

Family Educational Rights and Privacy Act (FERPA) Compliance Policy 8/15/2009

Pursuant to the Family Educational Rights and Privacy Act (FERPA), the Colorado Department of Education is permitted to disclose students' personally identifiable information from education records without the prior consent of students' parents (or students 18 years of age or above or who are enrolled in a postsecondary institution "eligible student") only if the disclosure meets specific criteria outlined in 34 CFR part 99.

The Colorado Department of Education takes very seriously its obligations to protect the privacy of student education records that are received from local educational agencies (LEAs) and schools, consistent with the requirements in FERPA.

FERPA includes a number of authorized disclosures that permit education records to be used for a range of legitimate educational needs. In effect, in authorizing these disclosures, FERPA permits CDE to harmonize the privacy of these records with the need to use them to measure school performance and growth and to conduct evaluation of the programs and support needed to improve education in Colorado. Typically, the information received from education records maintained by LEAs and schools is provided for the purpose of evaluating and auditing federal and state-supported education programs and ensuring compliance of those programs with federal requirements. The evaluation function in particular is very broad and includes research designed to measure and improve public education programs in Colorado. These functions may be carried out by CDE employees and contractors. In addition, under amendments to FERPA regulations issued by the U.S. Department of Education (USED) on December 9, 2008, CDE may redisclose personally identifiable information that it receives to third parties, for the purposes addressed in FERPA-authorized disclosures and consistent with safeguards in FERPA.

Receiving Information from LEAs and Schools

Personally identifiable information from students' education records which CDE receives from LEAs and schools for audit, evaluation, or compliance purposes is not available to all CDE employees. Access to this information is provided only to employees who have a legitimate need for access to the information in order to maintain the records or to assist in conducting CDE evaluation, audit, or compliance functions. The information is protected to avoid personal identification of students and their parents by anyone other than these employees, CDE contractors that perform these functions, or recipients of authorized redisclosures consistent with FERPA.

For further information on disclosures to contractors and third parties and the required recordation of disclosures, please see the *CDE Approval Process for Disclosure of Education Records*.

Redisclosure by CDE of Personally Identifiable Information¹

Disclosures CDE makes of personally identifiable information from education records to parties outside CDE generally must meet the following conditions:

1. The disclosure must be for one of the permissible disclosures authorized in FERPA (as listed in the FERPA regulations at 34 CFR §99.31), or the parent or eligible student must consent to the disclosure;
2. CDE informs the party to whom the disclosure is made that it must use the information only for the purposes for which the disclosure is made;
3. CDE must make a record of each disclosure of personally identifiable information from the education records of a student.² Such disclosure records may be maintained by CDE by groupings, such as by school district, school, or class of enrollment and must be provided, upon request, to the educational agency or institution from which the education record was received;
4. The record of disclosure must include the parties who have received the information and the legitimate interests the parties had in obtaining the information; and
5. If USED determines that a third party improperly rediscloses personally identifiable information from education records in violation of the requirements above, CDE may not allow that third party access to personally identifiable information from student records for at least five years.

¹ Note, these requirements generally do not apply to information that is aggregated or de-identified.

² For further information, please see the *CDE Approval Process for Disclosure of Education Records*.

Authorized Disclosures to Third Parties

Authorized disclosures of education records by CDE (without written parental or eligible student consent) under FERPA include, but are not limited to, the following:

1. Information that is not personally identifiable, including information that has been de-identified through use of a code for research purposes. Standards and processes for coding student information for research purposes shall be the responsibility of the Institutional Review Board for the Colorado Department of Education. If information derived from student records is not personally identifiable, it may be publicly disclosed without regard to FERPA;
2. Directory information (generally including information that would not be considered to risk harm or an invasion of privacy if disclosed), but information may be disclosed on this basis only if CDE ascertains that the educational agency or institution from which the records were obtained has a directory information policy that includes the subject information and that the parent or eligible student has not opted out of the disclosure of that information without written consent;
3. Disclosures of education records to a CDE contractor to evaluate or audit federal or state-supported education programs, or for the purpose of ensuring compliance with federal law, including accountability determinations for schools and school districts under federal and state law, provided that personally identifiable data are destroyed or returned when no longer needed for these purposes;
4. Disclosures between CDE and the Colorado Department of Higher Education to evaluate or audit federal or state-supported education programs, provided that personally identifiable data are destroyed or returned when no longer needed for these purposes; and
5. Disclosures for research studies for or on behalf of LEAs or schools, subject to the following requirements:
 - a. The purpose of disclosure must be to (a) develop, validate or administer predictive tests, (b) administer student aid programs or (c) improve instruction;
 - b. Any study must be conducted in a manner that does not permit personal identification of parents and student by individuals other than representatives of the organization;
 - c. Information must be returned or destroyed when no longer needed for the purposes for which the study was conducted; and
 - d. Any third party that USDE determines to have violated the requirement above may not receive access to personally identifiable information from education records for at least five years.
 - e. CDE must enter an agreement with the research organization specifying the purposes of the study or studies; ensuring that the education records will be used solely for that purpose; indicating the estimated period that the records will be needed for the indicated purposes; and ensuring compliance with the

requirement regarding return or destruction of the records once those purposes are met.

6. Disclosure of records to a school or local educational agency in which a student seeks or intends to enroll, or in which the student newly enrolls.

Disclosures to Non-Education State Agencies

FERPA does not authorize disclosures of personally identifiable information in student records to non-education state or local agencies for the purpose of evaluating or strengthening non-education programs. For example, unless they are not personally identifiable or there is written parental (or eligible student) consent, education records may not be disclosed to the state workforce agency in order to evaluate or strengthen workforce services. In addition, USED has taken the position that education records may not be disclosed by state education agencies to non-education state agencies, even if the purpose is to match records in order to evaluate education programs. The legal basis for the latter position is open to question, and the issue is being reexamined by USED. Pending further guidance any matching of education records with the records of non-education state and local agencies should be done by CDE, which may then report aggregate or de-identified information to the non-education agencies.

Responding to Requests for Students' Personally Identifiable Information from Charter Schools, BOCES, Charter School League and the Charter School Institute

If request is from a charter school for information about students enrolled in that charter school then inform the charter school that it can obtain information from its authorizer (public school district or Charter School Institute, whichever is applicable).

If request is from BOCES for information about students in schools controlled by BOCES then respond to request as if from a public school district.

If request is from BOCES for information about students under the control of school district that works with BOCES then direct BOCES to request information from appropriate school district.

If request is from League of Charter Schools then direct the League to request information from the appropriate school district.

If request is from the Charter School Institute then respond to request as if from a public school district.