

How Invincible maintains FERPA-compliance



Invincible is very serious about protecting the privacy of school nurses and other school staff, parents and students. We partner with privacy experts to ensure Invincible is always fully compliant with all federal privacy legislation (like FERPA and COPPA) as well as state legislation (like SOPIPA in California).

This primer shares more details about how Invincible's practices help schools stay compliant with FERPA. We can't provide you any legal advice, nor are we providing you legal advice with these FERPA "tips", but hope it's a helpful, clear guidepost!

What is FERPA?

FERPA is 'The Family Educational Rights and Privacy Act' that applies to all educational institutions that receive federal funding from the Department of Education. It protects personally identifiable information (PII) in students' "educational records" from unauthorized disclosure. FERPA also affords parents the right to access their child'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 education records.

Basically, FERPA says that schools cannot share PII contained in "education records" without parent's written consent. Without that written consent, FERPA only allows a school to share PII from an "education record" if an 'exception' to FERPA is met. The two most common exceptions utilized by schools that engaged third-party service providers such as Invincible are: the "Directory Information" and "School Official" exceptions.

What is the "School Official" exception to FERPA?

The "School Official" exception allows schools to disclose PII from students' "education records" to a "School Official" (i.e. Invincible) as long as the "School Official":

1. Performs an institutional service or function for which the school or district would otherwise use its own employees;

2. Has been determined to meet the criteria set forth in in the school's or district's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records;
3. Is under the direct control of the school or district with regard to the use and maintenance of education records; and
4. Uses education records only for authorized purposes and may not re-disclose PII from education records to other parties (unless the provider has specific authorization from the school or district to do so and it is otherwise permitted by FERPA).

What is an education record?

"Education records" are those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution. It is important to remember, however, that student information that is shared under the "Directory Information" exception (such as student name and class year), is not subject to FERPA's use and re-disclosure limitations.

Additionally, education records do not include records which are in the sole possession of the maker and which are not accessible or revealed to any other person except a substitute.

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Is anything submitted by health staff on Invincible an “education record?”

Some of the information school staff disclose to Invincible may likely be “Directory Information” (such as student name) and not an “education record.” Additionally, some of the information school staff disclose, such as care logs or messages with parents, could be deemed an “education record.” FERPA isn’t clear about whether the care logs school staff enter in Invincible would legally be considered an educational record. So, it’s really up to each school to decide if it is.

However, regardless of that distinction, and whether schools obtain parental consent, or rely on the “Directory Information” and/or “School Official” exceptions, we want to assist schools in complying with their FERPA obligations so our Terms of Service and Privacy Policy are written to make it easy for schools to support either approach. This includes drafting our Terms of Service to follow the best practice guidance of the U.S. Department of Education’s Model Terms of Service for Online Educational Services).

Does Invincible help schools stay FERPA-compliant?

Yes, Invincible helps schools stay fully FERPA compliant. Here’s how:

Under FERPA, schools can use the “School Official” or “Directory Information” exception to share PII from “education records” with third parties that provide a legitimate educational function.

This is the approach used by many districts with well-known education technologies, such as Google Apps for Education. Invincible’s Terms of Service and Privacy Policy are written to support this approach, including following the best practice guidance of the U.S. Department of Education’s Model Terms of Service for Online Educational Services.

Alternatively, some schools or districts may instead choose not to rely on the “School Official” or “Directory Information” exemption, and instead get parent consent for each technology they use. Invincible’s Terms of Service supports this approach, too, for complying with FERPA.

Finally, our policies also confirm that that no PII from “education records” will be shared with any other third-parties unless they aid in providing the Invincible service. We provide a list of these service providers on our website.

Invincible is always working with top privacy advocates and experts in education to protect teachers, parents, and students, and to ensure all privacy obligations are met, including FERPA.

For additional questions, please email Invincible at privacy@invincibleapp.com.