

FAQ FERPA and NSLVE

FERPA and NSLVE Basics

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FERPA and NSLVE Basics

What is FERPA (Family Educational Rights and Privacy Act)?

First enacted in 1974, the Family Educational Rights and Privacy Act (FERPA) protects the privacy of student¹ education records.² It is a conditional funding law that prohibits federal funding to

¹34 C.F.R. § 99.3 ("Student, except as otherwise specifically provided in this part [Part 99 of Title 34 of the Code of Federal Regulations], means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.").

²An "education record" means those records that are "directly related to a student" and "maintained by an educational agency or institution or by a party acting for the agency or institution," 34 C.F.R. § 99.3.

educational institutions unless certain policies involving inspection, review, access, and protection of student education records are followed.³ The Act sets forth (1) the rights of a parent to review a child's education records or of a student over the age of 18 to review his or her records⁴; and (2) the rules governing the disclosure of personally identifiable information from student education records.⁵

Is FERPA a barrier to an institution's participation in NSLVE?

No. NSLVE was specifically designed to be in compliance with FERPA requirements regarding *directory information*, the disclosure of information pursuant to the *directory information exception*, the disclosure of *personally identifiable information* under the *studies' exception*, and the *de-identified records' provision* of the Act.

Generally, how does NSLVE's process and structure ensure FERPA compliance?

Institute for Democracy & Higher Education (IDHE) has put in place several layers of protection of student privacy. Those layers include:

- A partnership with the National Student Clearinghouse ("Clearinghouse"), which receives enrollment and degree data from more than 3,600 public and private colleges and universities.⁶
- A confidential process whereby the Clearinghouse manages the process of combining student information with publicly available voting records.
- The matching process uses directory information only – names, dates of birth, and addresses.
- Disclosure by the Clearinghouse to IDHE of de-identified data only, meaning names, birth dates, and other information that would allow any individual student to be identified is removed. The IDHE database contains NO student names.
- Tight data security systems.
- Participation is *not* automatic. All participating institutions must submit an authorization form, which is technically an addendum to the institution's agreement with the Clearinghouse, authorizing the use of student data for NSLVE.

Directory Information

What is "directory information"?

Directory information is "information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed."⁷

Directory information includes but is not limited to:

[a] student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g.,

³20 U.S.C. § 1232g (a) and (b)

⁴20 U.S.C. § 1232g (a)

⁵20 U.S.C. § 1232g (b)

⁶www.studentclearinghouse.org/about/

⁷34 C.F.R. § 99.3

undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended.⁸

How can *directory information* be used by an institution?

Directory information may be shared by an institution of higher education with third parties without obtaining the consent of a student.⁹

What student information does IDHE need to match student records with public voting records?

Name, address, and date of birth.

Are name, address, and date of birth *directory information* under FERPA?

Yes. For this reason, using these three data elements is almost never a problem. There are two exceptions: when a student signs what is commonly called a “FERPA block” and when an institution adopts stricter rules (either voluntarily or because of a state law).

Your institution *might* define *directory information* in ways that are stricter than FERPA—for example, omitting date of birth from the list of information considered *directory information*. In that case, date of birth would be viewed as *personally identifiable information*.

What is a so-called “FERPA block?”

The Act provides two conditions for disclosure of *directory information*. (1) Campuses must give public notice of the categories of information that it designates as *directory information*, and (2) students must have the opportunity to inform the institution that she/he/they wants certain information to be released only with the student’s prior consent.¹⁰ Nationally, between 4% and 5% of students exercise that right.

Personally Identifiable Information

What is *personally identifiable information (PII)*?

Personally identifiable information (PII) is any student information that isn’t *directory information*.¹¹

What are some examples of *PII*?

Personally identifiable information includes gender, race/ethnicity and degree-seeking status.

If information is *PII* under FERPA or under an institution’s more stringent policies, does that mean it can *never* be disclosed?

No. There are several ways that *PII* can be disclosed. The two most relevant to NSLVE are the *studies exception* and the *de-identified records provision*.

⁸*Id.*

⁹34 C.F.R. § 99.31(a)(11).

¹⁰20 U.S.C. § 1232g(a)(5)(B).

¹¹34 C.F.R. § 99.3

What is the *studies exception*?

