

Sharing Student Data with Law Enforcement

FERPA Exceptions and Records Management

Learning Intentions

- Learners will be able to **explain the requirements for sharing** PII with a law enforcement official (LEO) under the following FERPA exceptions:
 - **School Official** exception
 - **Health and Safety Emergency** exception
 - **Subpoena** exception
- Learners will be able to **explain other circumstances** under which PII could be shared with a law enforcement official.
- Learners will understand the difference between **an educational record and a law enforcement record**.

Sharing Data with Law Enforcement

Whenever student data is shared, **it is important to be certain we have the legal right to do so** under the Family Educational Rights and Privacy Act (FERPA).

FERPA is **nuanced when it comes to sharing with Law Enforcement**. This training will help you gain confidence in understanding how FERPA applies.



Image created using Adobe Firefly



Utah State
Board of
Education

Student
Data
Privacy

FERPA Exceptions

FERPA gives parents the right to **consent before their students' information is shared, except under certain circumstances called "exceptions."**

The following exceptions apply to sharing with law enforcement.

School Official Exception

**Health and Safety
Emergency Exception**

Subpoena Exception

School Official Exception

FERPA Fast Facts–School Official Exception

Who counts
as a school
official?

Employees with
**legitimate
educational interest**

Examples:

- Teachers
- Office staff
- Administrators
- Counselors
- Paraeducators

Individuals/companies to
whom the school has
outsourced work that
are **performing an act
the school would
otherwise perform**

Examples:

- Volunteers
- Contractors
- Consultants
- Edtech apps



Utah State
Board of
Education

Student
Data
Privacy

For a **Law Enforcement Officer** to be considered a **School Official**, all of the following conditions must be met:

Must perform a function for which **the school would otherwise use an employee** (e.g., ensuring school safety)

The data must be under the **direct control of the school** in **usage and maintenance** of educational records

Can only use the data for the **purpose for which it was disclosed** (eg school safety)

Must meet the **criteria specified** in the school's **Annual Notice of FERPA Rights**

Under FERPA, this data cannot be redisclosed to anyone



Utah State
Board of
Education

Student
Data
Privacy

Checklist for Sharing under School Official

- ❑ Has the LEO been designated as a **School Official**?
- ❑ Does the LEO need this information to do the **specific task the school has asked them to do**?
- ❑ Have you ensured that **the data being shared is the minimum** needed for the LEO to do their job?
- ❑ Does the LEO understand that the records **cannot be redisclosed to anyone**, including to other LEOs?

Health and Safety Emergency Exception

FERPA Fast Facts–Health and Safety Emergency Exception

When can student data be disclosed under the Health and Safety Emergency exception?

When there is an
“articulable and significant threat”

When the disclosure is necessary to **protect the student or other individuals**

Examples:

- Natural disaster
- Terrorist attack
- Campus threat
- Epidemic outbreak



Utah State
Board of
Education

Student
Data
Privacy

Requirements to
share student
data under the
**Health and
Safety
Emergency
Exception:**

The data sharing must be limited
to the **period of the emergency**

The disclosure must be **necessary
to protect the health and safety**
of the student or others

The data shared must be
minimized to only the **data
related to the emergency**

A record must be made in the
student's records **stating what
the emergency was, and to
whom the data was disclosed**

**Disclosure
might be made
to:**

- LEOs
- Public Health
Officials
- Trained
Medical
Personnel
- Parents
- Officials of
Another School



Utah State
Board of
Education

Student
Data
Privacy

Subpoena Exception

FERPA Fast Facts–Subpoena and Court Order Exception

When can student data be disclosed under the Subpoena and Court Order exception?

When the disclosure is to comply with a **judicial order**

When the disclosure is to comply with a **lawfully issued subpoena**

Requirements to
share student
data under the
**Subpoena and
Court Order
exception:**

Schools must make a reasonable effort to **notify parents before the disclosure**, so that they can seek protective action

Under certain circumstances, schools are not required to notify parents

FERPA does not require that a record be made of the disclosure, **but it is best practice to do so**

If the subpoena **specifies that existence or contents of the subpoena not be disclosed**, or if it is an *ex parte* order



Utah State
Board of
Education

Student
Data
Privacy

Other Exceptions

Other exceptions
for sharing data
with a law
enforcement
officer

Directory Information Exception

To juvenile justice services, as long
as the receiver certifies in writing
they will not redisclose the data

When parents provide **written
consent**

Schools may
**only share
data
designated as
directory
information**,
and must
ensure they
have **removed
data from
students who
have been
opted out**



Utah State
Board of
Education

Student
Data
Privacy

Educational Records v Law Enforcement Records

Educational Records



- Records that are **managed and maintained by the school**
- **Protected** by FERPA

Cannot be
redisclosed
except as
permitted
under FERPA



Law Enforcement Unit Records



- **Created** by, and **maintained** by, a law enforcement unit, for **law enforcement purposes**
- Not protected by FERPA

May be
released
according to
school policy
or relevant
state or
federal laws



Utah State
Board of
Education

Student
Data
Privacy

Education Records

Cannot be redisclosed except as permitted under FERPA

- Records that **managed and maintained** school
- Protected** by

NOTE:

LEOs may handle and maintain both types of records.

It is advisable for Law Enforcement Units to maintain **Law Enforcement Unit Records** separately from Education Records.

Law Enforcement Unit Records

May be released according to school policy or relevant state or federal laws



Utah State
Board of
Education

Student
Data
Privacy

Special Note

Access to students in cases of suspected abuse

If you have additional questions around sharing data or providing access to students in cases of suspected abuse, please review the relevant section of state code ([Utah Code 53E-9-308\(3\)](#)) and [Board Rule 277-401-3](#) that address these situations.

Conclusion

Key Takeaways

- Data should only be shared with LEOs when parents have granted **parental consent**, or under one of **FERPA's exceptions**
- When sharing data under a FERPA exception, **certain conditions must be met before data is disclosed**
- **Data should not be re-disclosed**
- **Educational records** and **law enforcement unit records** are managed and maintained by **separate entities**, and **should be stored separately**

Resources

- [School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act \(FERPA\)](#)
- [Student Data Privacy and Data Ethics Scenarios for School Leaders](#)
- [School Official Exception](#)
- [Health and Safety Emergency Exception](#)
- [Subpoena and Court Order Exception](#)
- [Directory Information Short Video](#)
- [Directory Information Webinar](#)
- [Juvenile Justices exception](#)
- [FERPA Regulations](#)
- [FERPA Code](#)