

Terms for Parents Regarding Privacy Laws and Regulations

Prepared by the New York State Education Department's Privacy Office

Laws & Regulations:

FERPA: The Family Educational Rights Privacy Act. This is a federal law enacted in 1974 that applies to schools that receive federal funding, including all public schools, charter schools, and higher education institutions. FERPA provides parents with:

- The right to access their children's education records (until the student turns 18);
- The right to seek to have those records amended if necessary; and
- The right to have some control over the disclosure of their children's personally identifiable information (PII)¹.

Education Law § 2-d: Passed in 2014, New York enacted additional privacy requirements to protect PII from unauthorized disclosure and provides parents with additional rights regarding their children's PII, especially as it pertains to third party contractors or vendors used by educational agencies.

8 NYCRR Part 121: Effective January of 2020, these regulations further explain and interpret Education Law § 2-d.

IDEA: The Individuals with Disabilities Education Act. This federal law protects the rights of students with disabilities. IDEA Part B includes confidentiality provisions similar to, but broader than, FERPA, that protect the privacy of students with disabilities. The confidentiality provisions found in IDEA contain informed parental consent and notice provisions that are separate from FERPA. IDEA also prohibits the unauthorized disclosure and use of PII from the education records of students with disabilities, consistent with FERPA.

PPRA: The Protection of Pupil Rights Amendment. This is a federal law that governs the administration to students of surveys (including analysis or evaluation), that involve certain protected topics such as political affiliation, religious practices, income, sexual behavior, and mental or psychological difficulties, among others. The PPRA also requires schools to implement policies regarding the use of student information for marketing purposes, parents' access to information, and the administration of certain physical examinations to minors.

¹ <https://studentprivacy.ed.gov/faq/what-ferpa>

COPPA: The Children's Online Privacy Protection Rule, enforced by the Federal Trade Commission. This is a federal law that regulates websites, apps, and other online operators that collect data and personal information from children under the age of 13. The law requires that providers of online tools developed for children under 13 provide notice and obtain parental consent before collecting a child's information, have a "clear and comprehensive" privacy policy, and keep any information collected from children's online activities confidential and secure.

General Terms:

NYSED: The New York State Education Department (or the Department). NYSED is the State Educational Agency for New York.

Parent: A biological parent, legal guardian, or person in parental relation to the student (such as a foster or adoptive parent).

Student: Any person attending or seeking to enroll in an educational agency.

Eligible Student: A student who has reached 18 years of age or who attends a postsecondary institution at any age. FERPA rights pass from the parent to the student when they become identified as an eligible student.

Educational Agency: Defined in Education Law § 2-d as a school district, board of cooperative educational services (BOCES), school, or the New York State Education Department (NYSED or the Department).

School: Defined in Education Law § 2-d, as any:

- Public elementary, secondary, or charter school;
- Universal pre-kindergarten program authorized pursuant to Education Law § 3602-e;
- Publicly-funded (approved) provider of preschool special education;
- Publicly-funded pre-kindergarten program;
- School serving children in a special act school district as defined in Education Law § 4001;
- Publicly-funded (approved) private school for the education of students with disabilities;
- State-supported school subject to the provisions of Article 85 of the Education Law; and
- State-operated school subject to the provisions of Articles 87 or 88 of the Education Law (such as New York State Schools for the deaf and blind).

School Official: A school official is an employee of an educational agency, including but not limited to teachers, who the educational agency deems to have a legitimate educational interest (see below) in accessing a student's education record. School officials may also include third party contractors or vendors, consultants, volunteers, service providers, or other entities to which the educational agency outsourced services or functions for which the educational agency would otherwise use employees².

Third Party Contractor or Vendor: A person or entity, other than an educational agency, that receives student data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to the educational agency. Examples of services include data management and/or storage services, studies conducted on behalf of the educational agency, and the audit or evaluation of publicly-funded programs. To designate a third party contractor or vendor as a school official, the following criteria must be met:

- The third party contractor or vendor must perform an institutional service or function for which the educational agency would otherwise use employees;
- The third party contractor or vendor must meet the criteria set forth in the educational agency's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records;
- The third party contractor or vendor must be under the direct control of the

;

- The exclusive purposes for which the student or teacher/principal data will be used by the third party contractor or vendor;
- How the third party contractor or vendor will ensure subcontractors abide by the legal requirements for data privacy and protection;
- The duration of the contract and what will happen to the data provided to the third

