


West Virginia Department of **EDUCATION**

## Protecting Privacy, Respecting Students

Understanding FERPA

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## Introduction

- Financial staff may have need to access student records on occasion
- Safeguarding information is a must
- Purpose today:
  - Discuss responsibilities to protect student privacy



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## Objectives

1. Review FERPA guidelines and state privacy regulations
2. Review responsibilities for protecting student information
3. Discuss best practices for protecting information and respecting privacy



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**West Virginia Department of EDUCATION** **Talking Point**

For what purposes might you (or others in the financial area) need to view individual student records or information?



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**Family Educational Rights and Privacy Act of 1974, as amended (FERPA)**



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**West Virginia Department of EDUCATION** **What is FERPA?**

- Federal law governing access to and release of information in education records
- Foundation of state and local policies and practices
- Applies to all schools that receive funds under applicable programs of the USED



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**West Virginia Department of EDUCATION** **FERPA: Two Purposes**

<p><b>Access to Educational Records</b></p> <ul style="list-style-type: none"> <li>Parents &amp; Students</li> <li>Authorized Representatives</li> </ul>	<p><b>Limit on Disclosure</b></p> <ul style="list-style-type: none"> <li>Prior Written Consent</li> <li>Consent Exceptions</li> </ul>
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**West Virginia Department of EDUCATION** **Basic Concepts**

- Education Record
- Directory Information
- Personally Identifiable Information (PII)
- Consent
- Access & Disclosure

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**West Virginia Department of EDUCATION** **Education Record**

**Education Record**

- A record from which the student can be identified
- Directly related to a student
- Maintained by an educational agency or institution (or party acting on behalf of the agency)
- For elementary and secondary level students
- Records maintained on special education students including records on services provided to those students
- Includes health records that are maintained by the school district

**EXCEPT: Records of School Personnel which are:**

- Kept in the record maker's sole possession
- Used only as a memory aid
- Not accessible or revealed to anyone except temporary substitute for record maker

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**West Virginia Department of EDUCATION** **Directory Information**

- Information that would not generally be considered *harmful or an invasion of privacy if disclosed*
- Directory information is NOT
  - Social Security Number
  - Student ID (WVEIS Number)
  - Other ID Numbers (e.g., Medicaid)
- Parents and students may opt out

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**West Virginia Department of EDUCATION** **Directory Information**

1. Student's name	9. Dates of attendance (for school and athletics)
2. Address	10. Weight and height of athletic team members
3. Telephone listing	11. Degrees and awards received
4. Email address	12. Most recent previous educational agency or institution attended
5. Photograph	
6. Date and place of birth	
7. Major field of study	
8. Grade level	

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Why might opting out of sharing directory information be a good thing?

What might be some unintended consequences of sharing or not sharing directory information?

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**West Virginia Department of EDUCATION** **Personally Identifiable Info.**

**Personally Identifiable Information (PII)**

- Student's name, parent or family member names, student's address, or other **information that would allow a reasonable person in the school or its community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty**
- Indirect identifiers such as date and place of birth and mother's maiden name

**Personally Identifiable Information – Further Defined**

- Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable accuracy

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**West Virginia Department of EDUCATION** **Consent**

- Generally speaking, student information cannot be released without parent/student consent
  - Permission from parent (or eligible student) to release information to a certain entity and/or for a specific purpose
- Directory information is a special case
- However . . .

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**West Virginia Department of EDUCATION** **Talking Point**

Do you think it might ever be appropriate to share information from students' education records without explicit permission?

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## Consent Exceptions

- Several exceptions exist:
  - School Officials\*
  - Studies
  - Audits & Evaluations\*
  - Judicial Orders/Subpoenas
  - Health & Safety Emergencies

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## Consent Exceptions

School officials with a legitimate educational interest

- In determining the **school officials** who might need access to education records, it is more practical to establish broad position criteria than to list exactly who, or what individual positions, qualify. General criteria such as the following might be useful:
  - a person employed by the agency or school in an administrative, counseling, supervisory, academic, student support services, research position, or a support person to these positions; or
  - a person employed by or under contract to the agency or school to perform a special task.

