



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL**

THE INSPECTOR GENERAL

July 6, 2022

The Honorable Robert C. Scott, Chairman
Committee on Education and Labor
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Scott:

Thank you for your June 2, 2021, letter asking the Office of Inspector General to conduct an additional review of the U.S. Department of Education's (Department) enforcement and monitoring of entities' compliance with the Family Educational Rights and Privacy Act of 1974 (FERPA). Your letter included four questions about the Department's FERPA oversight processes.

Attached you will find a brief explanation of the work we performed and what we learned to address your questions. If you have any questions or need additional information, please do not hesitate to call me at (202) 245-6900 or have a member of your staff call our Congressional Liaison, Catherine Grant, at (202) 245-7023.

Sincerely,

/s/

Sandra D. Bruce
Inspector General

Attachment

Work Performed

The Family Educational Rights and Privacy Act of 1974 (FERPA) requires the U.S. Department of Education (Department) to maintain an office for the purpose of investigating, processing, reviewing, and adjudicating violations and complaints which may be filed concerning alleged FERPA violations (Title 20, United States Code, Section 1232g(g)). The Student Privacy Policy Office (SPPO)¹ within the Department's Office of Planning, Evaluation and Policy Development is responsible for FERPA oversight and enforcement of entities' compliance with FERPA. According to Title 34, Code of Federal Regulations, Section 99.63, a parent or eligible student² may file a written complaint with the office regarding an alleged violation under FERPA.

To address your questions, as of June 2022, we had interviewed SPPO personnel and reviewed Department records to gain an understanding of SPPO's oversight and enforcement of entities' compliance with FERPA. The records we obtained covered SPPO's processes for investigating complaints; monitoring entities' compliance with FERPA; conducting self-initiated investigations;³ and providing technical assistance, training, and guidance to schools and educational agencies. The records that we reviewed included SPPO's standard operating procedures; reports from SPPO's complaint and technical assistance tracking systems; a report detailing SPPO's technical assistance activities, including site visits and training presentations, from October 1, 2020, through September 30, 2021; and guidance and training documentation from SPPO's website. We also interviewed SPPO personnel to learn about the corrective actions that the office took in response to the recommendations that we made in our November 2018 audit report, "Office of the Chief Privacy Officer's Processing of Family Educational Rights and Privacy Act Complaints" (Control Number ED-OIG/[A09R0008](#)).

Your Four Questions and Our Answers

Through the work described above, we obtained sufficient information to respond to the four questions in your letter. To ensure the accuracy of our responses, we provided a draft version of the following to the director of SPPO for comment and technical corrections.

Question and Answer 1

What investigations and enforcement actions does the Department take beyond the resolution of complaints, including but not limited to proactive enforcement and monitoring?

FERPA grants certain rights and privacy protections to parents and eligible students regarding students' education records. FERPA applies to all elementary and secondary education schools, local educational agencies, State educational agencies, and postsecondary schools that receive Federal education funding under any program administered by the Department, if they provide educational services, instruction, or both, to students or are authorized to direct and control public elementary,

¹ Established through the consolidation of the Family Policy Compliance Office and Student Privacy Policy Assistance Division.

² FERPA affords privacy rights with respect to a student's education records to parents of students who are under the age of 18. Once a student turns 18 or attends a postsecondary school at any age, FERPA privacy rights transfer to the student, who is then referred to as an "eligible student."

³ As used in this attachment, self-initiated investigation means an investigation that the SPPO initiates of its own accord in the absence of an actionable FERPA complaint.

secondary, or postsecondary schools. Pursuant to FERPA, parents and eligible students have the right to review students' education records maintained by schools and educational agencies. Parents and eligible students also may ask schools and educational agencies to correct records that they believe are inaccurate, misleading, or violate the student's right to privacy. Schools and educational agencies generally must obtain written permission from the parents or eligible student before sharing information from the student's education records with third parties. Parents and eligible students may file complaints with SPPO if they believe that their FERPA rights have been violated.

