**University of Wisconsin-Oshkosh**

**Institutional Review Board (IRB)**

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|  STANDARD OPERATING PROCEDURES (SOP)   |
|  **SOP Number: 10**  Effective Date: 12/5/18    Last IRB Review: 04/29/22  Last Updated: 02/16/22 Prepared By: A. Miron, K. Schill  | **Title:**  **Guidance on FERPA and Use of Student Records for Research Purposes**   |

**Guidance on FERPA and Use of Student Records for Research Purposes**

The Federal Family Educational Rights and Privacy Act of 1974, known as “FERPA,” ([20 U.S.C. § 1232g](http://www.law.cornell.edu/uscode/text/20/1232g); [34 C.F.R. Part 99](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr99_main_02.tpl)) is a Federal law administered by the U.S. Department of Education. FERPA applies to all educational agencies and institutions that receive funding from programs under the U.S. Department of Education (including public K-12 schools and post-secondary institutions such as colleges and universities).  FERPA governs access to student education records maintained by educational institutions, including records at the University of Wisconsin Oshkosh. FERPA’s purpose is to protect the privacy of students’ education records. Under FERPA, the presumption is that a student’s records are private and not available to the public without the consent of the student. Researchers who wish to use UW Oshkosh student records for research purposes must be familiar with [UW Oshkosh’s FERPA Policy](https://uwosh.edu/registrar/academic-policies/) and FERPA’s requirements for data collection, data storage, and presentation of research results. The use of student records for research purposes (including prospective data collection and review of existing student records) requires IRB review and approval.

1. **To Whom Does FERPA Apply at UW Oshkosh?**

FERPA applies to “eligible students.” An eligible student is any individual who has been or is “in attendance” at an institution of post-secondary education at any time and about whom the institution maintains records.  UW Oshkosh applies FERPA to the education records of persons who are or have been enrolled for classes, including students in cooperative and correspondence study programs.

1. **What Records are covered by FERPA?**

FERPA protects from disclosure “education records,” broadly defined to include all records, files, documents, and other materials directly related to a student and maintained by an educational institution or someone acting on its behalf (e.g., contractors). These include individual class grades, grade point averages, test scores, attendance records, psychological evaluations and behavior assessments, social security numbers or other identifying information.  Records can be in any format, including email messages, other computer records, videos, etc.

However, the definition excludes, among other records:

* campus law enforcement records (if certain criteria are met);
* certain notes made by employees for their own personal use;
* certain employment records;
* certain medical treatment records; and
* alumni records containing information obtained after a student’s graduation~~.~~

NOTE: “Education records” does not include information obtained through personal observation.

1. **Who Has Access to Education Records at UW Oshkosh?**

Generally, there are four categories of individuals who can obtain access to education records in the manner defined under FERPA:

1. Students
2. Parents or Legal Guardians of Students (if the student has given them written permission)
3. School Officials with Legitimate Educational Need (faculty, staff, and student workers conducting activities within the scope of their educational job responsibilities)
4. Others May Request Access for Specific Reasons (researchers may fall into this category)

1. **When Can UWO Student Records be Obtained for Research Purposes?**

Researchers wishing to use student records for research purposes, must submit an IRB Application and obtain IRB approval.  In many cases student education records are accessible to school officials (including faculty, staff, and student employees) for the purpose of conducting the educational duties of their job. Instructors may have natural access to student’s assignments, test scores, and attendance records in order to evaluate performance and ultimately assign a grade. However, this same teacher or administrator cannot use this natural access for other intents and purposes, such as human subjects research, unless one of the following conditions are met:

* Consent is obtained, OR
* Researcher will receive a completely de-identified data set or coded data set from the educational institution, OR
* Access complies with an Exception (for consent) outlined in FERPA

1. **Obtaining** **Consent to Use Student Records for Research Purposes:**

When possible, consent should be obtained from students to access student records for research purposes.  The Informed Consent Document must include the following information to comply with FERPA (in addition to the human subjects research consent requirements, see UWO Consent Template):

* Specify the records to be disclosed;
* State the reason/purpose for disclosure of the record;
* Identify the person(s) to whom the disclosure may be made
* Include a signed and dated student signature
* Electronic signature or verification via the students electronic confirmation is allowed under UW Oshkosh’s FERPA Policy (identity authentication should be considered)

              Note: Parental/legal guardian consent is required for students under age 18

1. **De-identified Data or Coded Data Sets:**

Researchers may avoid issues with FERPA by requesting de-identified or coded data.

* De-identified data does not contain any personally identifiable information.  For example, an Excel file with data about 500 students, including their grade, attendance, and test scores which does not include their names or student IDs would be considered de-identified.  Researchers who simply want to analyze data about students without linking it to any other information may request information in this format.
* Researchers may request the data with a code that is not located on any other database or file but can be used to follow a student for a longitudinal study.  If the institution is willing to create the code, it should be developed using a private and complex algorithm that it can recreate to match the information to the original record in order to collect information each year. The file is given to the researcher in a scrambled and non-identifiable form.

