

MEMO

FROM: Donna Harris-Aikens, Senior Director
NEA Education Policy and Practice

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RE: Digital Learning: Implications for Family Educational Rights and Privacy Act (FERPA) and Perkins V State Plans

FERPA GUIDANCE: As many schools, districts, and campuses transition to digital learning models due to COVID-19 related school closures it is important for administrators, educators, and higher education faculty and staff to remember to first identify and work to address equity issues. Additionally, decision-makers should consider the implications of digital learning based on the requirements of the Family Educational Rights and Privacy Act (FERPA). FERPA protects the privacy of student education records and dictates the types of information that educational agencies can collect, maintain, and disclose with permission (20 U.S.C. §1232g; 34 C.F.R. Part 99). The statute applies to school districts, public schools at the elementary and secondary levels, and postsecondary institutions.

In addition to the underlying equity issues discussed in prior documents, digital learning provides challenges related to protecting student education records under FERPA, particularly students' personally identifiable information (PII). On March 30, 2020 the Student Privacy Policy Office (SPPO) at the U.S. Department of Education hosted a [webinar](#) to provide [guidance](#) around student privacy requirements under FERPA as educators and students shift to digital learning environments in response to COVID-19.

During school closures, digital learning environments can include learning activities that are carried out through various media such as online educational web services, video conferencing, forums, chat rooms, messaging and other digital learning software apps. Many of these require disclosure of student PII to providers of digital learning services. These disclosures are allowable under the school official exception to the general consent requirement of FERPA, but providers of these services must meet certain criteria as described in 34 C.F.R. §99.31.

Are you wondering why some school districts are restricting educators to using one platform or another (not necessarily the one most educators want to use)? It may be because the district has an agreement with that particular platform vendor. As you know, public school districts and postsecondary institutions must work in close collaboration with administrators and educators to safeguard PII within students' education records. Many districts already have existing agreements with educational web services or providers of digital learning apps. For existing agreements, and those yet to be made, districts must ensure that providers of digital learning tools and other web services apply best practices and explain how vendors' use of student education records complies with FERPA. Key considerations for educators are to ensure that digital learning activities or recordings do not disclose students' PII during digital lessons and student access to educational web service platforms and other digital learning apps do not disclose PII.

CTE PLAN FLEXIBILITY: The transition to digital learning also has created a host of unprecedented challenges for Perkins-funded state formula and discretionary grant programs, otherwise known as career and technical education (CTE). Now that states are in the midst of determining how to adjust their CTE programs and trainings, the U.S. Department of Education (ED) is providing additional time for states to submit their Perkins V State Plans. Additionally, ED is providing flexibility for states to award subgrants

to local grant recipients, and is providing states the flexibility to give local recipients more time to complete applications for Perkins V subgrant funding.

While ED encourages states to meet the original April 15 deadline to submit their Perkins V State Plans, it will allow an extension to June 15, 2020, and in special cases, up to September 15, 2020 to ensure timely disbursement of grant funds. ED is also permitting states to grant local recipients their Perkins V funding when they deem applications “approvable” and is allowing the application deadline for local recipients to be extended by three months when needed.

According to the Department, these adjustments and flexibilities should provide states time to adjust their Perkins V State Plans without the fear of missing out on much needed grant funding to continue to meet the needs of millions of CTE students across the country.

The resources listed below were published by the Student Privacy Policy Office (SPPO) and the Office of Career, Technical and Adult Education at ED to assist state and local educational agencies in understanding the impact of COVID-19 as it relates to federal statutes associated with FERPA and CTE.

For questions regarding FERPA and digital learning, please contact Melissa Mayville, EPP Senior Policy/Program Analyst, mmayville@nea.org. For questions about Perkins State Plans, please contact Antwan Perry, EPP Senior Policy/Program Analyst, aperry@nea.org.

Resources:

[FERPA & Virtual Learning During COVID-19](#)

[FERPA & Coronavirus Disease 2019 \(COVID-19\): Frequently Asked Questions \(FAQs\)](#)

[Perkins CTE COVID-19 FAQs](#)

[Perkins Collaborative Resource Network](#)