

## FAQ FERPA and NSLVE

### FERPA and NSLVE Basics

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## FERPA and NSLVE Basics

### **What is FERPA: the Family Educational Rights and Privacy Act?**

First enacted in 1974, the Family Educational Rights and Privacy Act (FERPA) protect the privacy of student<sup>1</sup> education records.<sup>2</sup> It is a conditional funding law that prohibits federal education funding to educational agencies or institutions unless certain policies involving inspection, review, access, and protection of student education records are followed.<sup>3</sup> In short, the Act sets forth (1) the rights of a

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<sup>1</sup>34 C.F.R. § 99.3 ("Student, except as otherwise specifically provided in this part [Part 99 of Title 34 of the Code of Federal Regulations], means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.").

<sup>2</sup>An "education record" means those records that are "directly related to a student" and "maintained by an educational agency or institution or by a party acting for the agency or institution," 34 C.F.R. § 99.3.

<sup>3</sup>20 U.S.C. § 1232g (a) and (b)

parent to review a child's education records or of a student over the age of 18 to review his or her records<sup>4</sup>; and (2) the rules governing the disclosure of personally identifiable information from student education records.<sup>5</sup>

### **Is FERPA a barrier to an institution's participation in NSLVE?**

No. NSLVE was specifically designed to be in compliance with FERPA requirements regarding *directory information*, the disclosure of information pursuant to the *directory information exception*, the disclosure of *personally identifiable information* under the *studies' exception*, and the *de-identified records' provision* of the Act.

### **How does NSLVE's process and structure ensure FERPA compliance?**

Institute for Democracy & Higher Education (IDHE) has put in place several layers of protection of student privacy. Those layers include:

- A partnership with the National Student Clearinghouse ("Clearinghouse"), which receives enrollment and degree data from more than 3,600 public and private colleges and universities.<sup>6</sup>
- A confidential process whereby enrollment and public voting records are matched by the Clearinghouse, not by NSLVE or any entity that collects voting records
- Disclosure by the Clearinghouse to IDHE of de-identified data only
- Tight data controls
- Participation is *not* automatic. All participating institutions must submit an authorization form: an addendum to the institution's agreement with the Clearinghouse authorizing the use of student data under the *studies exception* of FERPA.

## **Directory Information**

### **What is "directory information"?**

*Directory information* is "information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed."<sup>7</sup>

*Directory information* includes but is not limited to:

[a] student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended.<sup>8</sup>

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<sup>4</sup>20 U.S.C. § 1232g (a)

<sup>5</sup>20 U.S.C. § 1232g (b)

<sup>6</sup>[www.studentclearinghouse.org/about/](http://www.studentclearinghouse.org/about/)

<sup>7</sup>34 C.F.R. § 99.3

<sup>8</sup>*Id.*

### **How can *directory information* be used by an institution?**

*Directory information* may be shared by an institution of higher education with third parties without obtaining the consent of a student.<sup>9</sup>

### **What student information does NSLVE need to match student records with public voting records?**

Name, address, and date of birth.

### **Are name, address, and date of birth *directory information* under FERPA?**

Yes. For this reason, using these three data elements is almost never a problem. There are two exceptions: when a student signs what is commonly called a “FERPA block” and when an institution adopts stricter rules (either voluntarily or because of a state law).

Your institution *might* define *directory information* in ways that are stricter than FERPA—for example, omitting date of birth from the list of information considered *directory information*. In that case, date of birth would be viewed as *personally identifiable information*.

### **What is a so-called “FERPA block?”**

The Act provides two conditions for disclosure of *directory information*. (1) Campuses must give public notice of the categories of information that it designates as *directory information*, and (2) students must have the opportunity to inform the institution that he or she wants certain information to be released only with the student’s prior consent.<sup>10</sup> Nationally, between 4% and 5% of students exercise that right.

## **Personally Identifiable Information**

### **What is *personally identifiable information (PII)*?**

*Personally identifiable information (PII)* is any student information that isn’t *directory information*.<sup>11</sup>

### **What are some examples of *PII*?**

*Personally identifiable information* includes gender, race/ethnicity and degree-seeking status.

