

Understanding the NEW FERPA Guidance for School Security Staff from the U.S. Department of Education

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- For support during the Webinar, **please contact the REMS TA Center** at **info@remstacenter.org** or **1-855-781-REMS (7367)**.
- You are invited to **participate in a 30-minute Twitter Chat** after the Webinar via the Community of Practice.
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Understanding the NEW FERPA Guidance for School Security Staff from the U.S. Department of Education



U.S. Department of Education
Office of Safe and Healthy Students

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Housekeeping

- To download a copy of pertinent handouts, use the **Web links** on your screen. Select the name of the link you want to access.
- There is no dial-in for this Webinar. **Audio is available via the link provided**. If you are experiencing difficulty hearing the audio stream, make sure your computer speaker volume is turned up.
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Please use the
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Questions
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Presenters



Madeline Sullivan, Management and Program Analyst, Office of Safe and Supportive Schools

Michael Hawes, Director Student Privacy Policy Office

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Agenda

Understanding the Importance of FERPA in the Context of School Emergency Preparedness

Overview of the NEW U.S. Department of Education Guidance Document

Q&A Session

Web Chat



Understanding the Importance of FERPA in the Context of School Emergency Preparedness

FERPA

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

Gives parents (and eligible students) the right to access and seek to amend their children's education records

Protects personally identifiable information (PII) from education records from unauthorized disclosure

Requirement for written consent before sharing PII – unless an exception applies

- (20 U.S.C. §1232g & 34 CFR Part 99)

What Is Personally Identifiable Information (PII)?

Direct Identifiers

e.g., Name, SSN, Student ID Number, etc. (1:1 relationship to student)



Indirect Identifiers

e.g., Birthdate, Demographic Information (1:Many relationship to student)



“Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.” (§ 99.3)

What Are Education Records?

“Education Records” are records:

- Directly related to the student; and
- Maintained by (or on behalf of) an educational agency or institution.

Excludes certain types of records, including “sole possession records” and “law enforcement unit records.”

Law Enforcement Unit Records

What is a “Law Enforcement Unit”?

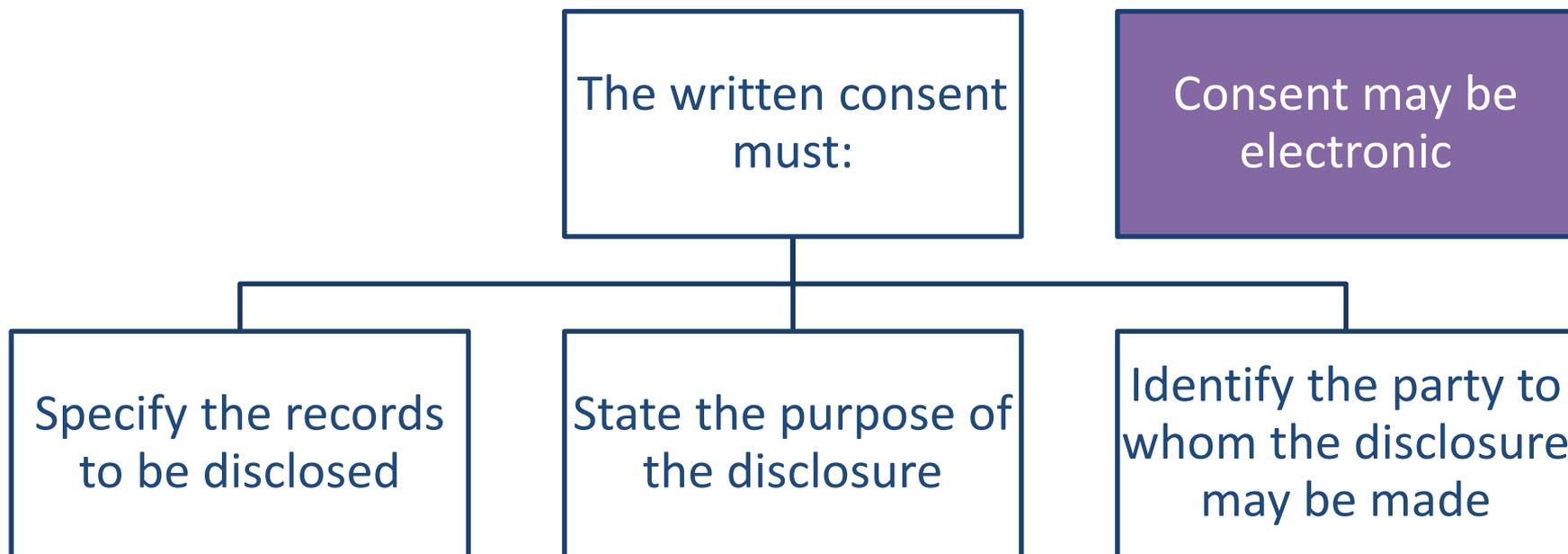
- ...any individual, office, department, division, or other component of a school or district, such as a unit of police officers or security guards, that is officially authorized or designated by that school or district to (1) enforce any local, State, or federal law, or refer to appropriate authorities a matter for enforcement...; or (2) maintain the physical security and safety of the agency or institution. [34 CFR § 99.8(a)(1)]

