Schools Might Be Violating FERPA, and How They Can Stay Vigilant](#)’ for more information.
2. Denying access to records to the student and/or parent (in certain circumstances, see information above about releasing information to parents)
3. Educators disclosing information on social media (see ‘[Protecting Student Privacy on Social Media: Do’s and Don’ts for Teachers](#)’ for more information):
 - a. Tweeting a photo of your class that displays the student’s faces or names on their athletic jersey (for instance) without their consent.
 - b. Sharing a screenshot of your student’s assignment on Facebook. A student’s handwriting is considered personally identifiable information and needs to be protected.
 - c. An instructor writing a post mocking a student’s name (‘[FERPA for Facebook, other social media](#)’).
4. Reporting very small sub-groups of students (e.g., less than 10 students) in the college’s Graduate Outcomes annual report.
5. Providing law enforcement with student information/records when a warrant has not been served.
6. Issues with legitimate educational interest:
 - a. Accidentally sending a student’s course record via email in a ‘reply all’ situation that goes out to college staff who do not have a legitimate educational interest for that student.
 - b. Presenting a new computer program at faculty in-service that provides participants with the program outputs that include student names and ID numbers. Instead of creating fake information for this report, the presenter uses information

from one of their classes. This disclosure to a wide audience includes individuals who do not have a legitimate educational interest for the students involved.

Related Federal Acts that Affect FERPA (note this is not a comprehensive list)

USA PATRIOT ACT

1. Disclosure to Federal Law Enforcement Officials who have a court order/warrant for the information.
2. Disclose without student consent of educational records.
 - a. Court order that would require an educational institution to discuss educational records considered to be relevant to a terrorism investigation.
 - b. Permits collection of student information from the National Center for Education Statistics.
 - c. Allow federal officials to collect directory and disciplinary information from colleges and universities, previously exempted by FERPA.

SOLOMON AMENDMENT

The Solomon Amendment overrides FERPA, it gives the military the right to receive data designated as “student recruiting information” for students age 17 and older. If an institution or its sub element does not comply, the entire institution risks losing certain Federal funds. The data that military recruiters can receive, includes:

Name	Address (home and mailing)
Telephone (home and mailing)	Age
Place of birth	Level of education
Academic program/major	Degrees received
Educational institution	

For more information regarding FERPA, visit the Department of Education’s websites on:

1. [FERPA Frequently Asked Questions](#),
2. [FERPA resources for a post-secondary audience](#)
3. [FERPA 101 for Colleges and Universities](#)

Frequently Asked Questions

With Whom Will You Share Information About My Disability?

The institution considers information you share with us regarding your disability to be private and confidential, and it will be shared only on a “legitimate educational interest” basis. The Disability Services office will only have conversations with staff/faculty at the institution for the purpose of providing and coordinating accommodations and related services.

Will my diagnosis be shared?

The name of your impairment or health condition and the details of your diagnosis, history, prognosis or treatment shall not be shared without your expressed permission. As a student you are not required to share your diagnosis or documentation with your instructors. Information may be shared in certain circumstances in order to comply with federal or state law that require reports of harm to self, harm to others, child abuse, or child neglect

What comments should be put in a note that refers a student to the DSO?

If referring a student to the Disability Services Office include information the student has shared and observations you may have made, and specific support you think they may need based on this information. Character judgements and opinions on if a student is able to succeed in a course or program are inappropriate and could be considered discriminatory. Instructors are encouraged to let students know when making a referral to DRS in order to not catch the student off guard. It may be effective in some situations to provide students with DRS information and encourage the student to reach out.

Is it a FERPA violation to indicate that a student has connected with the DSO that all faculty and staff can see?

In the broad scope, it is not a violation of FERPA. Students should be notified that their information is being shared in this way. If there is a case of disability discrimination, then this process could be considered a factor in the investigation.

According to the Association on Higher Education And Disability (AHEAD)’s Program Standards and Performance Indicators (linked above), colleges have a responsibility to “Develop, review and revise policy articulating students understanding of who will have access to their documentation and the assurance that it will not be shared inappropriately with other campus units.”

Is a release form necessary to communicate with the high school or a parent of a dual enrollment student?

It may be beneficial for college accommodation staff and school special education teachers to communicate in order to provide appropriate accommodations in dual enrollment settings. Some colleges may provide release of information forms asking students to consent to this communication. General information can be given to a parent or guardian without a release form however, student specific information requires FERPA consent signed by the student.

It should be noted that high schools and College settings operate under different laws to provide accommodations. Communication may be needed in order to provide the student with holistic care. Having a release signed allows for a better flow of conversation between the schools, thus being able to attend to the student's needs more efficiently and effectively.