



MINNESOTA STATE

## State and Federal Law FAQ – UPDATED

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Employees can support educational success for students by understanding the applicable legal framework. Attached are answers to questions students frequently ask about privacy and immigration-related issues.

### FAQ: Student Data Privacy

**1. What laws protect the privacy of a student's educational records?**

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99, and the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. § 13.32.

**2. What is an educational record of a student?**

Records maintained by the college or university that are directly related to a student. Educational records can be in any format.

**3. What are common types of educational records held by Minnesota State colleges and universities?**

Because the definition of educational record is broad, most information about a student maintained by a college or university is an educational record. This may include things such as a student's application for admission, records in the Integrated Student Record System (ISRS), records concerning financial aid, academic records such as class lists and grades, student housing records, conduct records, etc.

**4. What is the basic responsibility of all Minnesota State employees towards student educational records?**

Generally, student educational records are private. As a result, a college or university needs written permission (consent) from a student in order to release any information from a student's educational records to a person or entity outside the institution unless an exception to FERPA applies.

**5. What is “directory” information?**

Directory information is public information in a student’s educational records. Directory information would not generally be considered harmful or an invasion of privacy if disclosed. As a result, directory information is public unless a student opts out of release of directory information. Each college and university establishes its own definition of directory information but common examples include a student’s name, dates of attendance, major field of study, etc. Please review student records policy at your college or university for a specific list of directory information, as well as procedures for opting-out of allowing release of directory information. This information is often found in the student handbook, online, or at the Registrar’s Office.

**6. What are exceptions allowing non-consensual release of student records?**

There are exceptions to FERPA and the MGDPA that allow sharing of educational records without a student’s consent. These include release in a health or safety emergency, release to officials at a college or university to which a student is transferring, etc. One important exception is “to comply with a judicial order or lawfully issued subpoena.”

**7. What if law enforcement requests a student’s educational records?**

A college or university must follow FERPA and the MGDPA when law enforcement requests student educational records. This means that a college or university must obtain a student’s voluntary consent to release their records to law enforcement OR there must be an exception that authorizes non-consensual release. As noted above, one such exception is “to comply with a judicial order or lawfully issued subpoena.”

**8. How should a college or university handle judicial orders or lawfully issued subpoenas?**

We suggest that each college and university designate a single point of contact responsible for receipt of subpoenas, warrants, or other judicial orders. This could be your Data Practices Compliance Official (DPCO) or other administrator. All employees should refer legal documents to the designated contact who will work with the Office of General Counsel to determine how to respond to the judicial order or subpoena.

**9. Who is responsible for protecting student records at a college and university?**

**It is the responsibility of all employees to protect student educational records.** Any person requesting information on students should be referred to the Data Practices Compliance Official (DPCO) or other appropriate administrator at the college or university.

## 10. What resources are available on FERPA and student educational records?

- Every college and university has a student records policy that describes how it complies with FERPA and the MGDPA.
- The Office of General Counsel has information on its website at [Minnesota State - DPCO Directory](#).
- The Family Compliance Office, which is part of the United States Department of Education, has resources on FERPA, including summary documents, guidance, and frequently asked questions available at [OCPO Home Page | U.S. Department of Education](#).

## FAQ: Immigration and Custom Enforcement

### 1. What is ICE?

U.S. Immigration and Customs Enforcement (ICE) enforces federal laws governing border control, customs, trade, and immigration to promote homeland security and public safety. ICE was created in 2003 through a merger of the investigative and interior enforcement elements of the former U.S. Customs Service and the Immigration and Naturalization Service. ICE now has more than 20,000 employees in more than 400 offices in the United States and 46 foreign countries. The agency has an annual budget of approximately \$6 billion, primarily devoted to two operational directorates — Enforcement and Removal Operations and Homeland Security Investigations. These two operational directorates are supported by Management and Administration and Office of the Principal Legal Advisor to advance the ICE mission.

### 2. What does ICE do?

Immigration enforcement is the largest single area of responsibility for ICE. While certain responsibilities require close cooperation with U.S. Customs and Border Protection, U.S. Citizenship and Immigration Services, and others require significant ICE assets near the border, the majority of immigration enforcement work for ICE takes place in the country's interior.

