



## UNITED STATES DEPARTMENT OF EDUCATION

### STUDENT PRIVACY POLICY OFFICE

January 15, 2025

Dear Chief State School Officers:

The U.S. Department of Education's (Department's) Student Privacy Policy Office (SPPO) has received a number of inquiries from State educational agencies (SEAs) regarding the applicability of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1234g; 34 CFR Part 99) to the redisclosure of personally identifiable information (PII) from students' education records to Summer Electronic Benefits Transfer Program (Summer EBT) agencies<sup>1</sup> for the purpose of automatically enrolling students in Summer EBT. Summer EBT is a program of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS). Specifically, SEAs have inquired about disclosures of PII, including student name, date of birth, household address, parent/guardian name, phone number, email address, preferred language of communication, or other fields necessary to ensure verification for the purpose of automatically enrolling eligible children<sup>2</sup> in the Summer EBT program without further application. Similarly, questions also arose regarding the disclosure of such PII under FERPA from School Food Authorities<sup>3</sup> (SFAs) to Summer EBT agencies. As explained more fully below, we believe that these disclosures do not violate FERPA. Congress amended the Richard B. Russell National School Lunch Act (NSLA) in December 2022 to establish Summer EBT. Although the NSLA did not explicitly exempt educational agencies and institutions subject to FERPA from complying with FERPA for purposes of Summer EBT, we believe that Congress intended for SEAs to redisclose, and SFAs to disclose, PII from student education records to Summer EBT agencies, as required by the NSLA to automatically enroll eligible children in Summer EBT, without first obtaining parental consent. We hope this information will assist you in complying with the requirements of the NSLA.

#### *Background on FERPA*

FERPA protects the privacy interests of parents and students in students' "education records" by affording parents the right to access their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of PII from the records. All FERPA rights transfer from parents to students when the student reaches 18 years

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<sup>1</sup> "Summer EBT agency" includes "[a]ny agency of State government that has been designated by the Governor or other appropriate executive or legislative authority of the State which is responsible for the administration of the Summer EBT Program within the State." See 7 CFR § 292.2.

<sup>2</sup> This letter focuses on the enrollment of eligible children "otherwise determined by a school food authority to be eligible to receive free or reduced price meals in the instructional year immediately preceding the summer or during the summer operational period in the program under this section," as set out in Section 13A(c)(1)(A) of the NSLA, 42 U.S.C. 1762(c)(1)(A).

<sup>3</sup> "School Food Authorities" is defined as "the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein [noting that the Program is defined to refer to the National School Lunch Program and the Commodity School Program] or be otherwise approved by FNS to operate the Program." 7 CFR § 210.2.

of age or attends a postsecondary institution at any age. *See* 34 CFR §§ 99.3 (“Eligible student”); 99.5(a)(1). An educational agency or institution is prohibited from disclosing without consent PII from students’ education records unless the disclosure meets an exception to FERPA’s general consent requirement. *See id.* §§ 99.30 and 99.31. By “educational agency or institution” in FERPA, we generally mean a school district, individual school, and college or university.

Educational agencies and institutions may non-consensually disclose PII from education records for audit, evaluation, or enforcement purposes under 34 CFR §§ 99.31(a)(3) and 99.35 only to authorized representatives of the officials or agencies listed in 34 CFR § 99.31(a)(3). Typically, local educational agencies (LEAs) and their constituent schools disclose PII from students’ education records to State educational authorities, such as an SEA, under this exception to FERPA’s general consent requirement. The term “education records” means, with certain exceptions, those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. *See id.* § 99.3 “Education records.” SPPO administers FERPA and is responsible for the provision of technical assistance on student privacy issues for the broader education community. For more information on how FERPA applies to an SEA, please see our letter to the Nevada Department of Education: <https://studentprivacy.ed.gov/resources/letter-nevada-department-education-about-applicability-ferpa-providing-parents-access>.