What are “Law Enforcement Unit Records”?

- records that are: (1) created by a law enforcement unit; (2) created for a law enforcement purpose; and (3) maintained by the law enforcement unit. [34 CFR § 99.8(b)(1)]

Consent

Education agencies and institutions may not disclose PII from education records without the written consent of the parent or eligible student (unless an exception applies). (§99.30)



Exceptions to Consent

When Can Disclosures Be Made Without Consent?

There are several exceptions to FERPA's prior written consent requirement.

Those most relevant in the school safety context include:

Disclosures to other School Officials;

Disclosures during Health or Safety Emergencies; and

Disclosures pursuant to a Judicial Order or Lawfully Issued Subpoena.

School Officials

WITH LEGITIMATE EDUCATIONAL INTEREST

PII may only be disclosed from education records without consent to other school officials within institution that have a legitimate educational interest, or to third parties acting as school officials, if they:

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

Are under the direct control of the agency or institution with respect to the use and maintenance of education records;

Only use PII from education records for the purposes for which the disclosure was made;

Meet the criteria for “school official with legitimate educational interest” specified in the school’s annual notification of FERPA rights

Examples & Non-Examples of Education Records

EDUCATION RECORDS

Transcripts

Disciplinary records

Standardized test results

Health (including mental health) and family history records

Records on services provided to students under the Individuals with Disabilities Education Act (IDEA)

Records on services and accommodations provided under Section 504 of the Rehabilitation Act of 1973 & Title II of the ADA

NOT EDUCATION RECORDS

Records kept in the sole possession of the maker and used only as personal memory aids. Example: Teacher's grade book.

Law enforcement unit records

Grades on peer-graded papers before they are collected and recorded by a teacher

Records created or received by a school after an individual is no longer in attendance and that are not directly related to the individual's attendance at the school

Employee records that relate exclusively to an individual in that individual's capacity as an employee

Information obtained through a school official's personal knowledge or observation

Why is FERPA important in the context of school emergency preparedness?

Protects student data privacy while supporting education agency efforts under Step 2 of the six-step planning process for EOP development

