

October 31, 2003

Attorney for School District

Dear Attorney for School District:

This responds to your letter of September 30, 2003, in which you asked for an official opinion whether the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, permits the [District] to release certain information in education records related to one student to the parents of another student. My staff and I have spoken by telephone with you and with [the Hearing Officer], an impartial hearing officer for the State Department of Education, concerning this matter. This Office reviewed a copy of the Hearing Officer's August 16 and September 14, 2003, procedural orders in the matter. This Office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations codified at 34 CFR Part 99.

The District and [Parents], parents of [Student], are engaged in "an impartial hearing brought by the Parents pursuant to Part 200 of the Commissioner's Regulations and Section 1415 of the Individuals with Disabilities Education Act" (IDEA). In response to the Parents' request for a copy of the Student's discipline records, the District provided them a copy of the requested records after it had "redacted those portions of the [S]tudent's records containing names of and/or personally identifiable information regarding other students. The Hearing Officer issued procedural orders (Orders) to the District on August 16 and September 14, 2003, to provide the Parents a "complete and accurate copy" of the Student's discipline records, to include the names and other personally identifiable information of other students also contained in those records. The documents at issue are written and signed allegations made by other students charging the Student with serious or criminal behavior. In response to the Orders, the District informed the Hearing Officer that release of the education records in unredacted form violated FERPA. The Hearing Officer suspended implementation of the ordered disclosure pending written clarification from this Office.

The Hearing Officer states that the names and other personally identifiable information of other students contained in the Student's education records are information directly related to the Student, and thus the information of the other students must be disclosed to the Parents. The Hearing Officer asserts that redaction of the identity of other students from the Student's education records prevents the Parents from exercising their FERPA right to access and review "a complete and accurate copy" of the Student's education records.

Because the documents at issue contain charges by other students of serious or criminal behavior on the part of the Student, the Hearing Officer believes that the "due process rights" of the Student apply to the documents, and thereby override FERPA's prohibitions on release of the other students' information to a third party, the Parents, without prior consent of the parents of the other students. The District believes that it is prohibited by FERPA from releasing the information in the requested format because it may not release one student's information from education records in personally identifiable form to the parents of another student. You ask:

Whether the District should disclose the above-mentioned student's disciplinary/educational records containing information regarding more than one student, pursuant to 34 CFR § 99.12, without first redacting the names and/or personally identifiable information of other students.

An educational agency or institution subject to FERPA may not have a policy or practice of disclosing education records, or non-directory, personally identifiable information from education records, without the written consent of the parent, except as provided by law. 20 U.S.C. § 1232g(b); 34 CFR Subpart D. "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 the agency or institution. 34 CFR § 99.3 ("Education records").

Under the FERPA regulations, "disclosure" means "to permit access to or the release, transfer, or other communication of *personally identifiable information* contained in education records to any party, by any means, including oral, written, or electronic means." 34 CFR § 99.3 ("Disclosure") (emphasis added). The regulations define "personally identifiable information" so that it includes, but is not limited to:

- a. The student's name
- b. The name of the student's parent or other family member;
- c. The address of the student or student's family;
- d. A personal identifier, such as the student's social security number or student number;
- e. A list of personal characteristics that would make the student's identity easily traceable; or
- f. Other information that would make the student's identity easily traceable.

34 CFR § 99.3 ("Personally identifiable information") (emphases added). That is, FERPA-protected information may not be released in any form that would make the student's identity easily traceable. As stated above, a student's name or signature is "personally identifiable information" of that student.

The law governing the proper handling of a student's education records that contain personally identifiable information belonging to other students is clear. Indeed, the statute is unambiguous in that it states:

If any material or document in the education record of a student includes information on more than one student, the parents of one such student shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material.

20 U.S.C. § 1232g(a)(1)(A). See also 34 CFR § 99.12(a).

Thus, absent the consent of the parents of the other students whose names appear in a student's education records, an educational agency or institution does not have authority to release such personally identifiable information under FERPA. A school district should redact the names of, or information easily traceable to, any other students mentioned in a student's education records before providing a parent access to the student's education records. In cases where joint records cannot be easily redacted or the information segregated out, the school district may satisfy a request for access by informing the parent about the contents of the record.

The IDEA statute, on its face, makes FERPA applicable to IDEA proceedings. 20 U.S.C. §1417(c). Further, the IDEA regulations contain similar language limiting the right of a parent in an IDEA proceeding to inspect and review education records of another student that might be contained in their child's education records. Specifically, it states:

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

34 CFR §300.564. It is clear from the IDEA regulations that parents are not entitled to a greater right of access to the education records belonging to other students in the context of an IDEA proceeding.

Based on the information provided, this Office has determined that the documents at issue are "education records" under FERPA. The records are directly related to each student, containing specific information such as the name of a student, the signature of a student, or information concerning the alleged behavior or actions of the Student. The District acknowledges that it maintains the documents at issue.

Because the documents at issue contain personally identifiable information about more than one student, the documents also meet the requirements to be the education records of each student named or mentioned in the document. This Office considers that the name and other personally identifiable information of each other student is directly related only to that other student, even when such information is contained within the education record of the Student. This Office considers the name and other personally identifiable information of the Student to be directly related only to the Student. The FERPA statute specifically provides in those circumstances that the parent of each student then has a right to inspect and review only the information directly related to his or her child.

Based on the information submitted, the District provided the Parents a copy of the requested documents from which the names and other personally identifiable information of other students had been removed. Release of a redacted copy of the documents at issue is in compliance with the FERPA regulations specific to the handling of education records of more than one student. Additionally, this Office considers that the Parents right of access was met by the District when it provided the Parents with redacted documents. The District's action is in compliance with FERPA because it did provide the Parents with access to the Student's education records in response to their request while still protecting the information from the education records of the other students from being improperly disclosed to the Parents. Further, we confirm that, under the circumstances described, disclosure of the personally identifiable information of other students to the Parents would generally be an improper disclosure under FERPA. Compliance with the Orders to the extent that the Orders require the District to act in a manner inconsistent with the provisions of FERPA could subject the District to administrative action by the Secretary of Education and jeopardize the District's receipt of Federal education funds.

Based on the above cited statutory and regulatory authority that clearly requires compliance with FERPA in IDEA proceedings, we do not believe the Hearing Officer's claim is correct that the Student's "due process rights" justify the release of other students education records to the Parents. Rather, the IDEA "Due Process Procedures for Parents and Children" found in 34 CFR §§ 300.500 - 300.515 do not override any of the privacy rights of FERPA or IDEA. Accordingly, to the extent that the Orders require the District to release the names and personally identifiable information of other students contained in the Student's records, the Orders directly

conflict with the statutory and regulatory provisions of both FERPA and IDEA, and the Parents are not entitled to the education records of other students that are contained in the education records of the Student.

I trust that this explains the scope and limitations of FERPA as it pertains to your inquiry. Should you have any additional questions, please do not hesitate to contact this Office again.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office