



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

December 4, 2001

Honorable Roscoe E. Bartlett
Member, House of Representatives
5831 Buckeystown Pike, Suite E
Frederick, Maryland 21704

Dear Mr. Bartlett:

This is in response to your letter dated March 29, 2001, on behalf of your constituent, X. In a letter addressed to you dated March 23, 2001, she expressed concerns over the misuse and possible violation of the Family Educational Rights and Privacy Act (FERPA), by the X County Public Schools (District). Your letter was initially referred to the Office of Special Education Programs (OSEP) because X concern involved education records of special education students. However, after consultation with OSEP, it was determined that this Office, the Family Policy Compliance Office (FPCO), is the appropriate office to respond to the issues raised by your constituent because we are responsible for administering FERPA.

OSEP informed this Office that, in an attempt to assist you and your constituent, OSEP's contact for the State of Maryland, Michael F. Slade, contacted your office and spoke with Micki Hamilton requesting authorization to contact directly. Although authorized to do so, Mr. Slade was unable to contact X because the telephone number of record was no longer a working number.

Nonetheless, based on the information provided, it appears that the District employed the services of the George Washington University's Center for Excellence and Equity in Education (Center) to investigate statistical findings that implied that minority children were being disproportionately referred to the District's special education programs. The District provided the Center with a limited number of student files for its review and analysis.

Briefly, FERPA gives parents certain rights with respect to their children's education records. See 20 U.S.C. § 1232g and 34 CFR Part 99. In particular, FERPA generally prohibits the disclosure of a student's education records without the prior written consent of the parent. FERPA defines the term "education records" as:

except as may be provided otherwise in subparagraph (B), 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)(A); 34 CFR § 99.3 "Education records."

While FERPA generally prohibits the disclosure of education records without prior written consent, there are several statutory exceptions to this rule. One exception allows for the disclosure of education records to school officials with a legitimate educational interest in the records. School officials are broadly defined to include contractors and other third parties carrying out activities for the school that the school would otherwise do itself. Here, the District hired the Center to perform a service on its behalf. The disclosures to the Center, as a contractor acting for the district, are permitted under the school officials' exception. See 34 CFR 99.31(a)(1). Under this exception, the District must list the Center as a "school official" with a "legitimate educational interest" in the annual notification, or an amendment to such notification, required under 34 CFR 99.7.

Another potentially applicable statutory exception provides that the educational agency or institution may disclose personally identifiable information from an education record of a student without parental consent if the disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to improve instruction. See 34 CFR 99.3 1(a)(6)(i)(C). We do not have enough information about the particulars of the study to conclude that the purpose of the study is to improve instruction.

It is also worth noting additional requirements under this exception. Specifically, under its provisions, the organization must "conduct the study in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization" and must destroy the information "when no longer needed for the purposes for which the study was conducted." See 34 CFR 99.3 1(a)(6)(ii)(A) and 03). Based on the information provided to us, it appears that no personally identifiable information on a student was disclosed by the Center in its final report or its presentation of the report and that all information was disclosed in aggregate form. Thus, it appears that the District, and the Center acting on behalf of the District, complied with its requirement not to redisclose personally identifiable information from an education record.

FERPA also requires that if a school hires an organization to conduct a study, as the District did here, the school must maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student with that student's education records. See 34 CFR 99.32(a). In sum, from the information provided to us from your office, including documents provided by X we have determined that the disclosures made by the District to the Center without parental consent appear to be consistent with FERPA.

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OSEP informs us that X other concerns regarding the interpretation of the Center's study and the subsequent use of the data, issues not related to FERPA, should be addressed directly with the Maryland State Department of Education (MSDE). Included below is the name and address of the Assistant State Superintendent for the MSDE charged with overseeing special education in the State of Maryland:

Dr. Carol Ann Baglin
Assistant State Superintendent
Maryland State Department of Education
Division of Special Education/Early
Intervention Services
200 West Baltimore Street
Baltimore, Maryland 21201-2595

I hope this information is helpful. If this Office can be of further assistance regarding this matter, please feel free to contact me at (202) 260-3887.

Sincerely,

A handwritten signature in black ink, appearing to read "LeRoy Rooker". The signature is fluid and cursive, with a long horizontal stroke at the end.

LeRoy Rooker
Director
Family Policy Compliance Office