

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.

May 11, 2006

The Honorable Pamela S. Roberts
Secretary of Labor of South Dakota
Executive Office Kneip Building
700 Governors Drive
Pierre, South Dakota 57501-2291

Dear Secretary Roberts:

This responds to your September 8, 2005, letter asking for guidance about the disclosure of information from education records under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. The Family Policy Compliance Office (Office) is responsible for administration and enforcement of FERPA and provides technical assistance to ensure compliance with the statute and regulations, which are codified at 34 CFR Part 99.

Your letter states that since 1995 the South Dakota Department of Labor (SDDOL) has been actively involved in determining what happens to students after they complete educational or training programs in the State. You mentioned the "SD Follow-up Project, which was started in 1995 to conduct research on students and program graduates after they leave public education and training programs in order to improve the quality of these programs. Your letter does not indicate which State agencies or offices manage and participate in the "SD Follow-up Project."

You stated further that a few years ago SDDOL entered into an agreement with the South Dakota Department of Education (SDDOE) to determine what happens to high school students after they graduate. This agreement requires SDDOE to provide students' Social Security Numbers (SSNs), which SDDOL uses to obtain information from administrative records indicating whether the graduate is employed or enrolled in a postsecondary education program. You noted that this information is important to SDDOE, the public schools, and Governor Rounds as he implements his 2010 Initiative, which places an emphasis on keeping young people in the State.

According to your letter, SDDOE staff have expressed a concern about protecting the confidentiality of student SSNs and questioned whether SDDOE is authorized to disclose this information to SDDOL without the written parental consent required under § 99.30 of the FERPA regulations. SDDOL believes that "the research project the SDDOL is conducting for the SDDOE" meets the requirements of 34 CFR § 99.31(a)(6) for disclosing SSNs to "improve education" and asks for our written response so that SDDOL may move forward with this "valuable education improvement project."

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 the student’s education records and to seek to have them amended in certain circumstances. See 34 CFR Part 99, Subparts B and C. In addition, an educational agency or institution may not have a policy or practice of permitting the release of education records or providing access to personally identifiable information in education records without the prior written consent of a parent or eligible student in accordance with the requirements in 34 CFR § 99.30. 20 U.S.C. § 1232g(b). Exceptions to this requirement are set forth in § 99.31 of the FERPA regulations. “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”).

You asked whether the “research activity” described above permits SDDOE to disclose SSNs to SDDOL, without parental consent, under the FERPA exception for disclosures to:

organizations conducting studies for, or on behalf of, educational agencies or institutions to:

- A) Develop, validate, or administer predictive tests;
- B) Administer student aid programs; or
- C) Improve instruction.

34 CFR § 99.31(a)(6)(i). Regulations provide that an educational agency or institution may disclose information without consent under this provision only if:

- A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and
- B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

34 CFR § 99.31(a)(6)(ii). This exception provides further that:

If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

34 CFR § 99.31(a)(6)(iii). An educational agency or institution that disclosed information from education records under this exception must record the disclosure in each student’s education record in accordance with the requirements of § 99.32(a).

Section 99.31(a)(6) permits an educational agency or institution to retain the services of an outside organization and disclose personally identifiable information from education records, without consent, so that the organization can perform a study for the purposes specified, including improvement of instruction. The “SD Follow-up Project” does not appear to meet the

requirements of this exception because SDDOL is not conducting a study for SDDOE but simply matching the SDDOE data (i.e., student SSNs) with information in SDDOL’s possession (i.e., follow-up data on student employment).

Further, State educational agencies, such as SDDOE, generally populate their databases from education records maintained by school districts under another FERPA exception to the consent requirement, § 99.31(a)(3)(iv), which allows disclosure to “authorized representatives” of “State and local educational authorities ”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. See 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). As explained in our February 18, 2004, letter to the California Department of Education, available at www.ed.gov/policy/gen/guid/fpco/ferpa/library/ca21804.html, § 99.35 does not permit an SEA, such as SDDOE, to redisclose information from education records it has received from school districts, in personally identifiable form, to anyone other than an employee, appointed official, or contractor under the “direct control” of the SEA. Under these limitations, a State educational authority could use the exception in § 99.31(a)(6) to obtain a study *on behalf of* the school districts that supplied the information from education records provided that the school districts recorded the redisclosure in accordance with § 99.32. However, as explained above, a data matching program does not meet the requirement in § 99.31(a)(6) for conducting a study.

Finally, nothing in FERPA would prevent SDDOE itself from conducting the data match in question by having SDDOL submit the “other administrative records” directly to SDDOE, which may then release the results in non-personally identifiable form to other agencies and officials. Please refer to our May 25, 2004, letter to the Nebraska Coordinating Commission for Postsecondary Education at www.ed.gov/policy/gen/guid/fpco/ferpa/library/nebraskaccpe.html, for an example of how a State educational authority may conduct data matching with non-educational agencies in compliance with FERPA requirements. We would be happy to provide technical assistance regarding how SDDOE may conduct data matching in this manner, including the release of information from education records in non-personally identifiable form.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office