

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).

June 23, 2005

Ms. Lea Ann Schneider  
Assistant Attorney General  
Office of Attorney General  
State of North Dakota  
600 E. Boulevard Avenue  
Bismark, North Dakota 58505

Dear Ms. Schneider:

This responds to your August 9, 2004, email and follow-up communications regarding the disclosure of education records under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. This Office enforces FERPA and provides technical assistance to ensure compliance with the statute and regulations, which are codified at 34 CFR Part 99.

You indicated that you provide legal advice to the State Department for Career and Technical Education. According to your communications, local educational agencies (LEAs) in the State provide personally identifiable information from education records to the State educational agency (SEA), which in turn provides this information to a "Contractor." The Contractor receives and matches information from the SEA with employment and other information provided to the Contractor by other State agencies and then releases aggregate (i.e., non-personally identifiable) information about students back to the SEA and LEAs. You asked whether the SEAs and LEAs could receive this information from the Contractor in personally identifiable form and suggested that §§ 9931(a)(3), 99.35, and 99.31(a)(6) of the FERPA regulations (and their statutory counterparts) allow the Contractor to redisclose information to the SEA and LEAs in this manner.

At our request, you provided further information explaining that the "Contractor" is the North Dakota Career Resource Network (NDCRN), formerly known as the State Occupational Information Coordinating Committee (SOICC). NDCRN administers an Interagency Cooperative Agreement (executed in 1994) that established the Follow-up Information on North Dakota Education and Training (FINDET) system. The Agreement describes FINDET as "an automated system that electronically links administrative data bases of various state and federal agencies together so that follow-up data can be developed for former student/participants in North Dakota's education, employment, and training programs for the purpose of improving instruction and other programs." Signatories to the 1994 Interagency Cooperative Agreement that you provided represent the Governor's Employment and Training Forum; Job Service North Dakota; North Dakota Department of Economic Development; North Dakota State Board for Vocational-Technical Education; North Dakota Department of Human Services; North Dakota.

University System; North Dakota Department of Labor; North Dakota Workers Compensation Bureau; and North Dakota Department of Public Instruction.

Parents and eligible students, i.e., those who have reached 18 years of age or have attended a postsecondary institution, have a right under FERPA to inspect and review their children's education records and to seek to have them amended in certain circumstances. See 34 CFR Part 99, Subparts B and C. Parents or eligible students must also provide a signed and dated written consent before an educational agency or institution discloses education records, or personally identifiable information from education records, except in accordance with specified exceptions. 34 CFR §§ 99.30 and 99.31. "Education records" are defined as records that are directly related to a student and maintained by an educational agency or institution, or by a party acting for an agency or institution. 34 CFR § 99.3 ("Education records").

One of the exceptions to FERPA's prior written consent requirement allows an educational agency or institution to disclose education records to "authorized representatives" of

- (1) The Comptroller General of the United States;
- (2) The Attorney General of the United States;
- (3) The Secretary [of Education]; or
- (4) State and local educational authorities,

34 CFR § 99.31(a)(3), provided the disclosure is in connection with an audit or evaluation of Federal or State supported education program, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. 34 CFR § 99.35(a). Information that is collected under this provision must:

- (1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and
- (2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

34 CFR § 99.35(b).

This is generally the basis on which LEAs share personally identifiable information from education records with their SEA without meeting the prior written consent requirement in FERPA. As explained in our February 18, 2004, letter to the California Department of Education, cited in your email, § 99.35 of the FERPA regulations does not permit an SEA to redisclose information from education records it has received from LEAs, in personally identifiable form, to officials not listed in § 99.31(a)(3), such as the State Department of Health Services, without prior written consent. Disclosures to "authorized representatives" of a State educational authority, such as North Dakota's SEA, are limited as explained in the referenced California letter, as follows:

Earlier this year, the Department issued guidance regarding whether FERPA permits a State or local educational authority, such as an SEA, to authorize or designate another

State agency as its "authorized representative" in order to conduct data matching with the other entity. This memorandum was issued to all Chief State School Officers on January 30, 2003, by former Deputy Secretary William D. Hansen and is available on this Office's website ([www.ed.gov/offices/011/fpco](http://www.ed.gov/offices/011/fpco)). The Deputy Secretary's memorandum ... grew out of concern that unlimited discretion to appoint or designate an "authorized representative" for data matching purposes essentially vitiates the specific conditions for nonconsensual disclosure under §§ 99.31(a)(3) and 99.35 and, more generally, FERPA's prohibition on disclosure without written consent. The memo explains that multiple references to "officials" in the statutory text for this exception reflect congressional concern that the "authorized representatives" of a State educational authority"(or other official listed in § 99.31(a)(3)) must be under the direct control of that authority, which means an employee, appointed official, or "contractor."

"Contractor" in this sense means outsourcing or using third-parties to provide services that the State educational authority would otherwise provide for itself, in circumstances where internal disclosure would be appropriate under § 99.35 if the State educational authority were providing the service itself, and where the parties have entered into an agreement that establishes the State educational authority's direct control over the contractor with respect to the service provided by the contractor. Any contractor that obtains access to personally identifiable information from education records in these circumstances is bound by the same restrictions on redisclosure and destruction of information that apply to the State educational authority itself under § 99.35, and the State educational authority is responsible for ensuring that its contractor does not redisclose or allow any other party to have access to any personally identifiable information from education records.

Information you provided indicates that the NDCRN is not an employee, appointed official, or contractor providing services for and under the direct control of the North Dakota SEA, as required under § 99.35 of the FERPA regulations. Rather, NDCRN is a contractor established by and responsible to multiple State agencies, including some, such as the State Departments of Labor, Human Services, and Economic Development, that could not be considered a "State or local educational authority" or otherwise qualify for disclosure of education records without consent under § 99.31(a)(3). Therefore, the SEA may not redisclose personally identifiable information from education records received from LEAs to the NDCRN without meeting the written consent requirement in § 99.30.

Under this limitation, FERPA would not prevent the SEA from receiving wage and other information maintained by the other agencies that are parties to the Interagency Cooperative Agreement, conducting the data matching itself, and releasing the results in non-personally identifiable form to the other agencies. You may want to refer to our May 25, 2004, letter to the Nebraska Coordinating Commission for Postsecondary Education at available at <http://www.ed.gov/policy/gen/guid/fpco/fema/library/nebraskaccpe.html> for an example of how a State educational authority may conduct data matching with non-educational agencies in compliance with these FERPA requirements. Should the SEA decide to pursue data matching in this manner, we would be happy to provide technical assistance regarding the SEA's redisclosure of personally identifiable information from education records to LEAs.

I trust that this responds to your inquiry. Please let us know if you need any additional information on this issue or on FERPA in general.

Sincerely,

/s/

LeRoy S. Rooker  
Director  
Family Policy Compliance Office