According to the director, SPPO's primary mechanism for enforcing FERPA is resolving complaints ([FERPA's Complaint Process Explained](#)). However, the director told us that SPPO also performs the following activities to promote compliance with FERPA.

- Expedited resolution: When it can resolve a FERPA complaint in an expedited manner without completing a formal investigation, SPPO will use an alternative complaint resolution process: intermediation or resolution assistance. SPPO might use intermediation to address complaints related to a parent or eligible student's right to access or amend the student's education record. When appropriate, SPPO may act as an intermediary between the entity and parent or eligible student to help resolve the matter in a timely and mutually agreeable way. SPPO might use resolution assistance to address complaints related to an isolated incident in which an entity inadvertently discloses a student's education records or personal information. In these cases, according to SPPO, the most effective response is often to help the entity improve its policies and procedures to prevent future incidents. As of May 31, 2022, SPPO was resolving about 33 percent of its open complaints via intermediation or resolution assistance.
- Technical assistance: SPPO oversees the operation of a technical assistance helpdesk through its Privacy Technical Assistance Center (PTAC). PTAC annually processes about 3,000 phone and email requests for explanations concerning FERPA guidance and interpretations of FERPA requirements. During fiscal year 2021, PTAC responded to about 96 percent of the requests within 2 weeks of receiving them.

As part of its technical assistance efforts, PTAC provides training and performs a variety of other outreach activities. For example, during fiscal year 2021, PTAC attended 4 regional meetings and presented at 14 conferences or webinars to provide information about FERPA to stakeholders in the student privacy sector. Examples of topics covered at the meetings, conferences, and webinars included FERPA 101, vetting educational technology vendors, disclosure avoidance, data breach response, and data security. PTAC also made 16 site visits to schools and educational agencies to provide guidance customized to the needs of each entity.

- Student privacy website: [Studentprivacy.ed.gov](https://studentprivacy.ed.gov) provides FERPA training, educational resources, and reference materials for specific audiences, such as parents and eligible students, elementary and secondary school officials, and postsecondary school officials. In addition to training, the website includes FERPA guidance, best practices, and answers to frequently asked questions.
- Policy: Factors such as changes in the student privacy sector and advances in educational technology may give rise to FERPA policy issues. When FERPA policy issues arise, SPPO considers whether those issues may require clarification through the issuance of guidance, provision of technical assistance, or changes in regulations. SPPO also occasionally uses listening sessions to

better understand FERPA policy issues and their implications. For example, in February 2022, SPPO held a series of three listening sessions with stakeholders on FERPA and student privacy issues. In addition, SPPO will solicit comments from stakeholders during the rulemaking process.

- Self-initiated investigations: See the answer under [Question and Answer 3](#).

Question and Answer 2

Does the Department monitor school compliance with FERPA? Does the Department use information from its complaint resolution function to inform its monitoring and proactive enforcement activities? What steps does the Department take to address potential noncompliance that it identifies through its monitoring activities?

The director of SPPO told us that FERPA does not require SPPO to monitor school and educational agency compliance with FERPA. Instead, FERPA calls for a complaint-based enforcement model. While saying that FERPA does not require monitoring, the director told us that SPPO does obtain information from various sources to learn about emerging issues in the student privacy landscape, including potential noncompliance. Those sources include complaints and requests for technical assistance, news reports pertaining to FERPA or student privacy, quarterly meetings with student privacy sector leaders from State educational agencies, and referrals from other Department offices or other Federal agencies.

SPPO leadership stated that SPPO uses the information from these various sources to inform its FERPA enforcement and technical assistance efforts. For example, SPPO personnel might contact a school to discuss possible issues related to FERPA, provide technical assistance, conduct a self-initiated investigation, or address applicable issues in future FERPA guidance or regulations based on the information it obtained from the various sources.

Question and Answer 3

Does the Department conduct self-initiated investigations of potential FERPA violations? Under what circumstances does the Department conduct a self-initiated investigation? How many self-initiated investigations has the Department conducted? How does the Department identify potential FERPA violations to investigate?