1. **FERPA Exceptions:** ([34 CFR 99.31](https://www.law.cornell.edu/cfr/text/34/99.31))

Exceptions allowing for the use of educational records for research purposes without consent include:

1. **Directory Information Exception**:  The only personally identifiable information obtained constitutes “[directory information](https://registrar.wisc.edu/ferpa_directory_information.htm)” and the student has not opted out of having his/her information included in the directory.
	* At UW Oshkosh, a notice is placed in Titan Web for students who have opted out of the release of directory information.
	* UW Oshkosh FERPA policy defines the following student information as directory information:
		1. Name
		2. Address
		3. Telephone numbers
		4. Email addresses
		5. Grade Level/Classification (freshman, sophomore, etc.)
		6. Major field of study
		7. Dates of attendance
		8. Enrollment Status (full or part-time status)
		9. Degrees and awards received
		10. Participation in officially recognized activities and sports
		11. Weight and height of members of athletic teams
		12. Most recent previous educational institution attended by student

Note: DOB/place of birth and photograph are listed as personally identifiable information of the student in which the U.S. DOE concluded is permissible for institutions to release without a student’s consent, however UW Oshkosh FERPA Policy is more restrictive. Social security numbers and student identification numbers are not considered directory information.

Data associated with a student who has opted-out of disclosure of any directory information cannot be used for research purposes.

1. **School Official Exception:** Under FERPA’s School Official Exception, institutions may disclose, without prior written consent, PII from education records to other individuals within the institution, or to others outside the institution serving as school officials (e.g., to a contractor, consultant, volunteer, or other party) provided that the recipient of the records:
	* performs an institutional service or function for which the institution would otherwise use employees (if disclosing to a party outside the institution);
	* is under the direct control of the institution with respect to the use and maintenance of education records;
	* only uses the PII from education records for the purpose(s) for which the disclosure was made and only further discloses PII from education records as authorized by the institution and in compliance with FERPA;
	* meets the criteria specified in the institution’s annual notification of FERPA rights; and
	* has been determined by the institution to have a legitimate educational interest in the education records (Regulation: 20 U.S.C. 1232g(b)(1)(A) and 34 CFR § 99.31(a)(1))

UW Oshkosh defines a school official as faculty, staff, and student employees who may need to look at a student’s record in order to effectively complete their educational job duties.

1. **Research Studies Conducted for or on Behalf of Educational Institutions Exception:**

The release is to organizations conducting studies for or on behalf of educational agencies or institutions (34 CFR § 99.31(a)(6) to:

* + develop, validate or administer predictive tests;
	+ administer student aid programs; or
	+ improve instruction (34 CFR § 99.31)

Note: Research studies conducted for or on behalf of educational institutions require review and approval from the IRB. The IRB may receive protocols in which researchers request to obtain student records from courses or sections in which they do not teach for research purposes. A waiver of the consent process cannot be approved for a research purpose which does not meet the criteria for research studies conducted for or on behalf of UWO.

Investigators requesting this FERPA exception must:

1. Provide the IRB with documentation of a written agreement between the researcher and UW Oshkosh (See Appendix A).  The agreement outlines a plan for data security, storage, and reporting. The IRB will maintain a copy of this agreement.  These written requirements must be signed by an Authorized Institutional Signatory in the Registrar’s Office and meet requirements of [34 CFR 99.31(a)(6)(iii)(C)](https://www.law.cornell.edu/cfr/text/34/99.31).
2. [Complete the following online training: CITI Program: FERPA for Researchers](https://www.citiprogram.org/)
3. Information must be stored in a secure manner and not transferred to any third parties.
4. Research data must be de-identified in publication or reporting of results

When disclosure is contemplated under the organizations conducting studies for or on behalf of institution provision of FERPA, it may be appropriate to consult with UW System Legal Counsel to apply the balancing and notification requirements of the Wisconsin Public Records Law. FERPA requires educational agencies and institutions to record all disclosures of PII from education records under the research studies exemption.

NOTE: **FERPA permits, but does not require, these disclosures**.  If the Institution denies the researcher access to the student records, the IRB cannot overrule.  In some cases, a School Official with Legitimate Access (not researcher) may strip the records of personally identifiable information including direct personal identifiers, indirect identifiers, and biometric records, prior to releasing the student record to the researcher.

See Appendix B: FERPA Exceptions Summary Table for more information regarding exceptions.

1. **Data Security**

When working with personally identifiable information in a student record, appropriate data protections must be in place. Researchers should securely manage FERPA-protected data on a password-protected computer or on an appropriately protected shared server or cloud.  UW Oshkosh IT recommends Microsoft One-Drive to securely store research data.