### **If information is *PII* under FERPA or under an institution’s more stringent policies, does that mean it can *never* be disclosed?**

No. There are several ways that *PII* can be disclosed. The two most relevant to NSLVE are the *studies exception* and the *de-identified records provision*.

### **What is the *studies exception*?**

Under the *studies exception*, an institution may disclose *PII* from student education records, without student consent, to organizations conducting studies for or on behalf of such institutions to improve instruction, administer student aid programs, or to develop, validate, or administer predictive tests.<sup>12</sup>

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<sup>9</sup>34 C.F.R. § 99.31(a)(11).

<sup>10</sup>20 U.S.C. § 1232g(a)(5)(B).

<sup>11</sup>34 C.F.R. § 99.3

<sup>12</sup>20 U.S.C. § 1232g (b)(1)(F), 34 C.F.R. § 99.31(a)(6)

**Is NSLVE a “study” by an appropriate third-party researcher under the Act?**

Yes. The study is being conducted by the research division of the Jonathan M. Tisch College of Civic Life at Tufts University. All research is in collaboration with the Institute for Democracy & Higher Education (IDHE), whose mission is, through research, resource development, technical assistance, and advocacy, to shift college and university priorities and culture to advance political learning, agency, and equity. NSLVE’s purpose is to help institutions of higher education measure the effectiveness of their student civic learning and democratic engagement experiences.

**What is the *de-identified records provision*?**

The Act also says that institutions can disclose de-identified records, meaning records that can’t be attributed to any individual student.<sup>13</sup>

**What information do you receive?**

Campuses submit a two-page form to NSLVE authorizing the Clearinghouse to use previously-disclosed student information. The Clearinghouse uses three data elements (name, date-of-birth, address) and matches it with voter information obtained from a third-party vendor. The public voting information includes: (1) whether a student registered to vote; (2) whether the student voted in a given election; (3) where a student voted; and (4) by what method the student voted. Fundamental to the secret ballot, the information does not include information such as for whom a student voted, nor does NSLVE possess, seek, or receive such information.

The Clearinghouse scrubs the data for personal identifiers and sends it to NSLVE for analysis. If, for example, a student is one of five people at that institution from a particular area or with a particular major, NSLVE receives a “N/A” rather than data. For adequately populated data, NSLVE receives the age of the student on Election Day (no date of birth), students’ field of study and class level, gender and race/ethnicity (if available), as well as the institution’s OPEID number<sup>14</sup>.

NSLVE then conducts its analysis of aggregate student voting data. The aggregate results of its analysis are then provided to each institution in the form of a confidential report. No personally identifiable information is provided, and the results are not made public unless the school decides to make the data public.

**Does NSLVE receive gender and race/ethnicity information?**

Yes, if the Institution provides it to the Clearinghouse.

**Please recap NSLVE layers of protections for student privacy.**

- NSLVE has added a protective measure by requiring the Clearinghouse to de-identify the data, such that the data NSLVE receives are non-personally identifiable. That regulation permits an institution of higher education, or a party that has information from education records, to release the information without consent “after the removal of all personally

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<sup>13</sup>34 C.F.R. § 99.31(b)

<sup>14</sup>The Office of Postsecondary Education Identification (OPEID) number used by the U.S. Department of Education to identify schools that have Program Participation Agreements with the Department to participate in federal student aid programs under the Higher Education Act of 1965.

identifiable information provided that the . . . institution [of higher education] . . . has made a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information."<sup>15</sup> Such actions are in accord with the principles underlying FERPA's de-identified records regulation.<sup>16</sup>

- NSLVE does not receive students' names.
- NSLVE does not receive information if the number of students in a particular category is fewer than ten.
- Institutions receive aggregate data only.
- Publications contain aggregate data only. No institution-level data is disclosed without prior permission.

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<sup>15</sup>34 C.F.R. § 99.31(b)(1).

<sup>16</sup>34 C.F.R. § 99.31(b).