

Tribal Access to Student Data Under the Family Education Rights and Privacy Act (FERPA)

July 2025 | Nara Nayar

This brief was compiled by the [American Institutes for Research \(AIR\)](#) for the [Indigenous Education State Leaders Network \(IESLN\)](#) and supported by [AIR's Opportunity Fund](#).



96% of all K–12 American Indian and Alaska Native (AI/AN) students are educated in public schools. The federal trust responsibility—a legal and fiduciary responsibility to support Tribal self-governance that is grounded in treaty provisions and the U.S. Constitution and affirmed in various court decisions and legislative acts—includes education as an essential component for all Indigenous people.¹ Several federal funding streams are dedicated to serving the unique cultural, linguistic, and educational needs of AI/AN students in preK–12 public and Bureau of Indian Education (BIE) schools. This is important because Indigenous students who receive culturally appropriate education in schools are more likely to be engaged in their communities, avoid high-risk behavior, and succeed academically.²

Many Tribes and Tribal education agencies (TEAs) want information on how their students are doing academically and socially in preK–12 public school districts and schools operated by the BIE. They may need data from districts on individual student performance for a number of reasons, such as supporting families in the Tribe whose students are struggling with attendance or providing supplemental services to students based on their academic or behavioral outcomes.

This kind of data sharing is essential to effective local control of education and to effective ongoing consultation with Tribes as required by the Elementary and Secondary Education Act.³ Communities and families have a right to be informed about the education of their children, and student data can help both districts and Tribes/TEAs identify students for services, collaborate and coordinate offerings, and provide wraparound supports.

However, Tribes/TEAs are often denied access to information on individual students by education agencies that cite FERPA, a federal law that restricts access to data on individual students. But FERPA does not actually forbid the sharing of such information; it allows it under specific carefully defined circumstances.

What Is FERPA?

FERPA is a federal law that affords parents the right to have access to their K–12 children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information (PII) from the education records (20 U.S.C. § 1232; regulations at 34 CFR Part 99).

The Protection of Pupil Rights Amendment (PPRA) focuses on education officials' obligations in supporting the implementation of FERPA. The PPRA applies to the programs and activities of a state education agency (SEA), local education agency (district), or other recipient of funds under any program funded by the U.S. Department of Education (20 U.S.C. § 1232h, 34 CFR Part 98).

¹ Bureau of Indian Affairs. (2017). [What is the federal Indian trust responsibility?](#)

² Castagno, A. E., & Brayboy, B. M. J. (2008). Culturally responsive schooling for Indigenous youth: A review of the literature. *Review of Educational Research*, 78(4), 941–993. <http://www.jstor.org/stable/40071151>

³ Spang, M., Nayar, N., & Pete, K. (2025). *A scan of state education agency Tribal consultation supports*. American Institutes for Research.

How Can Tribes/TEAs Access Student Data?

State education agencies (SEAs) and local education agencies (districts) can and do release aggregate student data⁴ *without* prior consent. What FERPA regulates is individual student data that can be linked back to specific students, known as “personally identifiable information” or PII.

There are four primary ways that SEAs and districts may share PII with Tribes/TEAs under the current FERPA provisions.⁵ Each of these approaches has its own advantages and drawbacks.

1. **Prior Consent** – Tribes/TEAs can collect signed parental consent for the release of student data.
2. **Contracting** – Tribal contractors who provide certain services to the district or state may access relevant student data.
3. **Audits or Evaluations** – Tribes/TEAs that conduct audits or evaluations on federal programs serving students in the district/state may access specified student data as part of their efforts.
4. **Studies** – Tribal researchers who study relevant topics may access specified student data as part of their efforts.

Prior Consent

The first provision—collection of signed parental consent waiver forms—is both the most time consuming and the most reliable. Tribes/TEAs that have families complete paperwork for their students to participate in Tribal education, culture, health, or other programs may collect parental consent for the release of educational records as part of that paperwork. The signed and dated [consent forms](#) must specify (1) the information the Tribe/TEAs will request, (2) the purpose of the request, and (3) who will have access to the information.

Tribes/TEAs with the resources and systems to devote to this kind of collection may not gain access to data for *all* their students, but access to information for even a subset of students can be helpful to Tribes/TEAs that want to understand how best to support students and their families. In the case of a reluctant education agency, prior consent is a strong approach for Tribes/TEAs to access information on their students. Some districts collect data-sharing permissions as part of their registration process, reducing administrative burden for the Tribe; this type of collaboration can be written into a memorandum of understanding (MOU) between the district and the Tribe/TEA.

The remaining approaches are what are known as “**permissive exemptions**.” These approaches all require written agreements between the Tribe/TEA and education agency detailing what information will be released, under what terms, and the safeguards and assurances the Tribe/TEA has in place to ensure

What Are Permissive Exemptions?

Permissive exemptions are exceptions to the general FERPA rules. They are called “permissive” because districts and states are permitted—but *not required*—to release student PII to third parties under these exemptions. These approaches are useful in cases where districts or states are willing to cooperate with Tribes/TEAs, including developing written agreements.