Under the *studies exception*, an institution may disclose PII from student education records, without student consent, to organizations conducting studies for or on behalf of such institutions to improve instruction, administer student aid programs, or to develop, validate, or administer predictive tests.¹²

Is NSLVE a “study” by an appropriate third-party researcher under the Act?

Yes. The study is being conducted by the research division of the Jonathan M. Tisch College of Civic Life at Tufts University. All research is completed by the Institute for Democracy & Higher Education (IDHE), whose mission is to advance civic learning, discourse, equity, and participation. IDHE achieves its mission through research and resource development. NSLVE’s purpose is to help institutions of higher education measure the effectiveness of their student civic learning and democratic engagement experiences and to catalyze learning for democracy and civic life.

What is the *de-identified records provision*?

The Act also says that institutions can disclose de-identified records, meaning records that can’t be attributed to any individual student.¹³ The Clearinghouse does not send data about a student if the cell size for students in that category is under ten. So, for example, if you have 4 people majoring in business, IDHE receives an N/A (not available).

What student information does IDHE receive and use?

Campuses submit a two-page form to IDHE authorizing the Clearinghouse to use directory information to locate students in the voter file. The Clearinghouse uses three data elements (name, date-of-birth, address) and matches it with public voter files collected by a third-party vendor. The public voting information includes: (1) whether and when a student registered to vote; (2) whether the student voted in a given election; (3) where a student voted; and (4) by what method the student voted. Fundamental to the secret ballot, the information does not include information such as for whom a student voted, nor does IDHE possess, seek, or receive such information.

The Clearinghouse scrubs the data for personal identifiers and sends it to IDHE for analysis. For PII, specifically discipline, race/ethnicity, gender, class level, program level, enrollment status (full- or part-time), if the number of students is fewer than ten, then IDHE receives an “N/A” instead of data. For adequately populated data, for each student, we receive: a randomly assigned identification number, age on the date of the election, home zip codes, class and graduate/undergraduate status, major field of study, gender and race/ethnicity (if available), and enrollment status (full- or part-time, degree-seeking or not). Each student record is attached to the institution’s OPEID number,¹⁴ as well as the campus city and state. In the past, we received flags (yes/no) for SSN eligibility, but, that will not be the case going forward. (Our hope had been that we could remove noncitizens by combining data elements, but that did not work out.)

IDHE then analyzes the data and generates a tailored report for each participating NSLVE campus.

¹²20 U.S.C. § 1232g (b)(1)(F), 34 C.F.R. § 99.31(a)(6)

¹³34 C.F.R. § 99.31(b)

¹⁴The Office of Postsecondary Education Identification (OPEID) number used by the U.S. Department of Education to identify schools that have Program Participation Agreements with the Department to participate in federal student aid programs under the Higher Education Act of 1965.

The reports contain aggregate data only. Reports are sent to three people: the president, the director of institutional research, and a third person of that institution's choosing. No individual student data is provided. IDHE does not publish or share individual institution reports or data without express permission from the signatory on the authorization form.

Does IDHE receive gender and race/ethnicity information?

Yes, if the Institution provides it to the Clearinghouse.

Does IDHE ever use FERPA blocked student records?

On some campuses, the number of students that have exercised their right to block the use of their records is so high that IDHE cannot provide that campus with accurate student voting rates. This applies to about 30 campuses out of the 1000+ in NSLVE. In this rare situation, the National Student Clearinghouse created a separate authorization form that allows the campus the right to use these FERPA blocked records for research. If your campus has a FERPA-blocked rate that is so high that the quality of the data is compromised, IDHE will notify the report recipients and offer to use FERPA blocked records. This is entirely an institutional decision. IDHE believes that the better approach is to revise the institutional system for collecting student FERPA blocks to minimize this number. But in the rare case where this cannot be accomplished, there is a workaround. IDHE still receives only de-identified student records.

Please recap NSLVE layers of protections for student privacy.

- The Clearinghouse uses names, dates of birth and addresses to match students to a voter file, but does not include that information when sending the file to IDHE.
- IDHE only receives de-identified student records. In other words, no names or information that would allow us to identify an individual student.
- IDHE does not receive PII if the number of students (cell size) in a particular category is fewer than ten.
- Institutions receive aggregate data only.
- Publications contain aggregate data only. No institution-level data is disclosed without prior permission.