Reinforces cybersecurity and safety in the learning environment

Supports information sharing among various key stakeholders

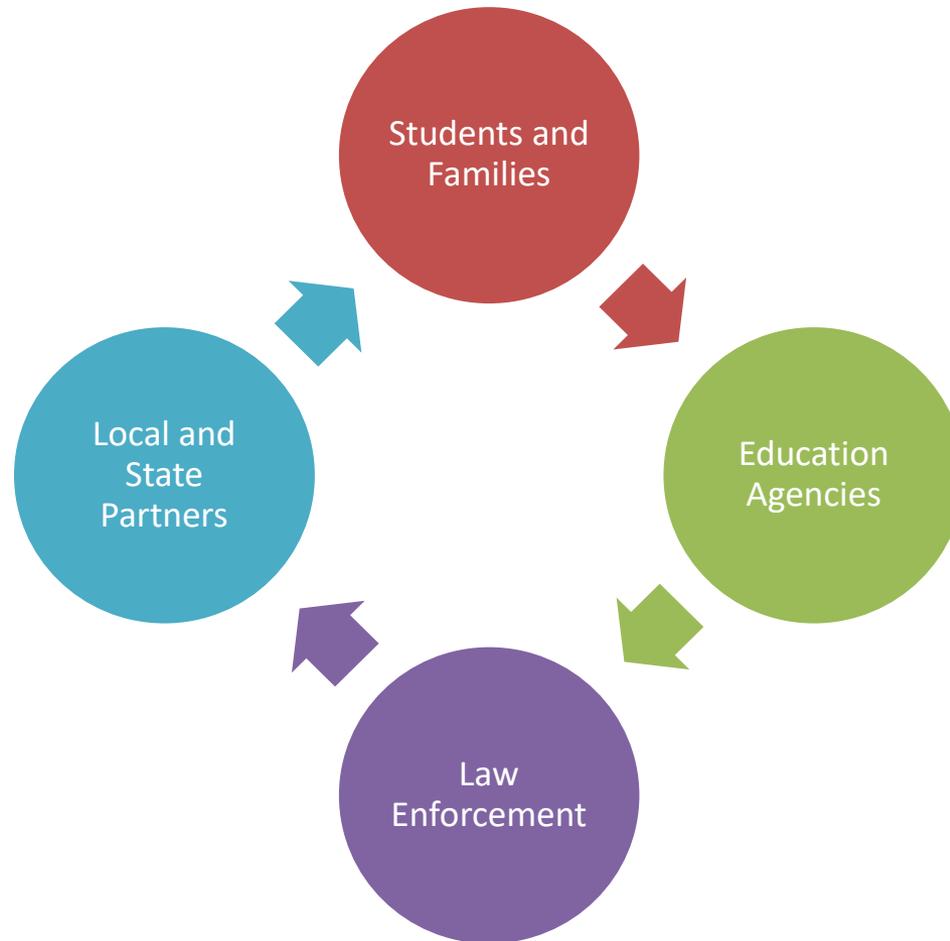
Encourages vendors and other service providers to take steps to protect students

Health or Safety Emergencies

PII from education records may be disclosed, without consent, to appropriate parties in the context of a health or safety emergency, provided that:

- There is an articulable and significant threat to the health or safety of a student or other individuals; and
- The disclosure is necessary to protect the health or safety of the student or others.

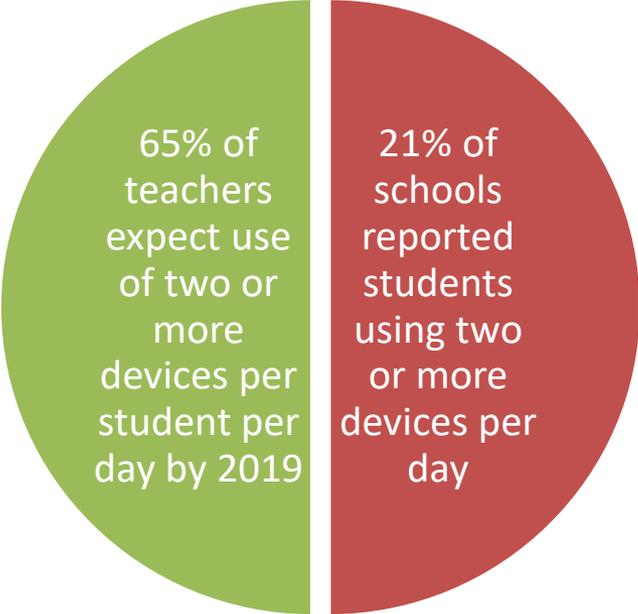
Who does FERPA protect and support?



FERPA and Integrated Use of Technology in School Settings

Virtual Tools Schools Use That Contain Student PII

- Liquid Crystal Display or Digital Light Processing Projectors
- Digital Cameras
- Interactive Whiteboards