### 3. Can ICE personnel come on campus and seize student records?

ICE is governed by the same rules as other law enforcement agencies when it comes to search, seizure, and entering powers. Generally speaking, law enforcement cannot require a Minnesota State employee to produce documents without a subpoena or warrant.

**4. Can ICE personnel compel Minnesota State employees to produce private data on undocumented students?**

No. The Family Educational Rights and Privacy Act (FERPA) and Minnesota Government Data Practices Act (MGDPA) apply to the records of all students, regardless of immigration status. Consequently, private data will be provided only as required by law, which in this case would mean pursuant to a valid subpoena or warrant.

**5. Can ICE personnel compel Minnesota State employees to participate in a law enforcement action? For example, can ICE ask a Minnesota State employee to assist with the arrest and/or detention of an individual?**

No. While we must not interfere with lawful ICE investigations, the U.S. Supreme Court has ruled that the federal government cannot commandeer state employees to participate in the actions of the federal government.

**6. How does ICE conduct investigations?**

ICE has the same investigatory powers as most law enforcement agencies, including the authority to issue subpoenas. Importantly, ICE must actually issue a subpoena to receive student records.

**7. Who should be responsible for responding to an ICE subpoena or warrant?**

An ICE subpoena for a student's records should be referred to the registrar or the Data Practices Act Compliance Official (DPCO) at the campus. Please send a copy of the subpoena to Daniel McCabe, Assistant General Counsel (Daniel.mccabe@minnstate.edu).

**8. What documents can ICE ask for in a subpoena or warrant?**

ICE can ask for a broad array of documents pertaining to the investigation of an individual, including documents typically protected from disclosure by FERPA and/or the MGDPA.

**9. Can ICE issue "blanket" subpoenas or warrants asking for the names of all students who are not Pell-eligible, for example?**

No. ICE subpoenas or warrants must be issued in the matter of a named, targeted individual.

**10. How can I tell if an ICE subpoena or warrant is valid?**

Please send a copy of the subpoena to Daniel McCabe, Assistant General Counsel (Daniel.mccabe@minnstate.edu).

**11. What happens if a college or university ignores an ICE subpoena or warrant?**

If a subpoena or warrant is neglected or refused, ICE may petition the relevant United States District Court to issue an order enforcing the subpoena or warrant.

**12. Will colleges and universities continue to be “sensitive locations”?**

No. In the past, ICE identified colleges and universities as “sensitive locations” where it would not engage in enforcement activities absent certain exigent or special circumstances. ICE recently rescinded the “sensitive location” guidelines.

**13. What steps should an employee take if contacted by an ICE agent on campus?**

We suggest that each college and university designate a single point of contact responsible for interacting with ICE. This could be your Data Practices Compliance Official (DPCO), campus security, or other administrator. All employees should direct ICE agents to that point of contact.

**14. Can ICE agents access all campus areas?**

No. As public colleges and universities, Minnesota State institutions welcome the public to significant portions of our campuses. For example, many campuses have outdoor space, parking lots, and indoor common-use areas open to the public. Some areas, however, are restricted due to privacy concerns, operational needs or safety considerations. Examples of such restricted areas that are not generally open to the public include student rooms in residence halls, classrooms in session, faculty and administrative offices, etc. ICE agents are subject to the same access restrictions as other members of the public.

It is important to note that ICE or other Department of Homeland Security personnel may also be on campus for reasons unrelated to enforcement actions. For example, a college or university with international programs is required to report certain information about F-1 or J-1 visa status students to ICE. This reporting is routine, and colleges and universities are required to comply with on-site visits to review such records when requested.

**15. Can SEVP conduct a mid-cycle review of our international student program?**

Yes. SEVP can conduct mid-cycle reviews and has recently sent a communication to colleges and universities reminding them of this fact. Mid-cycle reviews are not unusual, but we expect that SEVP may increase the number of mid-cycle reviews considering their recent communications.

**QUICK REFERENCE GUIDE**

DPCO	Data Practices Act Compliance Official (college or university president designates)
FERPA	Family Educational Rights and Privacy Act
MGDPA	Minnesota Government Data Practices Act
ICE	U.S. Immigration and Customs Enforcement
ISRS	Integrated Student Record System (Minnesota State’s database)