

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).

September 7, 2004

Richard P. Boyle, Ph.D.  
Senior Research Scientist  
Institute for Social Research  
The University of New Mexico  
2808 Central Avenue SW  
Albuquerque, NM 87106

Dear Dr. Boyle:

This responds to your letter of July 6, 2004, in which you asked about the circumstances in which the Institute for Social Research at the University of New Mexico (ISR) could obtain access to education records from the New Mexico Public Education Department (NMPED) for purposes of a research project. After my June 11 presentation in Santa Fe, I suggested that you work with NMPED to see if the information could be disclosed in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. As you know, this Office administers FERPA and provides technical assistance to ensure compliance with the statute and regulations codified at 34 CFR Part 99.

We understand from your letter and from communications with Arlene Strumor, Deputy General Counsel for NMPED, that the project would involve following children in the State's early childhood programs as they enter and move through public schools in order to evaluate the effectiveness of both the pre-kindergarten programs themselves and the ability of public schools to take advantage of and build on the student's early childhood experience. You asked in particular whether NMPED could disclose information from education records to ISR as an "authorized representative" of NMPED under §§ 99.31(a)(3) and 99.35 of the FERPA regulations. According to Ms. Strumor, the project has not been identified as part of NMPED's evaluation of educational programs within the State of New Mexico.

Educational agencies and or institutions subject to FERPA may not have a policy or practice of disclosing education records, or personally identifiable information from education records, without the prior written consent of the student's parent except as provided by law. See 34 CFR § 99.30. Local schools and school districts generally provide education records to their State educational agency, such as NMPED, under 34 CFR § 99.31(a)(3)(iv), which allows disclosure without consent to authorized representatives of State and local educational authorities in connection with the audit or evaluation of Federal or State supported education programs. An agency or authority that receives education records under this provision may not redisclose the information to anyone except the officials listed in § 99.31(a)(3) and must destroy the

information when it is no longer needed for the audit or evaluation for which it was disclosed. See 34 CFR § 99.35(b).

The Deputy Secretary of Education issued a memorandum on January 30, 2003, explaining that multiple references to “officials” in the statutory authority for this exception (20 U.S.C. § 1232g(b)(3)) indicate that it should not be interpreted in an expansive manner. Rather, “authorized representatives” means those individuals or entities under the direct control of the official, such as an employee or a contractor over which the official has direct control for purposes of the contract. (“Contractor” in this sense means outsourcing or using an agent to provide services where internal disclosure would be appropriate under § 99.35 if the § 99.31(a)(3) official were performing the service itself, and where the parties have entered into an agreement that establishes the official’s direct control over the contractor with respect to the service.)

In terms of your proposed research project, a contract would qualify ISR as an “authorized representative” of NMPED under §§ 99.31(a)(3) and 99.35 only if NMPED has selected ISR, or been directed by appropriate State authorities to select ISR, to conduct this research as part of NMPED’s own evaluation of Federal or State supported education programs. The requisite “direct control” is not established if ISR, or any other research institution, seeks to obtain information from education records for its own research projects.

I trust that this information is responsive to your inquiry. Please do not hesitate to contact this Office if you have additional questions or concerns.

Sincerely,

/s/

LeRoy S. Rooker  
Director  
Family Policy Compliance Office

cc: Arlene Strumor, Esq.  
Deputy General Counsel, NMPED