#### *Background on the Summer Electronic Benefits Transfer Program*

Summer EBT provides nutrition assistance for purchasing groceries directly to low-income families with school-age children over the summer months. As established in Section 13A(c)(1)(A) of the NSLA, 42 U.S.C. 1762(c)(1)(A), Summer EBT agencies operating Summer EBT are required to automatically enroll certain children in Summer EBT without further application. The NSLA provides:

(c) ENROLLMENT IN PROGRAM.— (1) STATE REQUIREMENTS.—States that elect to participate in the program under this section shall— (A) with respect to summer, *automatically enroll each eligible child who is directly certified, is an identified student (as defined in section 11(a)(1)(F)(i)), or is otherwise determined by a school food authority to be eligible to receive free or reduced price meals in the instructional year immediately preceding the summer or during the summer operational period in the program under this section, without further application from households;* (B) make an application available for children who do not meet the criteria described in subparagraph (A) and make eligibility determinations using the eligibility criteria for free or reduced price lunches under this Act; (C) establish procedures to carry out the enrollment described in subparagraph (A); (D) establish procedures for expunging summer EBT benefits from the account of a household, consistent with the requirements under subsection (b)(4); and (E) allow eligible households to opt out of participation in the program under this section and establish procedures for opting out of such participation.

42 U.S.C. 1762(c)(1)(A) (emphasis added). This letter focuses on the automatic enrollment without further application of children who are determined by SFAs to be eligible for free or reduced price meals in the instructional year preceding the summer or during the summer

operational period of the Summer EBT program. FNS has interpreted this requirement to mean that Summer EBT agencies must automatically enroll these children in Summer EBT, without additional outreach, contact, application, etc. (i.e., parents or guardians of these children need not take any further action in order for the children to receive Summer EBT benefits). The phrase “without further application” is used consistently throughout the NSLA to mean no action may be required by the household in order for a child to receive benefits.

*Applicability of FERPA to Disclosures Pursuant to the NSLA*

Occasionally, without amending FERPA, Congress passes Federal statutes that may include requirements that conflict with certain provisions under FERPA, particularly in requiring educational agencies and institutions to non-consensually disclose, or redisclose, PII from education records. FERPA does not directly address the permissibility of non-consensually disclosing or redisclosing PII from education records that must be disclosed pursuant to other Federal statutes enacted after August 21, 1974, (the date FERPA was enacted). However, in some instances, we have found that adhering to the later enacted Federal statutes requires the nonconsensual disclosure of PII from education records, in this case, specifically for purposes of enrollment in Summer EBT.

Following consultation with USDA regarding this matter, it is the Department’s position that the later-enacted requirements of NSLA’s Summer EBT program at Section 13A(c)(1)(A) of the NSLA, 42 U.S.C. 1762(c)(1)(A), cannot be reconciled with FERPA’s general consent requirement at 20 U.S.C. 1232g(b)(2) and 34 CFR §§ 99.30 and 99.31. To comply with the NSLA, Summer EBT agencies must “automatically enroll” eligible children “without further application from the household.” To complete Summer EBT enrollment, SEAs must disclose to Summer EBT agencies PII from education records, including the child’s name, household address, parent/guardian name, date of birth, phone number, email address, preferred language of communication, or other fields necessary to ensure verification. Requiring SEAs to obtain parental consent or the consent of an eligible child for this disclosure prior to enrollment would make it impossible for Summer EBT agencies to complete “automatic enrollment . . . without further application from the household.” None of FERPA’s exceptions to the consent requirement are applicable here. For example, FERPA’s directory information exception would not resolve this conflict. The PII that needs to be disclosed for verification purposes as discussed above includes elements that would generally not be considered directory information, e.g., preferred language of communication. Further, parents and eligible students have a right under FERPA to opt out of the disclosure of the information that is designated as being directory information under 20 U.S.C. 1232g(a)(5)(B) and 34 CFR § 99.37(a)(2). Because parents or eligible students may opt out of such disclosures, the directory information exception would not necessarily permit the disclosure or redisclosure of the PII from education records to Summer EBT agencies of all children who are eligible for the Summer EBT program. Accordingly, in order for Summer EBT agencies to comply with the NSLA requirement to automatically enroll eligible children without further application by the household, SEAs cannot also comply with FERPA’s consent requirement.

Because the NSLA Summer EBT requirements cannot be reconciled with FERPA, the later enacted provisions of the NSLA override FERPA’s consent requirement only to the extent it is necessary for SFAs and SEAs to disclose or redisclose PII from student education records to

Summer EBT agencies to automatically enroll eligible children in the Summer EBT program, without first obtaining the prior written consent of the child's parent or the child when the child is an eligible student.

We trust that the above information is responsive to your inquiry. If you have any additional questions, please do not hesitate to contact SPPO through our student privacy help desk at [PrivacyTA@ed.gov](mailto:PrivacyTA@ed.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank E. Miller Jr.", is positioned above the printed name.

Frank E. Miller Jr.  
Acting Director  
Student Privacy Policy Office