FAQ FERPA and NSLVE

FERPA and NSLVE Basics

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FERPA and NSLVE Basics

What is FERPA: the Family Educational Rights and Privacy Act?

First enacted in 1974, the Family Educational Rights and Privacy Act (FERPA) protect the privacy of student1 education records.2 It is a conditional funding law that prohibits federal education funding to educational agencies or institutions unless certain policies involving inspection, review, access, and protection of student education records are followed.3 In short, 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

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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.
320 U.S.C. § 1232g (a) and (b)
420 U.S.C. § 1232g (a)
identifiable information from student education records.\textsuperscript{5}

\textbf{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.

\textbf{How does NSLVE’s process and structure ensure FERPA compliance?}

CIRCLE 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 3,000 public and private colleges and universities.\textsuperscript{6}
- A confidential process whereby enrollment and public voting records are matched by the Clearinghouse, not by NSLVE or any entity that collects voting records
- Disclosure by the Clearinghouse to CIRCLE of de-identified data only
- Tight data controls
- Participation is not automatic. All participating institutions must submit an authorization: an addendum to the institution’s agreement with the Clearinghouse authorizing the use of student directory information. In the case of campuses with stricter student records rules, campuses agree to a study under the studies exception of FERPA.

\textbf{Directory Information}

\textbf{What is “directory information”?}

\textit{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.”\textsuperscript{7}

\textit{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., 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.\textsuperscript{8}

\textbf{How can directory information be used by an institution?}

\textsuperscript{5}20 U.S.C. § 1232g (b)
\textsuperscript{6}www.studentclearinghouse.org/about/
\textsuperscript{7}34 C.F.R. § 99.3
\textsuperscript{8}Id.

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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 NSLVE 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 he or she 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 social security number, the institutionally-assigned student identification number, gender, and race.

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.

What is the studies exception?
The studies exception is one of several exceptions to the general rule under FERPA that written consent must be obtained from a student before such information may be disclosed to third parties. Under this exception, an institution may disclose PII from student education records, without consent, to organizations conducting studies for or on behalf of such

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9 34 C.F.R. § 99.31(a)(11).
11 34 C.F.R. § 99.3

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institutions to improve instruction, administer student aid programs, or to develop, validate, or administer predictive tests.\textsuperscript{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 Citizenship and Public Service at Tufts University. All research is in collaboration with the Center for Information and Research on Civic Learning and Engagement (CIRCLE), the nation’s leading research institution on youth civic learning and engagement. NSLVE’s purpose is to help institutions of higher education measure the effectiveness of their student civic learning and democratic engagement experiences.

**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.\textsuperscript{13}

**What information do you receive?**

Campuses submit one of two participation agreements with the Clearinghouse authorizing the Clearinghouse to use previously-disclosed enrollment data. The Clearinghouse uses three data elements (name, date of birth, address) and matches it to voter information from a third-party vendor. The public voting information obtained by the Clearinghouse includes: (1) whether 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 NSLVE possess, seek, or receive such information. NSLVE does not receive information on party affiliation.

The Clearinghouse scrubs the data for personal identifiers, assembles a non-personally identifiable set of student information, and sends it to NSLVE for analysis. If, for example, a student is one of five people at that institution from a particular area or with a particular major, NSLVE receives a “N/A” rather than data. For adequately populated data, NSLVE receives the age of the voter on Election Day (no date of birth), the OPEID number\textsuperscript{14}, and students’ field of study and grade level (both directory information).

NSLVE then conducts its analysis of aggregate student voting data. The aggregate results of its analysis are then provided to each institution in the form of a confidential report. No personally identifiable information is provided, and the results are not made public unless the school decides to make the data public.

**My institution treats some key elements, like date of birth, as personally identifiable information. What happens then?**

For the limited number of higher education institutions that have not designated or do not

\textsuperscript{12}20 U.S.C. § 1232g (b)(1)(F), 34 C.F.R. § 99.31(a)(6)

\textsuperscript{13}34 C.F.R. § 99.31(b)

\textsuperscript{14}The 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.
designate enrollment data as directory information, an alternative participation agreement ("Studies’ Exception Agreement") is signed by the school with the Clearinghouse. That agreement is substantially the same as the Directory Information Participation Agreement, except it allows the disclosure and use of personally identifiable information pursuant to the studies exception under FERPA.\textsuperscript{15} Further, consistent with FERPA, the agreement requires the Clearinghouse to institute and enforce policies and procedures to protect the information; ensure its use is limited to comply with applicable laws; ensure the information is not improperly disclosed; ensure only de-identified student information is provided to NSLVE; ensure that only individuals within NSLVE with a need-to-know will receive access to the data; ensure confidentiality of the information at all stages by using appropriate disclosure avoidance techniques; and destroy the information when no longer needed for the purpose for which the Study is conducted.\textsuperscript{16}

**NSLVE appears to have multiple layers of protections for student privacy. Is this right?** Yes. First, there is never any disclosure of any information other than directory information, which can be disclosed by an institution without permission from students. Second, if an institution has a stricter policy and treats date of birth or address as personally identifiable information, then institutions sign a different authorization form allowing the Clearinghouse to use the data under the studies exception.

NSLVE has added a further protective measure by requiring the Clearinghouse to de-identify the data, such that the data NSLVE receives are non-personally identifiable. That regulation permits an institution of higher education, or a party that has information from education records, to release the information without consent “after the removal of all personally identifiable information provided that the . . . institution [of higher education] . . . has made a reasonable determination that a student’s identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information.”\textsuperscript{17} Such actions are in accord with the principles underlying FERPA’s de-identified records regulation.\textsuperscript{18}

\textsuperscript{15}20 U.S.C. § 1232g (b)(1)(F); 34 C.F.R. § 99.31(a)(6).
\textsuperscript{16}See 34 C.F.R. § 99.31(a)(6)(iii).
\textsuperscript{17}34 C.F.R. § 99.31(b)(1).
\textsuperscript{18}34 C.F.R. § 99.31(b).