


10 Questions for evaluating the Terms of Service (TOS) of third-party tool providers for FERPA compliance

	Provision	Questions	Yes	No	Notes
1	Definition of "Data"	Does "data" include all Personally Identifiable Information (PII) and other non-public information?			The definition of data should include a broad range of information to which providers may have access in order to ensure as much information as possible is protected in the agreement (e.g. student data, metadata, and user content, etc.). Beware of provisions that narrowly define the "Data," "Student Information," or "Personally Identifiable Information" that will be protected.
2	Marketing and Advertising	Will the provider use any data to advertise or market to students or use data for any purpose other than the specific purpose(s) outlined in this agreement?			<p>General ads are allowed, but the TOS should be clear that data and/or metadata may not be used to create user profiles for the purposes of targeting students for advertising and marketing, which could violate privacy laws.</p> <p>TIP: Look for a triangle i symbol () which is an industry label indicating that a site allows behaviorally targeted advertising. These are never acceptable for school use.</p>
3	Modification of Terms of Service	Will the provider change how data are collected, used, or shared under the terms of this Agreement in any way without advance notice to, and consent from, the college/district?			<p>Colleges/districts should maintain control of the data by preventing the provider from changing its TOS without the college's/district's consent.</p> <p>A provider that agrees to give notice of TOS changes is good; a provider that agrees not to change the TOS without consent is better.</p>
4	Data Collection	Will the provider only collect data necessary to fulfill its duties as outlined in this agreement?			<p>If the agreement relates to FERPA-protected data, a provision that says the provider only collects data necessary to fulfill its duties as outlined in this agreement may be necessary.</p> <p>Including a provision that limits data collection to only what is necessary to fulfill the agreement is a best practice.</p> <p>Providers may view user access to their services through a third-party social networking site as an exception to established rules limiting data collection.</p>
5	Data Use	Will the provider only use data for the purpose of fulfilling its duties and providing services under this agreement and for improving services under this agreement?			Colleges/districts should restrict data use to only the purposes outlined in the agreement. This will help colleges/districts maintain control over the use of FERPA-protected student information and ensure appropriate data use.

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6	Data Sharing	Can data be shared with any additional parties without prior written consent of the user except as required by law?			<p>While it is perfectly acceptable for providers to use subcontractors, colleges/districts should be made aware of these arrangements, and subcontractors should be bound by the limitations in the TOS.</p> <p>The vendor should clearly promise never to sell data.</p>
7	Data Transfer or Destruction	Will the provider ensure that all data in its possession and in the possession of any subcontractors are destroyed or transferred to the college/district when the data are no longer needed?			<p>While FERPA does not specify that education records shared under some of its exceptions must be returned or destroyed at the end of the contract, it is a best practice to require this. Data return or destruction helps limit the amount of personal information available to third parties and prevent improper disclosure. This provision also helps colleges/districts maintain control over the appropriate use and maintenance of FERPA-protected student information.</p> <p>The policy should state that any sale or merger will require the new company to adhere to the same protections.</p>
8	Rights and License in, and to, Data	Does this agreement give the provider any rights, implied or otherwise, to data, content, or intellectual property, except as expressly stated in the agreement?			<p>Maintaining ownership of data to which the provider may have access allows colleges/districts to retain control over the use and maintenance of FERPA-protected student information. This provision will also protect against a provider selling information.</p>
9	Access	Can any data held by the provider be made available to the college/district upon request?			<p>A good contract will acknowledge the need to share student information with the school upon request.</p>
10	Security Controls	Does the provider store and process data in accordance with industry best practices?			<p>Failure to provide adequate security to students' PII is not a best practice and could lead to a FERPA violation. This includes appropriate administrative, physical, and technical safeguards to secure data from unauthorized access, disclosure, and use.</p> <p>The provider should conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. It should also have a written incident response plan to include prompt notification of the college/district in the event of a security or privacy incident. It should state best practices for responding to a breach of PII and agree to share its incident response plan upon request.</p>

Information adapted from government sources and from The Educator's Guide to Student Data Privacy.