As of May 31, 2022, SPPO had two self-initiated investigations of potential FERPA violations in progress. SPPO leadership told us that because of the historical backlog of FERPA complaints and the office's limited resources,⁴ SPPO has focused its enforcement activities on resolving complaints, not self-initiated investigations. However, conducting self-initiated investigations of potential FERPA violations is an option in certain circumstances.

According to SPPO leadership, SPPO might open a self-initiated investigation based on several sources of information. It might open a self-initiated investigation based on allegations included in

⁴ As of May 31, 2022, SPPO's Student Privacy Policy team, which is responsible for FERPA oversight, including enforcement and technical assistance, had 11 caseworkers, 2 senior policy advisors, and 1 deputy director/supervisor. These numbers do not include contracted resources through PTAC.

a FERPA complaint that did not meet all the regulatory criteria⁵ for opening a formal investigation of the specific complaint (for example, the complainant did not have standing to file the complaint or did not submit the complaint timely). SPPO also might open a self-initiated investigation if it receives a technical assistance request that includes indicators of a potential FERPA violation.

Question and Answer 4

Has the Department implemented appropriate corrective actions in response to the recommendations from OIG's prior audit report?

As you noted in your letter, we previously audited the Department to determine whether it had a system of internal control to ensure that it timely and effectively processed FERPA complaints. Our November 2018 audit report (Control Number ED-OIG/[A09R0008](#)) disclosed weaknesses in the Department's FERPA complaint resolution processes. We made eight recommendations for improvement, including recommendations to allocate sufficient resources to ensure FERPA complaints are resolved timely, resolve outstanding policy issues that impede the Department's ability to resolve certain FERPA complaints, and implement an effective FERPA complaint tracking system.

The Department developed a corrective action plan that was responsive to all eight recommendations. According to information in the Department's Audit Accountability and Resolution Tracking System and our limited audit work, SPPO has completed corrective action for six of the eight recommendations. Completed corrective actions include significantly reducing the FERPA complaint backlog and improving SPPO's FERPA complaint tracking and performance management tools. For example, at the time of our prior audit, SPPO could not readily identify the number of complaints it had received during the last 3 fiscal years or the status of those complaints. Also, SPPO could not readily show us the number of complaints that were currently open or the age of open complaints. In response to our recommendations, SPPO overhauled its tracking and performance management tools and can now readily identify information about its inventory of complaints, including the status of each complaint.

As of May 31, 2022, SPPO still had not completed corrective actions to address our recommendations to: (a) resolve outstanding policy issues that impede the investigation of certain complaints and (b) review and evaluate its policies and procedures to ensure they are complete and appropriate. Although SPPO has not yet completed corrective actions to address these two recommendations, it has addressed several aspects of them. For example, SPPO has identified policy issues that impede complaint investigations and is preparing a notice of proposed rulemaking that will be followed by issuance of a final rule providing needed clarification regarding those issues. SPPO also has evaluated its policies and procedures and updated aspects of its complaint resolution processes to reflect recent improvements. SPPO is developing a new Case Management Tracking System that will automate aspects of its enforcement operations. SPPO leadership told us that it would finish updating its standard operating procedures once all SPPO's recent improvements, including the new Case Management Tracking System, are operational.

⁵ See Title 34, Code of Federal Regulations, Section 99.64(a) through (c) for the applicable criteria.

Decision to Close Our Audit

As you know, the OIG takes student privacy seriously. In September 2021, we started an audit to evaluate the Department's oversight and enforcement of entities' compliance with FERPA. The objective of our audit was to determine the extent to which SPPO designed and implemented processes for ensuring that entities comply with FERPA. However, because we did not identify any areas of significant risk related to our audit objective and because of the actions that SPPO has taken since our previous audit, our limited staff resources, and other competing priorities,⁶ we have decided to close this audit. The closure of this audit does not preclude our office from conducting future reviews of this or similar areas.

⁶ See our [FYs 2021–2022 Annual Plan](#).