



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

JUL 29, 2002

Honorable C. L. "Butch" Otter
Member, House of Representatives
802 W. Bannock, Suite 101
Boise, Idaho 83702

Dear Mr. Otter:

This is in response to your July 11, 2002, letter to former Assistant Secretary Rebecca Campoverde, on behalf of your constituent. In his July 10, 2002, letter to you, raises several questions about the Family Educational Rights and Privacy Act (FERPA) and the Individuals With Disabilities in Education Act (IDEA), particularly with regard to limitations on "the right of parents to obtain a copy of records concerning [a child] and his parents from a public school." I have been asked to respond to the portion of letter regarding FERPA because this Office administers FERPA. Because IDEA has some requirements that are not found in FERPA, which in some cases may afford rights to special education parents that are not afforded by FERPA, the Department's Office of Special Education Program (OSEP) will respond to his IDEA questions by separate letter.

Specifically, asked if FERPA and IDEA require schools to provide parents with copies of education records, if schools must provide parents with "subsets" of records upon request, if schools must provide parents an "attestation/affidavit" regarding the records, if "sole possession records" become "education records" once released, if records concerning parents must be made available to them upon request, and if FERPA prohibits a representative with consent from the parent from inspecting and reviewing education records without the parent accompanying him or her. The applicability of FERPA to these issues is explained below.

FERPA protects the privacy rights of parents in their children's "education records." It applies to educational agencies or institutions that receive federal funds under any program administered by the Secretary of Education, including IDEA. In particular, FERPA gives parents the right to inspect and review 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. 20 U.S.C. § 1232g; 34 CFR Part 99. FERPA provides that a parent must provide a signed and dated written consent before an educational agency or institution may disclose personally identifiable information from a student's education records, except under conditions specified by statute. 34 CFR § 99.31.

The term "education records" means those records that are:

1. Directly related to a student; and
2. Maintained by an educational agency or institution or by a person acting for the agency or institution.

34 CFR § 99.3 "Education records." Clearly, records on a student receiving services under IDEA are “education records” under FERPA.

FERPA requires that educational agencies and institutions provide parents the opportunity to inspect and review the student’s education records within 45 days after receipt of a request. 34 CFR § 99.10(b). A school is required by FERPA to provide copies of education records if a failure to do so would effectively prevent the parent from exercising the right to inspect and review the records. 34 CFR § 99.10(d). For example, a school could be required to provide copies if the parent does not live within commuting distance of the school. In such a case, the school must provide a copy of the education records or make other arrangements in accordance with FERPA. An example of a permissible arrangement would be for the school to send the records to a school near to the parent. The parent could then go to that school to inspect and review the records. Further, FERPA does not contain any provision that prohibits an educational agency or institution from providing copies of education records to a parent.

FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records. However, an institution may not destroy education records if there is an outstanding request to inspect and review the records. 34 CFR § 99.10(e). FERPA does not otherwise address the destruction of education records by an institution.

described a situation where an institution provides a parent with access to or copies of a large number of education records, and the parent then requests that the school arrange the records in “subsets” consisting of some criteria described by the parent. He asked whether FERPA requires the school to organize the records into the “subsets.” Additionally,

asked whether FERPA requires an institution to provide to a parent various attestations concerning the records it provides. He cited examples such as attesting that no records have been destroyed as of a given date, that the records were received from specific, named locations, or that the institution certifies that it provided the records in full compliance with FERPA.

Generally, an institution is required to conduct a reasonable search for the education records requested. If a parent makes a “blanket” request for a large portion of a child’s education records and the parent believes that he or she has not been provided certain records that were encompassed by that request, the person should submit a follow-up request clarifying the additional records that are needed. While an institution is obligated to make a reasonable effort

to provide the records requested, FERPA does not require the institution to organize the records it provides in a manner specified by the parent. In addition, FERPA does not require an institution to provide any attestations regarding education records.

asked about “sole possession records” under FERPA. Exempted from the definition of “education records” and, thus, from the protection of FERPA, are records that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. 34 CFR § 99.3(b)(1) “Education records.” Once the contents or information recorded in a sole possession record is disclosed to any party other than a temporary substitute for the maker of the record, that record becomes an “education record” under FERPA. Generally sole possession records are of the nature of informal “memory jogger” notes.

asked whether a record held by a school that concerned a parent would be an “education record” covered by FERPA. FERPA prohibits the disclosure of “personally identifiable information” from a student’s education records. Section 99.3 of the FERPA regulations defines “personally identifiable information” as information that 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 the 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.

Thus, records maintained by a school that contain information regarding a student’s parent or other family members would be considered “education records” protected by FERPA.

Finally, asked whether FERPA prohibits a person who has written authorization from a parent from inspecting and reviewing education records. Under FERPA, an educational agency or institution may permit a representative of a parent, or any other person, with written consent from the parent to inspect and review the child’s education records, but such a disclosure is not required. Under FERPA, the only individual a school is required to provide an opportunity to inspect and review information is a parent. Therefore, a school may, under FERPA, refuse to allow a third party, even with consent, access to a student’s education records. There may be different requirements under IDEA regarding this issue, which will be addressed in the letter from OSEP.

Page 4 – Honorable C.L. “Butch” Otter

I trust that the above information is helpful in explaining the scope and limitations of FERPA it relates to concerns. Should you or your constituent have further questions about FERPA, please do not hesitate to contact this Office directly. The address is as follows:

Family Policy Compliance Office
U. S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202-4605

Sincerely,

A handwritten signature in dark ink, appearing to read "LeRoy S. Rooker", written in a cursive style.

for LeRoy S. Rooker
Director
Family Policy Compliance Office

cc: Stephanie Lee
Director, OSEP