

AI in the Classroom: Are Vendors Actually "School Officials" Under FERPA?

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Over 60% of educators now use AI tools for many purposes, including adaptive learning, chatbots, games, and tutoring.^[1] However, only about 18% of teachers report receiving any type of formal guidance from school administrators on how AI tools should be used with student data.^[2]

The rapid adoption of Generative AI in education is creating hidden compliance issues, particularly with respect to disclosure of student data without parental consent.

Every time an instructor uploads a student essay, behavioral log, or Individualized Education Plan (IEP) draft into an unvetted AI platform, a legal question arises: *Is this tool a valid "School Official" under FERPA, or is it a regulatory compliance violation waiting to be discovered?*

As school districts build their tech stacks and EdTech startups scale their platforms, understanding the School Official Exception is the difference between safe innovation and unauthorized disclosures of student records.

What is the "School Official" Exception?

The Family Educational Rights and Privacy Act (FERPA) generally prohibits schools from sharing a student's Personally Identifiable Information (PII) from education records without explicit parental consent.

Understanding that schools cannot operate without external technology, FERPA includes the School Official Exception (34 CFR § 99.31(a)(1)) which allows educational institutions to share student educational records with external vendors without parental consent, provided the vendor meets four criteria:

1. **Outsourced Function:** The vendor performs a service the school would otherwise use its own employees to do. An AI tool that prepares a first round of feedback on student essays qualifies, because a teacher would otherwise perform that task.
2. **Direct Control:** The vendor operates under the "direct control" of the school regarding the use and maintenance of education records. That means that school, not the vendor, decides how education records are used, stored, secured, and deleted. For example, a platform that deletes student data within 30 days in accordance with school rules is under direct control. A platform whose terms let it change its retention policy at its discretion is not, even if its then-current policy is compliant with school rules.
3. **Strict Use Limitations:** The data is used only for the authorized educational purpose specified by the school and cannot be sold or redisclosed by the vendor. A tutoring tool that uses a student's work to generate feedback for that student meets this test. The same tool fails the test if it also uses that work to improve its own models, or markets upgrades to parents, even if no data leaves the vendor.
4. **Legitimate Educational Interest and Data Minimization:** The school must determine that the vendor has a legitimate educational interest in the records, and the vendor's access must be strictly limited to data required to perform that function. A reading intervention tool designed to work with third graders has a legitimate interest in those students' reading scores, but it does not have an interest in the records of students who never used it. The district should also share with the vendor

only what the tool needs. If a reading tool needs reading scores, it should not receive the student's whole school record, including attendance, discipline history, and IEP status.

Why Consumer AI Violates the Exception

Many educators assume that using consumer-facing tools like the free tier of ChatGPT or generic chatbots is harmless. In reality, these tools often fall outside the "School Official" framework, leaving the disclosure without a lawful basis. Tested against the four criteria above, a consumer tool usually fails each one.

Outsourced function: A teacher who independently signs up for a chatbot has not been asked to do so by the school, so there is no function that has been formally outsourced to the AI platform by the school.

Direct control: The school cannot dictate retention, deletion, or security on a platform governed by public terms of service that the vendor is free to change at any time.

Strict use limitations: Most general-purpose models retain inputs and reuse them to train future commercial products, a secondary use the school never authorized.

Legitimate educational interest and data minimization: An open text box will accept whatever the user chooses to input, including a full IEP or behavioral history. It should be limited to a narrow set of fields that the task actually requires.

Failing any single criterion is enough to take the disclosure outside the School Official exception. Uploading an education record to a consumer platform can therefore result in an unauthorized disclosure and a secondary use of data, which violates the redisclosure and use limitations of FERPA.

"No Training" is Not Enough

Using a tool as a compliant school official requires planning. Simply agreeing to a "we do not train models on school data" clause in a terms-of-service page is insufficient, particularly where the vendor reserves the right to amend those terms unilaterally.

True FERPA compliance for an AI platform requires an explicit Data Privacy Agreement (DPA) that handles the realities of AI architecture:

- AI tools must restrict data processing strictly to the contracted scope (e.g., generating a grade or providing feedback). Once the task is completed, data retention and deletion pipelines must be clearly defined.
- AI platforms frequently rely on secondary APIs, hosting providers, or other external systems. If a vendor passes student data to a subprocessor (such as an external Large Language Model (LLM) provider), that subprocessor must be bound by the same rules the school imposed on the vendor.
- In addition to traditional student data (such as grades or assignments), predictive analytics, AI-generated behavioral scores, or saved chatbot conversation logs involving mental health support are legally considered education records. They are subject to the same student access, review, and amendment rights as a traditional report card. The DPA must also require that the vendor support those rights operationally, including retrieval and correction of AI-generated outputs.

FERPA is also only the floor. State student-privacy statutes frequently impose stricter contractual requirements and should be evaluated when determining what AI tools can be used by educators with student data. For example, New York Education Law § 2-d and 8 NYCRR Part 121 require a signed data privacy agreement, a Parents' Bill of Rights, and a data security plan for every contract involving student personally identifiable information. California's SOPIPA (Bus. & Prof. Code § 22584) regulates the vendor directly, barring targeted advertising, non-educational profiling, and any sale of student data. Illinois' SOPPA (105 ILCS 85) requires public posting of agreements. Finally, Colorado, Connecticut, Texas, Virginia, Florida, and Louisiana impose their own contracting and secondary-use restrictions.

How Educators Can Protect Themselves

School districts and educational institutions must avoid relying on ad hoc, unvetted AI adoption. They must establish formal data governance policies with respect to the adoption and use of AI tools that: (1) inventory the AI tools already in use across classrooms, including free and teacher-adopted tools; (2) mandate the use of privacy-first platforms that have signed DPAs designating the vendor as a School Official; (3) require vendors to disclose subprocessors and to flow-down all contractual obligations between vendor and the school to any downstream subprocessor/model provider; and (4) provide ongoing training to educators, administrators, and staff on the permissible uses of AI, applicable laws, and the institution's AI governance and acceptable use policies.

AI will remain in classrooms whether or not school districts plan for it, and the School Official Exception is wide enough to accommodate it, but only if properly documented in agreements that can constrain the vendor. The distinction that matters is not whether a tool is "AI," but whether the educational institution retains direct control over education records throughout the processing chain, including downstream model providers and subprocessors.

[1] Artificial Intelligence In Education: Teachers' Opinions On AI In The Classroom
(<https://www.forbes.com/advisor/education/it-and-tech/artificial-intelligence-in-school/>)

[2] Most Teachers Receive No Formal Guidance on AI Use
(<https://news.gallup.com/poll/710534/teachers-receive-no-formal-guidance.aspx>)

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