UNITED STATES DEPARTMENT OF EDUCATION

STUDENT PRIVACY POLICY OFFICE

August 26, 2026

Dear Chief State School Officers and Superintendents:

We are writing you to provide the notification required by 20 U.S.C. § 1232h(c)(5)(C). The U.S. Department of Education (Department) through its Student Privacy Policy Office (SPPO) is required to inform State educational agencies (SEAs) and local educational agencies (LEAs), as recipients of funds under programs administered by the Department, of their obligations under the Family Educational Rights and Privacy Act (FERPA)[1] and the Protection of Pupil Rights Amendment (PPRA).[2] Failure to comply with FERPA or PPRA can result in loss of Federal financial assistance.

FERPA protects the privacy interests and access rights of parents and students in education records maintained by educational agencies and institutions, or by parties acting for such agencies or institutions. PPRA affords parents and students with rights concerning specified marketing activities, the administration or distribution of certain surveys to students, the administration of certain physical examinations or screenings to students, and parental access to certain instructional materials, including ones used as part of a student's educational curriculum.

This letter serves as the cover letter to the Department's annual notification.[3] In addition to notifying you of your legal obligations, we would also like to take this opportunity to point out several areas of concern identified over the last year. At Secretary McMahon's direction SPPO is taking proactive measures to address these issues, explained below.

Non-Compliance with PPRA. Based on the quantity of complaints filed with SPPO and various media reports we have reviewed, it appears that many LEAs are not in full, consistent compliance with PPRA. As explained in the Annual Notice to Superintendents,[4] PPRA affords parents with specific notification and consent rights with regard to certain surveys or evaluations given to elementary and secondary students, as well as the administration of certain types of physical exams or screenings of students. PPRA also requires LEAs to work in collaboration with parents to develop and implement certain policies that address these matters. This includes affording parents the opportunity, upon request, to inspect instructional material, excluding academic tests or academic assessments, used by an LEA as part of the educational curriculum for a student.

[1] 20 U.S.C. § 1232g; 34 C.F.R. Part 99
[2] 20 U.S.C. § 1232h; 34 C.F.R. Part 98
[3] 20 U.S.C. § 1232h(c)(5)(C)
[4] Annual Notice to Superintendents (March 2025), https://studentprivacy.ed.gov/resources/annual-notice-superintendents

Parental Consent. Under PPRA, parents must consent before students are required to submit to a survey, evaluation, or analysis that concerns one or more of the following eight protected areas if the survey is funded as part of a program administered by the Department:

1. political affiliations or beliefs of the student or the student's parent;
2. mental or psychological problems of the student or the student's family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or student's parent; or,
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

When an educator, counselor, or other school official administers a survey, evaluation, or analysis, students commonly feel obligated to participate. Because an authority figure is on the other side of the survey, evaluation, or analysis, students also rarely feel the need to ask a parent to review or approve it beforehand. As a result, administering such surveys, evaluations, or analyses effectively places students in the position of deciding on their own whether they feel compelled to participate. A student's decision can be shaped by peer pressure, fear of repercussions for not participating, a desire to please a favored teacher, or simply the authority a teacher or school official holds. Accordingly, any survey, evaluation, or analysis administered that addresses one or more of the eight protected areas listed above will be considered by this Office as "required," and therefore subject to PPRA's advance parental notification and written parental consent requirements.

Further, Federal law interprets "applicable program" as "any program for which the Secretary of Education has administrative responsibility."[5] PPRA (and FERPA) are Spending Clause statutes enacted under the authority of Congress in Article I, § 8 of the U.S. Constitution to spend funds to provide for the general welfare. With some limited exceptions, most public elementary and secondary schools receive Department funds, whether directly or through SEAs that distribute Department funds to LEAs. The PPRA parental consent requirements apply to surveys whether or not a specific survey is exclusively or directly administered with Department funds.

Therefore, in an effort to ensure parents are afforded their rights under PPRA, before administering a survey, evaluation, or analysis that solicits information relating to the eight protected areas listed in PPRA, a school must provide parents an opportunity to inspect and review the survey and provide written consent before their minor child participates in the survey. Please note the opt-out provisions in PPRA do not apply as a way of securing parental consent for student participation in such a survey.[6]

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[5] *See* 20 U.S.C. § 1221(c)(1); 34 C.F.R. § 81.2
[6] *See* 20 U.S.C. § 1232h(c)(2)(A)-(C)

Inspection upon Parent Request. Under PPRA, LEAs are required to develop and adopt policies, in consultation with parents, to address the protection of student privacy and parents' rights under PPRA, including the opportunity to inspect surveys implicating the eight protected area before administration or distribution by an LEA of the surveys to a student; any instrument used by an LEA to collect personal information for the purpose of marketing or sale (or otherwise distributing such information for that purpose), before the instrument is administered or distributed to a student, with some exceptions; and instructional material, excluding academic tests or academic assessments, used by an LEA as part of the educational curriculum for a student. SPPO is concerned that many LEAs may be denying parents the opportunity to fully inspect requested curriculum.

Mental Health Screening. Because many mental health screening instruments, or professionals who utilize them require students to answer questions about their emotional wellbeing, internalized distress, social interactions, and other indicators of psychological or mental states or conditions, the Department considers these instruments to elicit information that falls within the "mental or psychological problems of the student or the student's family," one of the categories protected under the Protection of Pupil Rights Amendment (PPRA). As discussed above, under PPRA, any survey, analysis, or evaluation administered to students that seeks information in a protected category may not be administered without prior written parental consent. Accordingly, when educational agencies or institutions use behavioral health screeners that probe students' emotional or psychological states, they must ensure that written parental consent is obtained prior to administration, in alignment with Federal requirements and the Department's existing guidance.