65% of teachers expect use of two or more devices per student per day by 2019

21% of schools reported students using two or more devices per day

Ensuring Compliance via Use of Multi-Disciplinary Teams

Non-School Partners

Parents and Caregivers

Mental/Medical Health Providers

Tutors

Coaches

Mentors

Social Service Providers

School Partners

Principals and District Administrators

Human Resource Staff

SROs and Security Staff

EOP Development Planning Team Members

Emergency Response Staff

Teachers

Counselors

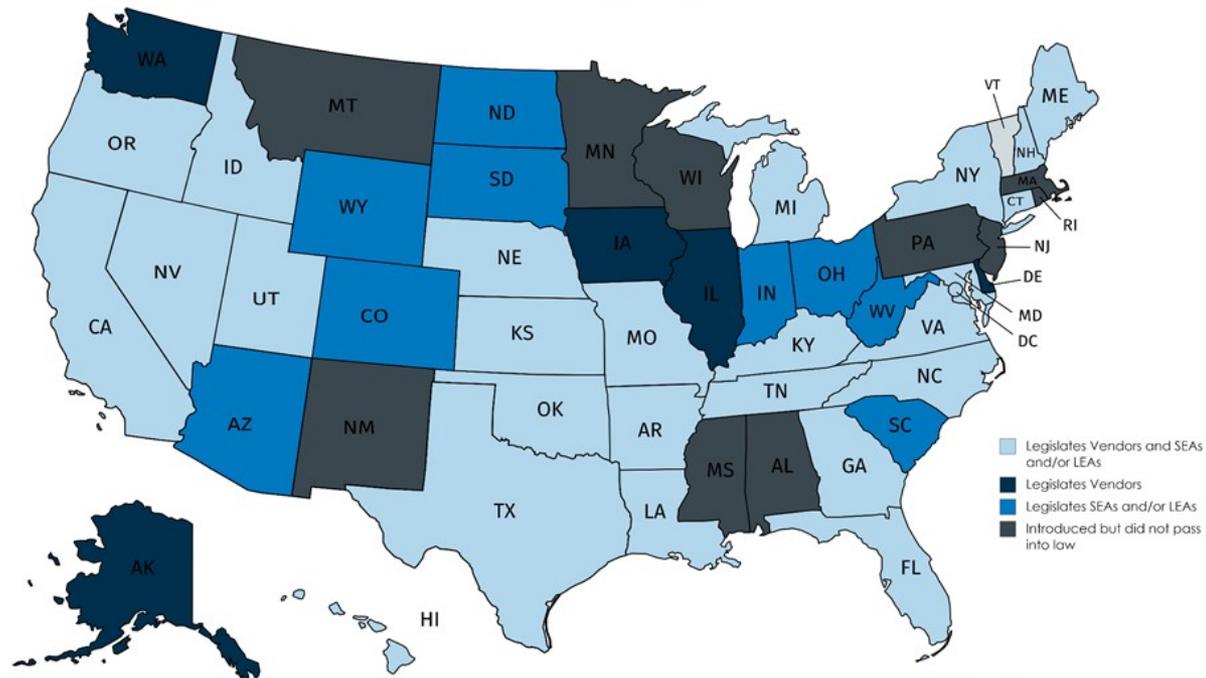
Students

IEP Teams

Threat Assessment Teams

State Efforts to Protect Student Data and Privacy

39 States Have Passed **113** Laws Since 2013*



*161 total laws mentioning student privacy were passed since 2013, but the map above only includes laws that are primarily about student privacy or had significant student privacy provisions



<https://ferpasharpa.org/state-laws>

Federal Recommendations for SEAs and LEAs Specific to FERPA

States

- Examine state-level student privacy laws to identify protections that go beyond FERPA. Information shareable under FERPA may not be shareable under their state student privacy laws.

Districts and schools

- Raise awareness of existing FERPA flexibilities and access support via ED's Privacy Technical Assistance Center (PTAC).

District and school staff

- Make recommendations on additional training needs that can support increased awareness and understanding.

Federal Efforts to Support States with FERPA Implementation

Offices and Centers

- Student Privacy Policy Office
 - Privacy Technical Assistance Center
- Office of Safe and Supportive Schools
 - REMS TA Center
 - National Center for Safe and Supportive Learning Environments
- National Center for Homeless Education

