



Privacy Technical
Assistance Center



Drafting FERPA Compliant Agreements & Consent Forms

Baron Rodriguez, PTAC Director

Disclaimer

- This presentation is intended to discuss the current FERPA regulations and 2012 changes.
 - It is **NOT** intended to interpret or provide comment on whether sharing of data with other agencies is permissible under other federal, state, or local laws.
 - State and local laws may have MORE stringent protections around privacy and security of education data and other state agency associated data.
- Remember that for student education data containing PII, ***FERPA is the floor, not the ceiling***, regarding the protection of the privacy of student education records.



Remember....



Other than consent...

Requirements for consent forms:



- (1) Specify the records that may be disclosed
- (2) State the purpose of the disclosure; and
- (3) Identify the party or class of parties to whom the disclosure may be made.



Perkins Example

Appendix A: Sample FERPA Consent Form

The following consent forms are examples that you should adapt to reflect the specific circumstances in your State.

Carl D. Perkins Vocational and Technical Education Act

I, a student at a postsecondary educational institution or a student age 18 years or older, _____, consent to the release of personally identifiable information from my education records or I, parent or guardian of a student at a secondary educational institution under the age of 18, _____ consent to the release of personally identifiable information from the education records of my son/daughter.

I understand that the records to be disclosed include my social security number and other personally identifiable information from my education records. I acknowledge that the purpose of the disclosure is to assist the _____ State Department of Education in obtaining and reporting information concerning the placement and retention of students in employment as required by section 113 of Carl D. Perkins Vocational and Technical Education Act. I understand that the personally identifiable information will be disclosed by the educational institution only to _____ Department of Labor / _____ Unemployment Insurance Agency. This information may not be redisclosed to others and will be destroyed as soon as all statistical analysis has been performed, or when the information is no longer needed, whichever date comes first.

Signature of Parent or Student

Date



Session Objectives

- Provide examples of allowable FERPA data sharing agreements.
- Highlight the required elements & best practices of FERPA compliant data sharing agreements.
- Discuss some scenarios of school official, Audit & Evaluation, and de-identified data sharing.



Disclosure Provisions

§ 99.31 Under what conditions is prior consent not required to disclose information?

The exceptions which relate to postsecondary institutions are:

- To school officials with legitimate educational interests (**defined in annual notification**). § 99.31(a)(1)

School officials with legitimate educational interests can include a contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions, provided the outside party –

- performs an institutional service or function for which the agency or institution would otherwise use employees;



Disclosure Provisions (cont.)

- is under the direct control of the agency or institution with respect to the use and maintenance of education records;
 - is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records; and,
 - an educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests (physical or technological access controls or administrative policy for controlling access).
- To schools in which a student seeks or intends to enroll.
§ 99.31(a)(2)
 - And others.. such as Directory information, health/safety, court order, etc.



Access to Student Records: Directory Information

- Directory information
 - May be released without prior consent
 - Postsecondary institution policies could specify what types of information are considered directory info
- Under **FERPA**, students must be informed of what is considered directory information and given the opportunity to withhold its release
 - [FERPA Model Notice for Directory Information](#)



Data Sharing Agreement Discussion

- Ray Marshall Center & Austin ISD
- Midwest school district & large non-profit



Written Agreements: Audit/Evaluation Exception

- Written agreements **must**
 - Designate an authorized representative
 - Specify what PII will be disclosed and for what purpose
 - under the audit/evaluation exception, the purpose of data sharing can only be to carry out an audit or evaluation of Federal- or State-supported education programs, or to enforce or to comply with Federal legal requirements that relate to those programs
 - Describe the activity to make clear that it falls within the audit/evaluation exception



Written Agreements—Audit/Evaluation Exception

- Written agreements must
 - Require an authorized representative to destroy PII upon completion of the evaluation and specify the time period in which the information must be destroyed
 - Establish policies and procedures, consistent with FERPA and other Federal and State confidentiality and privacy laws, to protect PII from further disclosure and unauthorized use



Audit/Evaluation

- Data can only be shared in order to
 - Audit or evaluate a Federal- or State-supported **education** program, or
 - Enforce or comply with Federal legal requirements that relate to those education programs
- Education program – broad, but not limitless



Written Agreements: Best practices

“FERPA represents the floor for protecting privacy, not the ceiling.”