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## Consent Exceptions

School officials with a legitimate educational interest

- Identifying a person as a "school official" does not automatically grant him or her unlimited access to education records. The existence of a legitimate educational interest may need to be determined on a case-by-case basis. A sample policy statement of what constitutes legitimate educational interest might include substantiation such as the following:
  - 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.

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## Consent Exceptions

School officials with a legitimate educational interest

- Continued...
- 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.
- The information is relevant to the accomplishment of some task or to a determination about the student.
- The information is to be used consistently with the purposes for which the data are maintained.

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## Consent Exceptions

Individuals to whom an education agency has outsourced services or functions

- Includes contractors, vendors, consultants, and volunteers
- Based on the following conditions:
  - party is under the direct control of the SEA or LEA (contract)
  - party is subject to the same conditions governing the use and re-disclosure of education records applicable to other school officials
  - parties may also be required to sign additional assurances such as confidentiality and nondisclosure agreements

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## Consent Exceptions

Authorized individuals for the purpose of audits & evaluations

- Audit or Evaluation Exception allows for the disclosure of PII and 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.
- 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
  - Describe the activity to make clear that it falls within the audit or evaluation exception

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## Consent Exceptions

Authorized individuals for the purpose of audits & evaluations

- Continued...
  - 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
  - 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.

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## More Exceptions

Authorized individuals for the purpose of audits & evaluations

- Written Agreement – Best Practices
  - Bind individuals to the agreement
  - Agree on limitations on use of the PII
  - Specify points of contact and data stewards
  - District ownership of PII
  - Penalties for inappropriate disclosure
  - Set terms for data destruction
  - Maintain the right to audit
  - Identify and comply with all legal requirements
  - Have a plan to respond to a data breach
  - Review and approve reported results
  - Specify modification and termination procedures
  - Inform the public about the written agreements

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## More Exceptions

Organizations Conducting Studies

- The education agency must have a written agreement with the receiving organization that specifies:
  - purposes of the study;
  - information may only be used to meet the purposes of the study stated in the agreement;
  - restriction on re-disclosure of the information;
  - requirement for destruction of the information when no longer needed;
  - information disclosed under this exception is used only to meet the purposes of the study, and that all re-disclosure and destruction requirements are met.

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## More Exceptions

**Parents of Students 18+**

- Disclosure of education records without consent is permitted to parents in some circumstances:
  - When a student is a dependent under IRS tax code;
  - When the student has violated a law or the school's rules or policies governing alcohol or substance abuse, if the student is under 21 years old;
  - When the information is needed to protect the health or safety of the student or other individuals in an emergency.
- FERPA does not block information sharing with parents if any of the above exceptions apply.

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## More Exceptions

- Financial Aid**
  - To persons or organizations providing student financial aid, or determining financial aid decisions
- Enrollment**
  - To officials at institutions in which a student seeks to enroll or has enrolled so long as the disclosure is in connection with the student's enrollment
- Judicial Order / Subpoena**
  - *Note that a reasonable attempt at parental notification is required!*
- Accreditation**
  - To accrediting organizations and other entities conducting educational studies
- Health & Safety Emergency**
  - When necessary to protect the health or safety of the student or other persons

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## More Exceptions

- USA Patriot Act**
  - Schools can disclose information relevant to an investigation or prosecution of an act of terrorism.
- Campus Sex Crimes Prevention Act**
  - Schools are permitted to disclose information about registered sex offenders.
- Clery Act**
  - Requires a school to inform the accuser and the accused of the outcome of a school's disciplinary proceeding of an alleged sex offense (name, violation, and sanction imposed).
  - A school may not require the accuser to execute a non-disclosure agreement.
- Authorized government representative**
  - <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

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**West Virginia Department of EDUCATION** **Access to Records**

- **Parent Access**
  - Right to “inspect and review”
  - Right to request corrections
  - Provide records within 45 days
    - WVDE requires response in 30 days or less
  - May charge “reasonable fee” for copies
- **Eligible Student Access**
  - Rights transfer to students at age 18
- **School Officials and Others**
  - Per the exceptions . . .