1. **Reporting Student Data in Public Reports, Publications, and Presentations**

Researchers need to be careful when displaying data to avoid identifying an individual student.  Many researchers display data in summary form (information summarized by a mean or other aggregated statistical format).  Researchers must be careful when presenting information in small size cells or small sample sets that would allow an individual to be easily identified.  The following techniques outlined in the CITI training can be used to avoid the detection of identifying an individual:

1. Blurring: disclosing data in a way that reduces the precision of the information
* Examples: reporting ranges of data as opposed to exact figures, aggregating across small groups, reporting rounded values
1. Masking: modifying the data in a way that hides specific information while also displaying relevant information
* Example: adding errors into a dataset to mask the real values and prevent disclosure of data; data can be recreated with a unique algorithm
1. Suppression: removing data from cells with very small numbers and replacing them with an indicator denoting privacy concerns
* Removing data with an “S” or another value to denote that the data were removed to ensure privacy

 **VII. Guidelines for Principal Investigators (PIs) Applying for Use of Student Data**

1. When the instructors plan to collect data from students (data from student assignments, activities, and course artifacts), they should secure student consent for the use of those data for research purposes at the beginning of the semester.
2. When these activities, assignments, and artifacts are part of the established course curriculum, they do not constitute research activities per se. In the consent document, the PIs should specify that those activities will be done as part of planned course curriculum, but that the research component consists in the instructor using students' submissions for research purposes. As such, the PIs should ask for student permission for the USE OF DATA for research purposes rather than for student participation in those activities (which are required as part of the course).
3. When the instructors plan to collect longitudinal data from students (data from multiple assignments and activities across the semester), it is recommended that they assign students a unique code at the end of the semester and discard students’ private identifying information (name, student ID #) at that time.
4. When the instructors plan to collect data from student assignments and activities and these data are identifiable, it is recommended that they allow students to withdraw their consent for the use of their class artifacts for research purposes up to one week after the grades have been submitted. Allowing students to withdraw their consent after the grades have been submitted will minimize any potential perceived instructor coercion on the students to participate in the study. The instructors should emphasize this information in the consent document.

**References**

* FERPA Regulations 34 CFR 99: <https://www.gpo.gov/fdsys/granule/CFR-2010-title34-vol1/CFR-2010-title34-vol1-part99>
* UW Oshkosh Registrar’s Office, FERPA Policy: <https://uwosh.edu/registrar/academic-policies/>
* UW System Legal Counsel, Legal Topics: FERPA:  <https://www.wisconsin.edu/general-counsel/legal-topics/ferpa/>
* Department of Education: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
* FERPA Exceptions Chart: <https://studentprivacy.ed.gov/sites/default/files/resourcedocument/file/FERPA%20ExceptionsHANDOUThorizontal0.pdf>
* University of Wisconsin ED/SBS IRB; IRB Guidance: FERPA:

<https://kb.wisc.edu/sbsedirbs/42988>

* University of New Mexico IRB Guidance:

 <http://irb.unm.edu/sites/default/files/Guidance%20on%20FERPA.pdf>

* Privacy Technical Assistance Center Written Agreement Checklist: <https://studentprivacy.ed.gov>
* CITI Program: FERPA for Institutional Review Boards and FERPA for Researchers

<https://citiprogram.org>

**APPENDIX A: FERPA EXCEPTION AGREEMENT for HUMAN SUBJECTS RESEARCH**

**Instructions:**  This form is used for research involving the use of student records for the following FERPA exception which requires a written agreement.   This form and the [CITI Program](https://about.citiprogram.org/en/homepage/): FERPA Training for Researchers must be completed for each researcher on the study who will have access to personally identifiable information in the student record. Please return the form to IRB@uwosh.edu and the IRB Office will route it to the Registrar for approval.

FERPA Exception: Research Conducted for or on Behalf of Educational Institutions Agreement (34 CFR § 99.31 (a)(6))

The release of the student records falls under the following category:

[ ]  Develop, validate, or administer predictive tests

[ ]  Administer student aid programs

[ ]  Improve instruction

* 1. Specify the purpose, scope, and duration of the study and the information to be disclosed:

* 1. Personally identifiable information from education records will only be used to meet the purpose of the study as stated in this agreement.  [ ] **I agree**
	2. Specify the plan to destroy the personally identifiable information in the research records and protections in place to protect the disclosure of the records:

* 1. The study will be conducted in a manner that will not permit personal identification of parents or students by anyone other than representatives of the organization with legitimate interests (i.e. members of the research team).   [ ] **I agree**
	2. Personally identifiable information will be destroyed when the information is no longer needed for the purpose in which the study was conducted.  [ ] **I agree**
	3. Personally identifiable information will be destroyed by the following date:
	4. I have completed the CITI Program: FERPA Training for Researchers.   [ ] **I agree**

**Signatures:**

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 Principal Investigator Date

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Authorized Signature at UWO (Registrar/Designee) Date

**APPENDIX B: FERPA EXCEPTIONS SUMMARY TABLE**

FERPA Exceptions Summary Table:

<https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20Exceptions_HANDOUT_horizontal_0.pdf>