⁴ Disaggregated data can only be released when there is no possibility that students can be personally identified. Thus, if there are only a few American Indian/Alaska Native students in the third grade in a district, those data may be “suppressed” or left out of reporting that is otherwise disaggregated by race or ethnicity. For more information, see Data Quality Campaign. (2017). [Understanding minimum n-size and student data privacy: A guide for advocates](#).

⁵ There are some [data that are exempted from FERPA](#) (e.g., teacher substitute notes or law enforcement records) and [a number of other exceptions to and exemptions from the general consent rule](#) (e.g., for enrollment transfer, directory information, or information for parents of dependent students over age 18), but the methods listed here are those most often used by Tribes.

the security and privacy of the data. The written agreement may take the form of a contract, an MOU, a memorandum of agreement (MOA), a data-sharing agreement (DSA), or a cooperative agreement.

Audits or Evaluations

Entities conducting an audit or evaluation of a federally or state-funded program “on behalf of” an education agency or institution can access PII for that purpose. Tribes/TEAs that partner with public education agencies on grants or contracts or Tribes/TEAs that receive federal funding intended to improve student outcomes will have particularly strong cases for this exemption. For example, the Chickasaw Nation and Cheyenne and Arapaho Tribes/TEAs had MOUs with multiple districts as part of their State-Tribal Education Partnership grants from the U.S. Department of Education (ED).

Contracting

Many Tribes/TEAs provide academic, cultural, language, or other services to districts to support the success of their students. If the Tribe/TEA has a formal contract with the district regarding these services, the direct providers may be considered “authorized representatives” and may access relevant PII “under the direct control of the school.”⁶ For example, a counselor from the Tribe/TEA who works with Tribal students might need information on their attendance and grades to support them appropriately.

Studies

Organizations that conduct studies for “improving instruction,” among other reasons, can access relevant PII to conduct those studies. A Tribal researcher examining the effects of Indigenous language classes on student academic achievement might, for example, use student test scores or grades to identify differences in outcomes between students who study their native language and those who do not.

In all of these cases, written agreements would need to meet several criteria to be used for permissive exemptions. ED’s Student Privacy Protection Office (SPPO) has released guidance on the specific requirements for written agreements under each exemption.⁷

Aren’t There Any Other Ways Tribes/TEAs Can Access Student Data?

Most districts publish aggregated data on student outcomes by race/ethnicity that do not identify specific students, but given the small numbers of AI/AN students in many schools and the imprecision of racial categorization (nationwide, as many as 70% of AI/AN students may not be counted as such), this is inaccurate or impossible in many districts.⁸

Efforts to get the SPPO to reinterpret FERPA in a way that allows Tribes/TEAs to access student data as “state or local education agencies” (i.e., without parental consent or permissive exemptions and written agreements) have not been successful to date. In 2005, the Native American Rights Fund petitioned for equal access on behalf of the Rosebud Sioux Tribe, but the SPPO determined that Tribes/TEAs did not qualify as “state or local

⁶ 34 CFR §§ 99.31(a)(1) and 99.7(a)(3)(iii). For further clarification on the limits of the contractor exemption, see Rooker, L. S. (2008, January 11). [[Letter to New Jersey Department of Education regarding student database](#)].

⁷ Privacy Technical Assistance Center. (2015). [The Family Education Rights and Privacy Act: Guidance for reasonable methods and written agreements](#). [PTAC-FAQ-5].

⁸ IESLN and AIR. (2023). [Indigenous students count: A landscape analysis of American Indian and Alaska Native student data in U.S. public schools](#) and Cook, B., Dancy, K., Maxim, R., Nayar, N. and Santos, J. (2025) [Federal data vastly undercount Native American college students. New federal standards could change that](#). Washington, DC: Brookings Institution.

education agencies” for the purposes of data sharing under FERPA.⁹ The National Indian Education Association (NIEA) and the National Congress of American Indians (NCAI) issued resolutions in 1998, 2005, 2007, and 2015 in support of treating Tribes/TEAs as the equal of “state or local education agencies” in terms of obtaining public school student records under FERPA, but Congress has not yet revised the law to do so.¹⁰

Indigenous education advocates have since concentrated their efforts on developing written agreements between Tribes/TEAs and SEAs or districts that allow Tribes/TEAs (or “authorized representatives”) to access PII under one of the existing permissive exemptions.

