

NOTE: This letter was reformatted to make it more accessible on the Student Privacy Policy Office's (SPPO's) website. Please note that SPPO administers FERPA and the office's prior name was the Family Policy Compliance Office (FPCO). Some citations in this letter may not be current due to amendments of the law and regulations. SPPO has not revised the content of the original letter. Any questions about the applicability and citations of the FERPA regulations included in this letter may be directed to [FERPA@ed.gov](mailto:FERPA@ed.gov).

July 6, 2009

Ms. Kristy Shirley  
Program Coordinator  
Institutional Review Board  
Office of the Vice President for Research,  
Creative Activities and Technology Transfer  
North Dakota State University  
1735 NDSU Research Park Drive  
P.O. Box 5756  
Fargo, North Dakota 58105-5756

Dear Ms. Shirley:

This responds to your letter in which you asked for guidance about the conduct of research with education records under the Family Educational Rights and Privacy Act (FERPA). This Office investigates, processes, and reviews complaints and violations under FERPA and provides technical assistance to ensure compliance with the statute and regulations. See 20 U.S.C. § 1232g and 34 CFR part 99.

Your letter states that instructors who teach online classes wish to use grades and other education records of their own students to conduct research on the efficacy of online instruction. According to your letter, the university believes that under FERPA students must provide written consent before their records may be used for these purposes. You asked the following questions based on the premise that online instructors are not likely to see their students face-to-face:

1. Would the data use fall under the exception for disclosures to school officials with "legitimate educational interests" since conducting research is part of fulfilling the faculty member's professional responsibility?
2. If not, does FERPA provide for a waiver of the signature portion of the student's written consent?
3. If the signature requirement cannot be waived, is an electronic signature acceptable?
4. If so, what are the requirements for an electronic signature under FERPA.

An eligible student (i.e., a student who is 18 years of age or attends a postsecondary institution) must provide a signed and dated written consent in accordance with the requirements in § 99.30

of the FERPA regulations before an educational agency or institution discloses personally identifiable information from the student's education records. 34 CFR § 99.30(a). Exceptions to this requirement are set forth in § 99.31(a) of the regulations.

Section 99.31(a)(1)(A) of the regulations permits an educational agency or institution to disclose personally identifiable information from education records, without consent, to:

other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

An agency or institution that has a policy of disclosing education records under this exception must include in its annual FERPA notification (required under § 99.7) a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. 34 CFR § 99.7(a)(3)(iii).

This Office has advised previously that a school official has a legitimate educational interest in education records if the individual needs to review the records in order to fulfill his or her professional responsibilities. It is our understanding that the professional responsibilities of teachers and other school officials may include conducting research into the effectiveness of the educational programs they provide. As such, we believe that an educational agency or institution may determine that teachers and other school officials within the agency or institution have a "legitimate educational interest" in using the education records of their own students, or records of other students within the educational agency or institution, for internal research into the effectiveness of online instruction.

Note that if the university wishes to allow its instructors to use personally identifiable education records in this manner, it should include in its annual FERPA notification a statement that teachers and other school officials have legitimate educational interests in students' education records in order to conduct educational research. Further, in accordance with § 99.33(a) of the regulations, instructors and other school officials who obtain access to education records under this (or any other) FERPA exception to the consent requirement may use the information only for the purposes for which it was disclosed and may not redisclose the information in personally identifiable form to any other party without the prior written consent of the student. The university is not required to record disclosures made to instructors and other school officials with legitimate educational interests. 34 CFR § 99.32(d)(2).

Please note also that § 99.31(a)(1) applies only to teachers and other school officials *within the agency or institution* (which includes, under § 99.31(a)(1)(B), a contractor, consultant, or volunteer under the direct control of the agency or institution). An educational agency or institution may disclose information from education records to *outside* education researchers only under the specific requirements of § 99.31(a)(6) (to organizations conducting studies for or on behalf of the agency or institution for specified purposes); § 99.31(a)(3) (to authorized representatives of the Secretary or a State or local educational authority); or § 99.31(b) (in de-identified form).

In regard to your remaining questions, written consent to disclose personally identifiable

information from education records must be "signed and dated" (§ 99.30(a)) and must specify the records that may be disclosed; state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made (§ 99.30(b)). There is no provision in FERPA for waiving the signature requirement when written consent is required. The regulations do provide that "signed and dated written consent" may include a record and signature in electronic form provided that it -

- (1) Identifies and authenticates a particular person as the source of the electronic consent;  
and
- (2) Indicates such person's approval of the information contained in the electronic consent.

34 CFR § 99.30(d).

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concern. Enclosed for your information is a copy of the FERPA regulations, which were amended on December 9, 2008, at 73 FR 74806. Please do not hesitate to contact this Office again if we may be of further assistance.

Sincerely,

/s/

Paul Gammill  
Director  
Family Policy Compliance Office