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**West Virginia Department of EDUCATION** **Reasonable Methods**

- Regulations require “reasonable methods” to ensure access is given to only those education records in which the official has a legitimate educational interest.
- Reasonable methods include:
  - Physical controls (locked filing cabinets)
  - Technological controls (role-based access)
  - Administrative policies (must ensure compliance)

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**West Virginia Department of EDUCATION** **Records of Disclosures**

- LEAs must keep records (including names and reasons) when student data is disclosed:
  - Without written consent (as in any of the exception situation)
  - To the parent of an “eligible” student
  - In response to a lawfully issued court order or subpoena
  - For external research purposes where individuals are identified
  - In response to an emergency

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**West Virginia Department of EDUCATION** **What Can't Be Released**

- **Individual** student data can **never** be publicly published or released.
- Aggregated data can be released, but only if the group size is large enough (>10) to protect the privacy of individual members of the group.
- When the identity of an individual student could be inferred through reasonable methods, treat that report as confidential.

*The summary reports to which you have access may contain small group sizes, and should therefore be treated as confidential.*




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**West Virginia Department of EDUCATION** **State Regulations**

- WVBE Policy 4350
  - Other policies also have privacy provisions
- Student Data Accessibility, Transparency and Accountability Act (WV State Code §18-2-5h)
- WVDE Data Access & Management Guidance




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**West Virginia Department of EDUCATION** **Family Policy Compliance Office**

- U.S. Department of Education
  - Phone: (202) 260-3887
  - Fax: (202) 260-9001
  - Email: FERPA@ed.gov
  - [www.ed.gov/fpco](http://www.ed.gov/fpco)
  - FERPA Final Regulations
  - Revised Regulation Overviews for LEAs, Parents, Students
  - FAQs
- Privacy Technical Assistance Center
  - [www.ptac.ed.gov](http://www.ptac.ed.gov)
  - Webinars, Publications, Case Studies
  - FERPA 101 Webinar Recording and Transcript




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 **Responsibilities**

- Respect students by protecting their privacy and respect their confidentiality.
- Comply with federal, state, and district regulations that protect student privacy.
- Use student information only for legitimate and necessary purposes.
- Use appropriate precautions and practices to secure student information.



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 **Consequences of Breaches**

- Exposes you, your school, and your district to potential criminal and civil liability, and loss of federal funds
- May result in prohibition from PII for at least five years
- May put teacher licensure at risk for egregious or repeated violations
- **Could result in harm to the student**



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 **Do your part to protect privacy!**

Some quick tips for keeping information—and the students behind it—safe!



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 **Do Your Part!**

**Protect students' (and teachers') privacy.**

Recognize that you may have access to information about students and/or teachers that is private or sensitive. Treat all information with care!

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 **Do Your Part!**

**Know what you must do.**

Know which laws and regulations apply to your work and understand how you must implement them in a way that respects and protects privacy.

Hint: Georgia and Jeff can help you out! Just call!

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 **Do Your Part!**

**Know what you may and may not do.**

Make sure you understand what data you need to use and why you need to use it. Don't access or use data for any other purposes.

Hint: WVDE Data Stewards and Data Governance staff can help you out! Just give us a call!

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 **Do Your Part!**

**Act like your emails are public documents.**

In fact, our K12 work emails are subject to FOIA requests. Do all you can not to send PII about students, teachers, or others via email. If you must, treat it as if you were sending your own information.

We can redact documents subject to a FOIA request to remove PII, but let's do all we can to save time and effort for our colleagues in Legal Services who do the redaction!

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 **Do Your Part!**

**Papers can be data, too.**

Data includes not only information stored in WVEIS or other electronic sources. Profiles, reports, applications, and other paper-based records are also rightfully considered data and should be treated as such.

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 **Do Your Part!**

**Log out and lock it down.**

Make sure to log out of all applications that may include private or confidential information. Close browser or explorer windows, just to be safe. Lock your other devices and filing cabinets when not in use.

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## CONTACT US

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