Annual Notifications of Rights. Many LEAs are not effectively notifying parents,[7] and where applicable, eligible students of their rights under PPRA and FERPA. While a school is not required to provide notice to parents individually, it is required to provide the notice by such means that are reasonably likely to inform parents of their rights. This could include publication in the school activities calendar, newsletter, student handbook, or prominently displayed on the school's website. A point of emphasis during our enforcement work this year will be ensuring that schools communicate these annual notifications clearly and effectively to parents. Please visit our Student Privacy website for more information, including sample notices and opt-out forms.[8]

Parental Right to Inspect and Review Education Records. Many LEAs may have policies and practices that conflict with the "inspect and review" provisions afforded to parents under FERPA. It appears that some of these practices occur at the direction, or at a minimum, with the tacit approval of their SEAs. After recent investigations revealed SEAs and LEAs engaging in such activities, we continue to be concerned about this matter. Many schools create "gender plans" for students and assert these plans are not "education records" under FERPA and

[7] *See* 34 C.F.R. § 99.7
[8] https://studentprivacy.ed.gov/annual-notices

therefore must be inaccessible to the parent.[9] This Office has investigated policies instructing schools to keep "gender" related records in a separate file, distinct from a student's "official record," or otherwise not classified as education records under FERPA. As clarified in this Office's 2025 Dear Colleague Letter, FERPA requires that schools provide parents with the opportunity to "inspect and review" *all* education records of their child upon request. Additionally, under the current statutory and regulatory framework, FERPA does not distinguish between a student's "official record," "cumulative file," or "unofficial records." Rather, all information, with certain limited statutory exceptions, that is directly related to a student and maintained by an educational agency or institution is considered part of the student's education records which parents have the right to inspect and review.

Outsourcing Institutional Services or Functions. Most schools find it necessary to outsource institutional services or functions. This may involve disclosing personally identifiable information from students' education records to contractors, consultants, volunteers, or other third parties. School administrators should be aware of the "outsourcing" provisions in FERPA that stipulate the requirements for such arrangements. First, the third party to which information from student records is being provided must be performing an institutional service or function which the LEA would otherwise use employees. Second, the LEA must maintain "direct control" over the third party's use and maintenance of the education records. And third, the LEA should make clear to the third party that they are subject to FERPA's requirements governing the use and redisclosure of personally identifiable information from education records.[10] Otherwise, the LEA may only disclose to the third party properly designated "directory information" on those students whose parents have not opted out, unless parents and eligible students provide prior written consent for the disclosure.[11]

Use of Personal Devices and Online Educational Services/Mobile Apps in the Classroom. SPPO also regularly receives inquiries and complaints regarding the use of personal devices by teachers in the classroom and the use of web-based tools provided by a third-party to a school or school district that students (and/or their parents) access via the Internet and use as part of a school activity. FERPA does not currently address the issue of school officials or other individuals using personal devices, such as cell phones, to take pictures or videos of students, some of which are posted on social media. This is because FERPA does not protect the confidentiality of information in general but rather prohibits the improper disclosure of personally identifiable information contained in or derived from education records. However, school administrators may want to consult with their attorney to determine if there is a state law that addresses personal devices and to develop relevant policies to protect students consistent with (or in the absence of) applicable State laws.

Regarding the use of online educational services in the classroom, school officials should refer to SPPO's guidance on our website, "Protecting Student Privacy While Using Online

[9] https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Secretary_Comb_SPPO_DCL_Annual%20Notice_0.pdf
[10] 34 C.F.R. § 99.31(a)(1)(i)(B)(1)-(3)
[11] 34 C.F.R. §§ 99.31(a)(11) and 99.37

Educational Services: Requirements and Best Practices."[12] In general, student information may only be disclosed to an online educational service company in compliance with FERPA, specifically under the outsourcing provisions discussed above. If the disclosure of education records to the third party does not meet the requirements for outsourcing services, then the LEA may only disclose properly designated "directory information" to the third party, unless parents and eligible students provide prior written consent for the disclosure.

Military Recruiters. SPPO also administers the military recruiter provisions of the Elementary and Secondary Education Act (ESEA),[13] which contains certain requirements for LEAs that are the recipients of ESEA funds. These provisions, as well as the Department of War companion law,[14] give military recruiters the same access to secondary students as provided to postsecondary institutions or to prospective employers and require that schools provide student information to military recruiters, when requested, unless the parent has opted out of providing such information. The information schools are required to provide to military recruiters includes student names, addresses, electronic mailing addresses, and telephone listings.

Should you have any questions or need assistance regarding these matters, SPPO is available to assist you. We encourage you to submit your questions directly to our student privacy help desk or sign up for our monthly student privacy electronic newsletter by visiting the "Contact" tab.[15]

Thank you for the vital work you do every day to safeguard student privacy, empower parents, and create safe and effective learning environments for our students nationwide.

Sincerely,



Frank E. Miller Jr.
Director, Student Privacy Policy Office
Director, Office of Educational Technology

[12] https://studentprivacy.ed.gov/resources/protecting-student-privacy-while-using-online-educational-services-requirements-and-best

[13] *See* Section 8528 of the ESEA, as amended, 20 U.S.C. § 7908

[14] 10 U.S.C. § 503(c)

[15] https://studentprivacy.ed.gov/contact