- Bind individuals to the agreement
- Specify points of contact/data custodians
- Mention Institutional Review Board review and approval
- State ownership of PII

Identify penalties



Written Agreements: Best practices

- Include funding terms
- Maintain right to audit
- Identify and comply with all legal requirements
- Have plans to handle a data breach
- Review and approve reported results
- Define terms for conflict resolution
- Specify modification and termination procedures
- Inform the public about written agreements
 - In some cases, a separate confidential IT Security Plan may be appropriate



Audit & Evaluation Written Agreement Example

- State of Connecticut multi-agency project.
 - Includes non-educational agencies

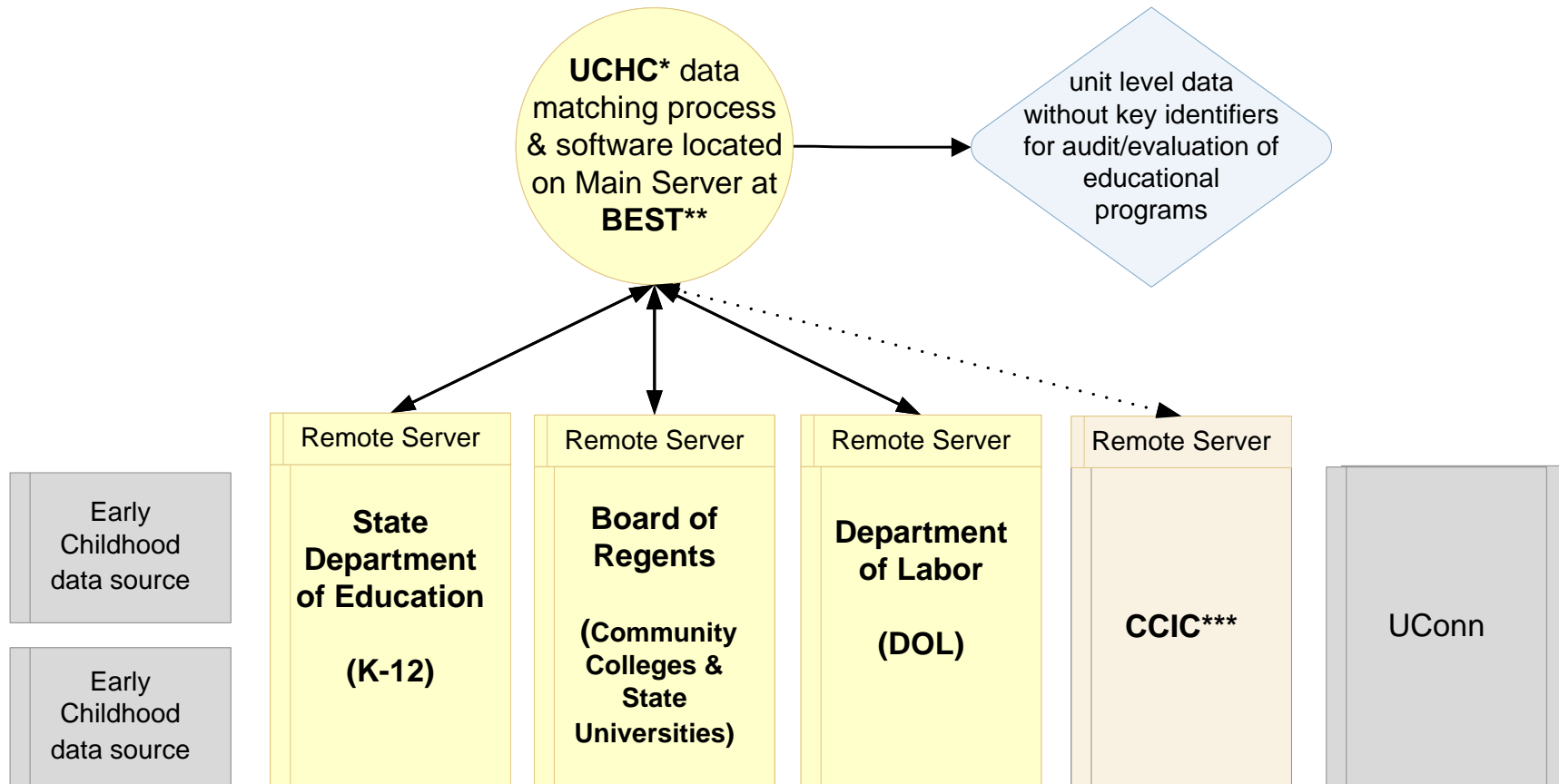


Background

- MOA to enable data linkages for P20W system
 - Goal:
 - Create a solid template for participating agency attorneys to modify
 - Challenges:
 - Agency attorneys lack of familiarity with new FERPA guidelines
 - Wary State Assistant Attorney Generals
 - Lack of in-house counsel



MOA for P20W system



* UCHC: University of Connecticut Health Center

** BEST: Bureau of Enterprise Systems and Technology (DOIT)

**** Connecticut Conference of Independent Colleges (CCIC)



Process for P20W system MOA – phase I

- Read relevant FERPA sections
- Utilized the PTAC document *Guidance for Reasonable Methods & Written Agreements*
- Gathered example MOU's
- Created a draft
- Asked PTAC for review
- PTAC read and provided feedback through conference call
- Made adjustments
- Circulated to participating agency attorneys
- Meeting scheduled to review/adjust ... finalize ...



