

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.

FERPA regulates the disclosure of Personally Identifiable Information from youth 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.

Educational records include but are not limited to course grades and graded documents, 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.

This guidance specifies the policies and procedures related to research access to Education Records covered by FERPA.

Investigators are responsible for meeting FERPA, human subject protection 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 non-compliance 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 an investigator access to information in an Education Record, the IRB cannot overrule the decision.

FERPA and IRB requirements are usually met if a parent (or Eligible Student, as defined in § 99.3) signs a consent form to participate in a research study and authorizes release of his/her child's Education Records for research purposes. Once a student reaches 18 years of age or attends a postsecondary institution, he/she becomes an "eligible student," and all rights formerly given to the parents under FERPA transfer to the student.

FERPA regulations specify that a parent or Eligible Student must provide a signed and dated written consent 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.

FERPA's consent provisions require a specification of:

1. The records that may be disclosed
2. The purpose of the disclosure
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 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's names, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, each educational institution designates what information is considered directory information. Therefore, the Investigator should contact each institution from which he/she proposes to access student records and follow that institution's FERPA policy and procedures when accessing directory information.

UNM considers "directory information" as: student's name, personal address, phone number, personal web address (if provided), campus work-related information (job title and organization, mailing address, work location, campus phone number), UNM email and preferred email address.

A researcher can also gain access to 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.

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

- Develop, validate, or administer predictive tests.
- Administer student aid programs
- 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 educational 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 study.
- The information to be disclosed.
- That information from education records may only be used to meet the purposes of the study 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 study will be conducted in a manner that does not permit personal identification of parent 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 study.
- 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 the IRB application. In most cases involving educational 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. 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, this includes publications.

Please note, that most of this guidance is directed towards investigators reaching out to educational institutions to conduct research. For researchers conducting analyses on courses they instruct FERPA does not apply, however, the study may fall under exemption criteria 45 CFR 46.101(b)(1): Research conducted in established or commonly accepted educational settings, involving normal education practices. Informed consent may apply for proactive studies however it may not apply if research is being conducted on existing data.

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.