

Guidance on FERPA

FERPA, or the Family Educational Rights and Privacy Act (20 U.S.C. §1232g; [34 CFR Part 99](#)), established in 1974, is a federal law that protects the privacy of student Education Records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. This guidance specifies the policies and procedures related to research access to Education Records covered by FERPA.

FERPA regulates the disclosure of Personally Identifiable Information from Education Records in all public elementary and secondary schools, school districts, intermediate education agencies, state education agencies and any public or private agency or institution that uses funds from the U.S. Department of Education. The purpose of FERPA is to protect all student and parent information maintained in an Education Record.

Education Records include but are not limited to course grades and graded coursework, transcripts, class lists, student course schedules, health records, student financial information, and student discipline files. This information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail.

In many cases, student Education Records are accessible to and used by instructors, teachers, and administrators for the purposes of conducting the duties of their job. For example, as part of a teacher's job, there is natural access to student's assignments, test scores, and attendance records in order to evaluate performance and ultimately assign a grade. However, this same teacher cannot use this natural access for other purposes, such as research. If a teacher/instructor wants to use student data for research purposes, FERPA applies and written permission is required, unless one of the exceptions as outlined below is met. Researchers are responsible for maintaining compliance with FERPA, human research regulations (Institutional Review Board requirements), and University policy when accessing Education Records for the purpose of research. If a complaint is filed regarding violation of FERPA an investigation will be conducted by the federal office, if following the investigation noncompliance is not resolved, the institution may lose federal funding.

FERPA stipulates that an educational institution has the authority to determine what information may be accessed from an Education Record. If an institution denies a researcher access to information in an Education Record, the IRB cannot overrule the decision.

FERPA and IRB requirements are typically met if a parent (or Eligible Student, as defined in §99.3) signs a consent form to participate in a project and authorizes release of their child's Education Records for research purposes. Once students reach 18 years of age or attend a postsecondary institution, they become "eligible students" and all rights formerly given to the parents under FERPA transfer to the students.

FERPA regulations specify that a parent or Eligible Student must provide a signed and dated written consent form in accordance with the requirements of §99.30 before personally identifiable information from Education Records is disclosed, unless the disclosure falls within one of the exceptions set forth in §99.31. The signed consent form, which is provided to the University Registrar, can be either a pdf of the original signed form or an actual paper copy of the original signed form. If the research interaction is online and a wet signature cannot be obtained, the student must access and electronically sign the consent form (using software such as Adobe Sign) after logging in (authenticating) with their UNM credentials (NETID). Both steps must be taken in order for the Registrar to accept it as a valid permission.

FERPA's consent provisions require a specification of:

1. The records that may be disclosed,
2. The purpose of the disclosure, and
3. The identity of the party or class of parties to whom the records may be disclosed.

Access to records for research purposes without obtaining signed consent can occur under certain stipulations. FERPA allows schools to designate and disclose, without consent, certain items of information as "directory information," such as student names, addresses, telephone numbers, dates and places of birth, honors and awards, and dates of attendance. However, each educational institution designates what information is considered directory information. Therefore, the researcher should contact each institution from which they propose to access student records and follow that institution's FERPA policy and procedures when accessing directory information.

At UNM, UNM emails are not public directory information. Release of UNM student email addresses by the registrar for recruitment purposes requires IRB approval and signed student permission. Release of emails by the Registrar without student permission for the purpose of general research recruitment is not allowable at UNM. The IRB approval letter and signed student permission must be submitted to the Registrar for access to email addresses. Registrar data access form is available at <http://registrar.unm.edu/data-access-form.php>.

UNM public directory information includes: student's name, major field of study, enrollment status (half-time, full-time, etc.), dates of attendance (matriculation and withdrawal dates), degrees and awards received, participation in officially recognized activities and sports, and weight and height of members of athletic teams.

A researcher can also gain access to Education Records without consent if a school official with legitimate access (other than the researcher) strips the records of any identifying information prior to release of that information. Many educators who are also researchers are surprised to find that the student records they personally hold (e.g., tests, journals, written assignments, etc.) are considered part of the official Educational Records of a student. Even more surprising is the fact that, when conducting research, an educator may not be considered to have a legitimate educational interest in the records they otherwise handle on a regular basis.

FERPA allows an educational agency or institution to grant an **exception** and disclose personally identifiable information from an education record of a student without written consent if the disclosure is to organizations conducting research for, or on behalf of, educational agencies or institutions to:

- Develop, validate, or administer predictive tests,
- Administer student aid programs, and/or
- Improve instruction (34 CFR §99.31)
 - If the researcher is a school official with legitimate education interest (34 CFR §99.31(a)(1); or
 - If the researcher is conducting studies for or on behalf of the school (34 CFR §99.31(a)(6).

When invoking an exception for the use of Education Records, the holder of the records must specifically cite the exception to the regulation in writing and specify the following:

- The determination of the exception.
- The purpose, scope and duration of the research.
- The information to be disclosed.
- That information from education records may only be used to meet the purposes of the research stated in the written agreement and must contain the current requirements in 34 CFR §99.31(a)(6) on re-disclosure and destruction of information.

- That the research will be conducted in a manner that does not permit personal identification of parents and students by anyone other than representatives of the organization with legitimate interests.
- That the organization is required to destroy or return all personally identifiable information when no longer needed for the purposes of the research.
- The time period during which the organization must either destroy or return the information.

This exception letter should be submitted to the IRB along with other relevant IRB documents. In most cases involving Education Records held by elementary and secondary schools, the letter should come from the school district's superintendent. When working with a university, the letter should come from the University Registrar (<https://registrar.unm.edu/>). The use of personal, identifiable data for research purposes must always be approved by the IRB prior to the researcher obtaining access to such data. Additionally, at no time during the use of the personal identifiable information may the researcher disclose the information without first de-identifying the data, which includes publications.

For more information about best practices to protect PII from education records, contact the PTAC Help Desk at PrivacyTA@ed.gov or 855-249-3072.

If you are a parent, eligible student, school, Local or state educational agency and would like more information on FERPA, please call FPCO at 1-800-872-5327.