Process for P20W system MOA – phase 2

- Agency attorneys reviewed & developed own versions
- UCHC Assistant Attorney General got involved and raised larger issues regarding impact of FOIA
- Discussions revealed that our model was not entirely accurate in its representation of where PII would flow
- More questions to PTAC
- More revisions to data sharing agreements
- Communicated changes among agency attorneys and Data Governing Board members
- Bundled documents for review by State Attorney Generals Office



P20 WIN Data sharing agreements

Main Memorandum of Agreements (MOAs):

- One MOA for each participating agency
- Each MOA includes the participating agency, UCHC & BEST
- Enables the participating agency to participate in the system and share PII only for the purpose of conducting a data match based upon approved data queries
- Meets written requirements under FERPA for 'Audit/Evaluation' exception

•Query Management Document/Agreement (QMD):

- One QMD for each data request/query
- Each QMD will meet the written requirements under FERPA for data sharing agreements that use the 'Audit or Evaluation' exception
- Identifies the 'Authorized Representative' to conduct evaluation using the matched data
- Each agency whose data would be included must sign that they approve before the request can be fulfilled.



Let's look at the language in the agreement...

- Authority:

3. Purpose of the Agreement [99.35(a)(3)(i) and 99.35(a)(3)(ii)(B)]

Purpose: audit and evaluation

WHEREAS, the purpose of the agreement is to enable and support the audit and evaluation of education programs offered by the [X Education Authority] including evaluation of the degree to which education programs are preparing students for post-secondary education and for success in the workforce; and



Sample Language

- Clearly articulate the purpose:

3. Purpose of the Agreement [99.35(a)(3)(i) and 99.35(a)(3)(ii)(B)]

Purpose: audit and evaluation

WHEREAS, the purpose of the agreement is to enable and support the audit and evaluation of education programs offered by the [X Education Authority] including evaluation of the degree to which education programs are preparing students for post-secondary education and for success in the workforce; and



Sample Language

- Designating the Authorized Representative:

FERPA allows designation of authorized rep

WHEREAS, FERPA allows an educational agency or institution to disclose personally identifiable information from education records without the consent required by §99.30 if the disclosure meets one or more of the conditions under §99.31, and FERPA allows disclosures to authorized representatives of state and local educational authorities for the purpose of conducting an audit or evaluation of educational programs or for the compliance with Federal legal requirements that relate to those program §99.31(3)(iv) & §99.35; and



Sample Language

- Restrict usage outside of the agreement:

Data used for the purpose of this agreement only

The Authorized Representative shall only utilize PII from education records of [X Education Authority] sufficient to meet the purposes of this Agreement. Approval given to the Authorized Representative



Specify PII to be shared

Appendix A

* Personally Identifiable Data

Data for Matching	Data Disclosed by CSBE	Data Disclosed by BOR
	Name: first, middle, last, suffix*	Name: first, middle, last, suffix *
	Date of birth*	Date of birth*
	Gender*	Gender*
	High school code (ACT/CEEB)	Graduating High school code (ACT/CEEB)
	SASID	SASID (where available)
Data for research / evaluation	CSBE	BOR
	Institution Information	
	Facility code (district, school, institution)	Institution IPEDS code & name
		2-year 4-year indicator
	Student Characteristics	
	Gender*	Gender*
	Race / Ethnicity*	Race / Ethnicity
	Free Reduced Lunch status	Food Stamp recipient
	English Language Learner status	Pell eligibility
	Gifted and talented status	Veteran Code
	Special Education status (IEP: Yes or No)	Permanent Address (state, country)
		Transfer status (in and out)
	Placement	
	Test scores (AP, CMT, CAPT, SAT, ACT) – all subjects	Placement test scores (Accuplacer) SAT
	Academic Experience	
	Graduation date	Enrollment status (full-, part-time, withdrew)
	High school courses completed	Enrollment dates (initial & term dates)
	Course grades	Credits attempted (term & cumulative)



Written Agreement Best Practice Examples

All necessary precautions – safeguard confidential info

The Authorized Representative agrees to take all necessary precautions to safeguard confidential student information and shall comply with all state and federal laws concerning the safeguarding and disclosure of such student information.

Data ownership

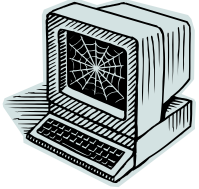
Authorized Rep understands that the Agreement does not convey ownership of any shared data.

Data Storage

The Authorized Representative agrees to store all confidential data obtained from [\[X Education Authority\]](#) on secure computers and in secure files to which access is restricted to authorized persons



Questions?



Website: <http://ptac.ed.gov>



Email: privacyTA@ed.gov

