

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

MYTH

BUSTERS

1. Federal privacy laws are aligned and consistent.
2. States and districts risk court action and monetary damages if they make unauthorized disclosures under FERPA.
3. Congressional intent in enacting FERPA was solely to protect the confidentiality of student records.
4. Permitting states (and not just schools or districts) to redisclose records for purposes authorized in FERPA (such as research studies) is a serious threat to student privacy.
5. A state postsecondary data system may disclose education records to a separate state P-12 data system only if the P-12 system has legal authority to evaluate postsecondary education programs (and vice versa).
6. FERPA provisions authorizing student record disclosures for studies "for or on behalf of" schools and districts do not apply to studies using state-level data authorized by a state longitudinal data system or state education agency.
7. No state workforce agency may use education records to evaluate education programs, because workforce agencies are not controlled by state education agencies.

1. Federal confidentiality laws applicable to health and employment records permit much broader disclosure of confidential records to state officials than permitted under FERPA.
2. There is no private right to sue for a FERPA violation. A single potential remedy for a FERPA violation exists: loss of federal funds. In FERPA's 34 year history, no federal funds have been withheld because of FERPA violations. (Notably, federal funds can't be withheld where unauthorized disclosures are inadvertent.)
3. FERPA was enacted for the principal purpose of protecting student record privacy, but multiple FERPA provisions reflect legislative intent to permit use of these records for educational needs such as evaluation, audits, and research to improve education.
4. States may redisclose records only to the same recipients and for the same purposes permitted for initial disclosures by schools and districts. The principal threat to the privacy of records lies in the need for strong administrative and electronic safeguards.
5. The FERPA authority to disclose student data to state education agencies for evaluation is not limited according to the education level of the disclosing agency. Both a P-12 and a postsecondary data system have independent authority under FERPA to receive education records for students at any level of education for evaluation of education programs.
6. Nothing in FERPA bars a state agency from authorizing a study under FERPA provisions authorizing disclosures for studies for the benefit of schools and districts in its state.
7. Interagency agreements or state law may include appropriate controls in the state education agency regarding maintenance and use of data by the workforce agency.