The Role of Tribal Affiliation Data

In 2019, another joint resolution of the NIEA, the NCAI, and the Tribal Education Departments National Assembly (TEDNA) urged “states to work with tribal nations to develop and enact cooperative agreements with SEAs, districts, and institutions of higher education that share data related to Native students that identifies the tribal students’ tribal citizenship or affiliation.”¹¹

The addition of Tribal affiliation to written agreements is not an exemption under FERPA but rather an additional piece of data collection that can increase the accuracy of data sharing between districts, states, and Tribes/TEAs. Tribal affiliation data are important when Tribes/TEAs want information specific to students who are affiliated with their Tribe, as opposed to all students who check the “American Indian/Alaska Native” race/ethnicity box. In some districts, those populations might be the same; in others they might be very different.¹² In some cases, Tribal affiliation data collection may help districts meet the SPPO guidance, which instructs agencies to release only “necessary” PII by restricting records to only those students in whom the Tribe has a legitimate educational interest.¹³

An increasing number of SEAs are including Tribal affiliation in their state data collection systems at the request of Tribes/TEAs interested in this type of Tribally specific data.¹⁴ Districts can also include Tribal affiliation elements in their student information systems even if the SEA does not; these data can support a district’s process for identifying students eligible for Title VI Indian Education Formula Grant funding or Johnson O’Malley services.

⁹ Rooker, LeRoy S. (April 11, 2005). [Response to the Native American Rights Foundation’s June 9, 2003, letter to the Office of Indian Education regarding the release of public school records to Tribal governments under FERPA.](#)

¹⁰ Four resolutions to this effect were passed by NIEA or NCAI in the 2 decades between 1998 and 2018.

1. NIEA. (1998). [A Resolution in Support of Treating Tribes as Equals of Federal, State, and Local Governments in Terms of Obtaining Public School Student Records.](#)
2. NCAI. (2005). [In support of legal, political, and fiscal equity for Tribal governments in the access to and systems management of student records and information kept by state public schools](#) [NCAI Resolution FTL-04-005].
3. NEA. (2007). [In Support of Amending FERPA to Include Treating Tribal Education Officials as Equals With Federal, State, and Local Education Officials in Terms of Access to Public School Student Records.](#)
4. NCAI. (2015). [Exempt Tribes from FERPA’s advance consent requirement and thereby provide access to Tribal student records](#) [NCAI Resolution SD-15-002].

¹¹ NCAI and NEA. (2019). [In support of Tribal–state data sharing partnerships and cooperative agreements](#) [NCAI Resolution ABQ-19-019 (NIEA 2019-2)].

¹² Maday-Karageorge, T., & Nayar, N. (2024). [Tribal affiliation data collection in public education: A primer.](#)

¹³ Privacy Technical Assistance Center. (2015). [Guidance for reasonable methods and written agreements](#) [PTAC-FAQ-5].

¹⁴ Maday-Karageorge, T., & Nayar, N. (2024). [State approaches to Tribal affiliation data collection.](#)

Support for Developing Written Agreements

Because student privacy is so important and the law is complex, it is essential to develop written agreements between Tribes/TEAs and districts using appropriate language and meeting requirements for permissible exchanges of data under both FERPA and state statutes. In addition to ED's [Written Agreement Checklist](#) and [Guidance for Reasonable Methods and Written Agreements](#), several states have developed their own materials. The BIE also has [a FERPA-compliant template for data-sharing agreements](#) between itself and Tribes/TEAs.

New Mexico

New Mexico's Public Education Department has a 2022 [template for a FERPA-compliant MOU between NMPED and a Tribe, Nation, or Pueblo](#) and a [model FERPA consent form](#) for parents or guardians.

Minnesota

The Minnesota Department of Education has an "Authorized Data User and Nondisclosure Agreement" template for members of its Tribal Nations Education Committee, designating them as authorized representatives of the Department "for the limited purpose of evaluating American Indian student achievement in school districts, charter schools, and tribal schools,"¹⁵ consistent with FERPA and [Minn. Stat §13.32.3 \(2024\)](#).

Washington

The **Washington** State School Director's Association worked with the Washington Office of the Superintendent of Public Instruction in 2021 to develop a [model school board policy](#) and [MOA template](#) for data sharing with local Tribes/TEAs.

Next Steps for Research

In partnership with NIEA and TEDNA, the Indigenous Student Identification Project¹⁶ has begun an analysis of dozens of written agreements between Tribes/TEAs and districts or states. The goal of this work is to identify common themes and provisions of written agreements that allow Tribes/TEAs access to PII; support collaboration and transparency; and acknowledge and respect Tribal data sovereignty. A report with preliminary findings is expected to be released in fall 2025, and guidance for Tribes/TEAs and districts on best practices will be released sometime thereafter.

Further research based on interviews with Tribes/TEAs and districts about their consultation and data-sharing practices is underway; case studies and findings will be published on a rolling basis throughout 2026.

Conclusion

It is absolutely legal and permissible for states or districts to share personally identifiable student data with Tribes/TEAs provided all requirements have been met under one of the existing FERPA exemptions. Many Tribes/TEAs, Tribal organizations, states, and districts have paved the way for this work and provided examples of strong, fruitful data-sharing practices between Tribes/TEAs and public education agencies that support Indigenous student success.

¹⁵ Minnesota Department of Education. (n.d.). *Authorized data user and nondisclosure agreement*.

¹⁶ The [Indigenous Student Identification \(ISI\) Project](#) is a research partnership between the [Indigenous Education State Leaders Network](#) (IESLN) and the [American Institutes for Research](#) (AIR) that is supported by [AIR's Opportunity Fund](#).