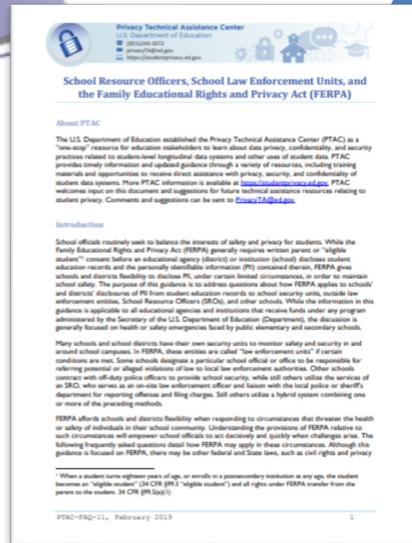
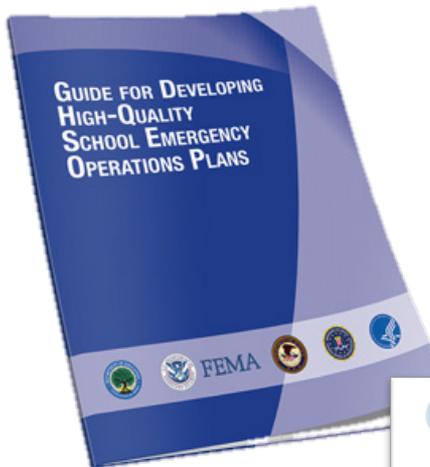
Virtual Resources

- Web pages
- Webinars
- Virtual Toolkits

Guidance Documents

- Fact Sheets
- FAQ Documents
- Guidance Documents
 - School Guide
 - Final Report of the Federal Commission on School Safety
- NEW Guide for SROs and Security Units

Guidance Documents Snapshot



[School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act](#)

[Guide for Developing High-Quality School Emergency Operations Plans](#)

[Family Educational Rights and Privacy Act \(FERPA\) and the Disclosure of Student Information Related to Emergencies and Disasters](#)

[Addressing Emergencies on Campus](#)

Agenda

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Overview of the NEW U.S. Department of Education Guidance Document

FAQs on FERPA and School Safety

School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act

Provides answers to 37 frequently asked questions about FERPA and student privacy in the context of school safety.

Available on the Department's Student Privacy Website at:
<https://studentprivacy.ed.gov>

NOTE: The information contained in the following slides is excerpted from the more detailed answers presented in the guidance. Please refer to the full document for more thorough answers and for additional information.

Law Enforcement Units

Does a school or district have to use only employees to staff its law enforcement unit?

No. FERPA does not require a school or district to use only employees to staff its law enforcement unit and may contract out those services.

School Resource Officers

Are SROs or other outside local law enforcement officials who serve as a school's law enforcement unit automatically considered school officials?

Not automatically. Subject to FERPA's conditions regarding outsourcing institutional services or functions, these officials may be considered "school officials" with "legitimate educational interests" and may have access to students' education records.

Health or Safety Emergencies

How does a school or district know when a health or safety emergency exists so that a disclosure may be made under this exception to consent?

A school or district must make this determination on a case-by-case basis, taking into account the totality of the circumstances pertaining to a threat to the health or safety of a student or others.

If the school or district determines that there is an articulable and significant threat to the health or safety of a student or other individuals...it may disclose that information to the appropriate parties without consent.

Health or Safety Emergencies

Who are considered “appropriate parties” that may receive information under the health or safety emergency exception?

An appropriate party under the health or safety emergency exception is a party whose knowledge of such information is necessary to protect the health or safety of the student or other persons.

Typically, local or State law enforcement officials, public health officials, trained medical personnel, and parents (including parents of an eligible student) are the types of appropriate parties to whom schools and districts may disclose information under this FERPA exception

Health or Safety Emergencies

What does “articulable and significant threat” mean?

This is a flexible standard under which the Department generally defers to school officials so that they might respond appropriately.

In applying this standard, a school official should be able to explain the basis for his or her reasonable belief, based on all the available information, as to why a given student poses an “articulable and significant threat.”

Health or Safety Emergencies

Does a school have to record disclosures made under FERPA's health or safety emergency exception?

Yes. When a school or district makes a disclosure under the health or safety exception, it must record in the student's education records the articulable and significant threat that formed the basis for the disclosure, and the parties to whom the information was disclosed.

Judicial Orders and Subpoenas

May schools comply with a subpoena or court order for education records without the consent of the parent or eligible student?

Yes, although a reasonable effort to notify the parent or eligible student is generally required. FERPA permits disclosure of education records without consent in compliance with a lawfully issued subpoena or judicial order. However, a school or district must generally make a reasonable effort to notify the parent or eligible student of the subpoena or judicial order before complying with it in order to allow the parent or eligible student the opportunity to seek protective action, unless certain exceptions apply.

