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NCOSEA Voice

What State Education Agencies Need to Know about FERPA

Imagine that your state's flagship university wants thousands of student records to study the impact of participation in extracurricular activities on academic achievement. Or perhaps social services agencies seek assessment data to evaluate outcomes for students in foster care. What if your state auditor, citing its statutory authority to access confidential records, demands access to your student information system for an undefined purpose? Chances are your state's department of education is regularly navigating questions like this.

State board members are no doubt familiar with the basic premise of the Family Educational Rights and Privacy Act (FERPA): A school or district may not share a student's education record without parental consent unless one of a handful of limited exceptions applies. But what does FERPA mean for state education agencies (SEAs)? Why can states collect data without parental consent, and when can they share that data?

SEAs maintain massive troves of student data, and everyone—businesses, universities, researchers, auditors, and policymakers—wants it. It has been nearly a decade since the U.S. Department of Education revised the FERPA regulations to permit increased state-level data sharing, particularly for research and program evaluation. Yet many state leaders remain uncertain about the types of student data sharing they can approve.

The department has released hundreds of guidance documents since Congress enacted FERPA nearly 50 years ago, but almost none of them are geared toward SEAs. To fill that void, NASBE's affiliate, the National Council of State Education Attorneys (NCOSEA), released *State*

Education Agency Data and the Family Educational Rights and Privacy Act.

SEAs may collect, maintain, and disclose students' personally identifiable information (PII) in connection with an audit or evaluation of a publicly funded education program. The SEA may *redisclose* PII only under a FERPA exception.

For example, SEAs may redisclose student PII to authorized parties for certain kinds of research, using either the law's "studies" exception or its "audit or evaluation" exception. But each contains precise definitions. For example, the only permitted "studies" are those focused on developing, validating, or administering predictive tests; administering student aid programs; or improving instruction. Meanwhile, the "audit or evaluation" exception only applies when the review concerns an "education program" and when the recipient is either a state or federal education authority or its designated agent. NCOSEA's report explains the scope of SEA discretion under each exception.

FERPA expressly subjects SEAs to hefty penalties for noncompliance, so an SEA must handle data privacy in a FERPA-compliant way or face a loss of federal funds. Yet this prospect should not restrain agency staff from sharing data effectively to improve a state's educational programs. State boards can set the vision for sharing data to serve the interests of students, families, and schools. But doing so effectively requires an understanding of FERPA's legal framework. For that reason, NCOSEA's new report, which is posted on NASBE's website, should be in every state board member's legal toolkit. ■