



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

JUL 18 2002

This is in response to your November 30, 2001, correspondence to this Office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (District). You allege that the District:

(1) improperly destroyed a portion of (Student) education records without your consent; (2) did not provide you the exact date of destruction of those records in response to your request; (3) improperly requested and received information from the Student's primary care physician and/or a non-District counselor; (4) improperly refused your request to remove information from the Student's education records concerning the Student's physical and mental health, and (5) misled you concerning education records maintained by the Special Programs Office. This Office administers FERPA, which addresses issues pertaining to education records. Other issues as you raise them, including the "privacy and confidentiality rights of other family members" and possible violations of the Washington Administrative Code (WAC) or Revised Washington Code (RWC) by the District, are not addressed by FERPA and will not be discussed in this letter.

FERPA is a Federal law that gives parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. When a student turns 18 years of age or attends an institution of postsecondary education, the student becomes an "eligible student" and all FERPA rights transfer to the student. 34 CFR §99.3. FERPA defines "education records" as "those records, files, documents, and other materials which –

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. 1232g(a)(4)(i) and (ii).

This Office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. A timely complaint is one that is submitted to this Office within 180 days of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation. As such, any allegations that your rights under FERPA were violated under circumstances about which you were aware over 180 days prior to the date you contacted this Office do not meet the threshold requirement on timeliness.

Your allegations pertain to several general areas and are discussed below in those categories.

Destruction of records

You allege that the District violated FERPA (1) when it improperly destroyed a portion of the Student's education records, and (2) when it did not inform you of the date on which those records were destroyed.

FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records. FERPA would not require a school district to honor a request that education records not be destroyed, although the Individuals with Disabilities Education Act (IDEA) or the state laws of Washington may contain such a requirement. However, a school may not destroy education records while there is an outstanding request to inspect and review the records. A school or district is permitted to destroy records at any other time, and FERPA does not require that a parent be notified prior to record destruction. FERPA does not otherwise address the destruction of education records by a school. There is no FERPA requirement that a parent be informed of the destruction date of education records.

Based on the information you provided, it appears that the District destroyed the test protocols and other parts of the school psychologist's file prior to your October 2001 request for access to those records. As stated above, neither the prior destruction of education records nor a failure to provide you an exact destruction date of the disputed records represents a FERPA violation. Accordingly, there is no basis at this time for this Office to initiate an investigation of these allegations.

If you wish us to further consider an allegation that these education records were destroyed while your October 2001 access request was pending, you need to provide us with evidence to support your belief that the education records existed at the time you made your request. Such evidence might be a signed statement of an independent third party verifying his or her personal knowledge of destruction of the records at a time later than your access request.

Improper Creation and Retention of Records

You allege that the District violated FERPA (3) when it improperly received information from the Student's primary care physician and other third parties to create education records, and (4) when it refused to remove information concerning the Student's physical and mental health from the Student's education records at your request.

FERPA applies to educational agencies and institutions that receive funding under a program administered by the U.S. Department of Education. Personal medical agencies or providers are not subject to FERPA, and FERPA does not apply to records maintained by those agencies or providers. FERPA does not prohibit a school or district from gathering information and records from any source and including such information in a student's education records.

FERPA does not prohibit a school from creating education records, or from modifying those records that it maintains. FERPA is not intended to be a vehicle for appeals of decisions about a student or a student's status, nor is it intended to interfere with decisions made by a school regarding what types of records or information it believes it should maintain. FERPA does not generally require a district to remove information or documents from a student's education records in response to a parent's request.

Based on the information you provided, it appears that the practices you describe comply with FERPA's requirements. Accordingly, there is no basis for this Office to initiate an investigation of these allegations. Allegations that the District violated State law are best made to the appropriate office of your State government.

Misleading Information Concerning Records Handling and Storage

You allege that the District violated FERPA (5) when it misinformed you concerning the records handling and storage practices of the Special Programs Office. You state that you were unaware that psychologist files were maintained in various school buildings throughout the District and kept separately from other education records in the Special Programs Office.

FERPA does not require that education records be kept in a particular file or location so long as the records are treated in accordance with FERPA without regard to the location of the records. FERPA also does not require that a District provide you with a list of personally identifiable information maintained on the Student, or that the District notify you of the locations in which education records are stored, although IDEA may contain such requirements. Although IDEA is

a Federal statute, the States administer it. Thus, you may want to contact the division that administers IDEA in your State. The address is as follows:

Dr. Douglas Gill, Director
Special Education
Office of Superintendent of Public Instruction
Old Capitol Building
PO Box 47200
Olympia, Washington 98504-7200

Based on the information you provided, it does not appear that the District failed to comply with FERPA's requirements when the Student's education records were maintained outside the Special Programs Office. Accordingly, there is no basis for this Office to initiate an investigation of this allegation. Allegations that the District violated State law are best made to the appropriate office of your State government.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concerns. Also, we are returning your letter of November 30, 2001, and enclosures as they may be useful to you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "LeRoy S. Rooker". The signature is written in a cursive style with a large initial "L".

for LeRoy S. Rooker
Director
Family Policy Compliance Office

Enclosures

cc: Stephanie S. Lee, Director
Office of Special Education Programs