

## AACRAO Memo on Disclosing Personally Identifiable Information From Education Records to Immigration Officials

On January 21, 2025, the acting director of the U.S. Department of Homeland Security **issued a directive** authorizing Immigration and Customs Enforcement and Customs and Border Protection enforcement actions to take place in previously prohibited "sensitive" areas such as hospitals, churches, and college campuses.

As immigration officials may seek access to personally identifiable information from students' education records, institutions must understand their legal obligations to protect students' personal information and the need to establish guidance for responding to requests from immigration officials seeking access to students' education records.

As you are aware, the Family Educational Rights and Privacy Act generally prohibits institutions from disclosing PII from education records without a student's written consent. However, FERPA includes several exceptions to the written consent requirement.

One such exception permits institutions to disclose PII from a student's education record non-consensually to comply with a judicial order or lawfully issued subpoena, including *ex parte* court orders under the USA Patriot Act.

Under this exception, if certain conditions are met, institutions may disclose PII to federal agents or immigration officials to comply with a judicial order or lawfully issued subpoena without the student's prior written consent.

Prior to complying with an order or subpoena, an institution must make a reasonable effort to notify the student of the order or subpoena so that the student can seek protective action, unless the subpoena is a federal grand jury subpoena or for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the order or subpoena or the information provided not be disclosed in response to the court order or subpoena.

When an institution receives a judicial order or lawfully issued subpoena, it should contact its legal counsel prior to compliance to ensure that the order or subpoena is valid and enforceable under state law and whether there may be grounds to challenge the subpoena.

If an institution receives an order or subpoena issued by an administrative agency and not a court, such as an administrative order or subpoena from the DHS, it should seek legal advice on how to respond.

We also remind institutions that FERPA requires that any disclosure of PII from education records made to immigration officials in compliance with a court order or lawfully issued subpoena must be recorded unless the court or other issuing agency has ordered that the existence or the contents of the order or subpoena or the information provided not be disclosed to the student in response to the court order or subpoena.

For each disclosure, the record must include:

- The parties who have requested or received PII from education records.
- The parties' legitimate interests in requesting or obtaining the information.

FERPA does permit an institution to disclose PII from education records, without consent, when such information has been appropriately designated as "directory information," and a student has not opted out of disclosing such designated information.

- Directory information includes information that would not generally be considered harmful or an invasion of privacy if disclosed, such as the student's name, address, telephone number, email address, date and place of birth, and other basic information.
- Directory information cannot include such information as social security number, race, gender, country of citizenship, or religion.

FERPA provides that an institution may disclose directory information if it has given students public notice of the types of personal information designated as directory information and the opportunity for a student to opt out of the disclosure of directory information.

However, it should be noted that FERPA would not permit the institution to disclose directory information that is combined with nondirectory information. For example, an institution could not disclose directory information about a group of students of a particular race or country of citizenship to immigration officials.

For more information on FERPA and immigrant student privacy, see the Presidents' Alliance's [Guidance for Higher Education on Immigrant Student Privacy and FERPA](#).

Congress sometimes passes laws that specifically require institutions to disclose PII from education records without the written consent of students. One such law requires institutions to report information concerning students in the F, J, or M nonimmigrant visa classifications<sup>1</sup> to the DHS, ICE, or the U.S. Department of State with respect to the Student and Exchange Visitor Information System, but only to the extent that reporting such information is required under federal law.<sup>2</sup>

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<sup>1</sup> See 8 U.S.C. 1101(a)(15)

<sup>2</sup> See 8 U.S.C. 1372 and 8 CFR 214.3(g)

An institution is required to report information that includes the student's identity, current address, nonimmigrant classification, current academic status, and any disciplinary action an institution takes against the student as a result of the student being convicted of a crime.

Federal law also provides that FERPA does apply to the PII of nonimmigrant student exchange visitors, except to the extent that the Attorney General determines that such information is necessary to carry out the Student and Exchange Visitor Program.<sup>3</sup> Thus, institutions would only be required to disclose such designated information to federal officials if the Attorney General determines it necessary.

As institutions prepare for the possibility of immigration officials seeking access to certain students' education records, institutions are encouraged to establish guidance for responding to such requests. We recommend institutions:

- Designate a point of contact, such as the institution's legal counsel, whom employees should immediately contact for guidance on how to respond to a court order or subpoena.
- Seek legal advice when determining whether the order or subpoena is consistent with state law and whether there are grounds for challenging the judicial order or lawfully issued subpoena.
- Establish procedures for notifying a student of the order or subpoena in a timely manner so that the student can seek protective action, unless the subpoena is for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the order or subpoena or the information provided not be disclosed in response to the court order or subpoena.
- Be sure to record the immigration official or parties receiving PII from education records and their legitimate interests in the information, unless the subpoena is for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the order or subpoena or the information provided not be disclosed in response to the court order or subpoena.

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<sup>3</sup> See 8 CFR 214.1(h)