Personal Knowledge and Observations

Does FERPA permit school officials to release information that they personally observed or of which they have personal knowledge?

Because FERPA applies to the disclosure of PII from education records that are maintained by the school, FERPA does not prohibit a school official from releasing information about a student that was obtained through the school official's personal knowledge or observation, rather than from the student's education records.

However, this does not apply where a school official learns of information about a student through his or her official role in making a determination about the student and the determination is maintained in an education record.

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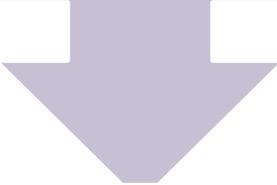
Q&A Session

Web Chat

Questions & Answers

During the Webinar

Please use the Q&A Pod on your computer screen to submit questions.



After the Webinar

Please join us on the Community of Practice for a 30-minute Web chat during which we will answer additional questions.

Key Questions to Remember

Who [what agency] has the information?



Who [what agency] wants the information?



What specific information does the requester want?



What exactly does the requester want to do with the information?



What laws are relevant to this situation?



What do these laws permit, and what do they prohibit?



How can school personnel proceed legally to get the student help?

Source: COPS Office, U.S. Department of Justice

Summary

Understand the importance of training staff to ensure compliance with the law under FERPA.

Study and **learn federal, state, and local legislation** specific to FERPA, but also other federal, state and local laws specific to the sharing of student data and PII.

Outline whether there are FERPA exceptions within applicable EOP annexes so that response team members understand if it and when it applies.

Access resources from ED, including the Student Privacy Compliance Office, PTAC, and the REMS TA Center.

Have Ideas? Need TA Support? Building a Training Program?

Email privacyTA@ed.gov.

Join Student Privacy Listserv.

- <https://studentprivacy.ed.gov/join-student-privacy-listserv>

Request training or technical assistance.

- <https://studentprivacy.ed.gov/request-ptac-training-or-technical-assistance>



Protecting Student Privacy

U.S. DEPARTMENT OF EDUCATION

A Service of the Privacy Technical Assistance Center and the
Student Privacy Policy Office

Join us for a Web Chat on the Community of Practice NOW!

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HOME ► [#SCHOOLSAFETYFERPA WEB CHAT](#)

Join us for a Web chat on March 27 at 3 PM ET as a follow up to our Understanding the NEW FERPA Guidance from ED Webinar.

Welcome to the Web Chat!

 <p>administrator Administrator Posts: 219 11 seconds ago</p>	<p>You may have more questions related to items discussed in today's Webinar. We hope to answer them in this forum!</p> <p>To ask a question or comment, click Add Reply and type your message into the field that appears. Click Preview to see your post before it's added and then Add Message to post your question or comment. The REMS TA Center will respond to each question individually as quickly as possible. To reply directly to a question or comment, select Reply with Quote. If you would like to receive an external email when a post is added during this Web Chat, click Notify me when a reply is posted.</p> <p>Please note that chat questions and responses may take a few seconds to appear. You do not have to hit refresh.</p> <p>If the conversation extends beyond the length of one page, chat questions and responses will appear on a second page connected to this thread. Click the numbers that will appear at the bottom of the page to view the entire conversation. Click the highest number to view the latest chats.</p> <p>Thanks again for joining this Web chat! We're here to answer your questions</p>
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Join us NOW on the Community of Practice to continue the discussion!

- Log on at <https://rems.ed.gov/COP/default.aspx>.
- Select K-12 Public Forums.
- Select **#SCHOOLSAFETYFERPA WEB CHAT**.



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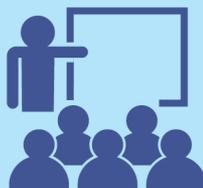
Enhance Emergency Operations Plans



Access Relevant Federal Guidance



**Use EOP-Enhancing
Interactive Tools**



**Request an On-Site Training
in Key EOP-Related Topics**



**Learn Anytime via Virtual Trainings
on all Topics in Emergency Management**



PREVENT



PROTECT



MITIGATE



RESPOND



RECOVER