



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

July 24, 2014

Mr. Philip Y. Ting
Assembly Member
California Legislature
PO Box 942849
Sacramento, CA 94249-0019

Dear Mr. Ting:

This is in response to your June 24, 2014, letter requesting an official opinion from the Family Policy Compliance Office (FPCO) relative to the impact of the sharing of student information provisions in the federal Family Educational Rights and Privacy Act (FERPA) on Assembly Bill (AB) 2160 that you are authoring within the California State Legislature. Your request is also in follow-up to various telephone conversations between representatives of your office and Frank Miller, deputy director of this office. As you are aware, FPCO is responsible for the administration of FERPA, which protects the privacy interests of parents and eligible students in the students' education records. *See* 20 U.S.C. § 1232g and 34 CFR Part 99. All FERPA rights accorded to, and the consent required of, parents transfer from the parents to the student when a student becomes an eligible student, which is a student who has reached 18 years of age or who attends an institution of postsecondary education at any age. *See* 34 CFR §§ 99.3 (definition of "Eligible student") and 99.5(a)(1).

Specifically, your letter states that AB 2160 aims to streamline the application process for California state financial aid known as the Cal Grant program, which is administered under the California Student Aid Commission (CSAC). You stipulate in your letter that in order for students to receive a Cal Grant, students "must complete the Free Application for Federal Student Aid and their verified grade point average (GPA) must be received by CSAC before March 2nd of each year." You also express that the GPA component of the application process is not always completed, rendering many students ineligible for aid.

As a solution, your proposed legislation would designate every twelfth grader enrolled in a California public school, except for those students who opt out, as an applicant for a Cal Grant to allow the public schools to submit the GPA of every twelfth grade student to CSAC under FERPA. The legislation also includes provisions requiring that the school district or charter school annually notify twelfth grade students, parents, or guardians in writing of the opportunity to opt out of the Cal Grant applicant status. The deadline for this opt out each year is October 15. Your stated intent is that this designation would permit the transfer of every twelfth grade student's GPA from their public high school to CSAC under the financial aid exception in the FERPA statute and regulations (20 U.S.C. § 1232g(b)(1)(D) and 34 CFR § 99.31(a)(4)). The

details and exact language of the proposed AB 2160 are contained in the attached document that you submitted with your request.

Under FERPA, a school may not generally disclose personally identifiable information (PII) from a student's education records to a third party unless the student's parent or the eligible student has provided prior written consent. However, there are a number of exceptions to FERPA's prohibition against non-consensual disclosure of PII from education records. Under these exceptions, schools are permitted, but not required, to disclose PII from education records without consent. One of the exceptions permitted by FERPA is "in connection with a student's application for, or receipt of, financial aid." 20 U.S.C. § 1232g(b)(1)(D). Specifically, the FERPA regulations at 34 CFR § 99.31(a)(4) provide that consent is not required when the disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to: (1) determine eligibility for the aid; (2) determine the amount of the aid; (3) determine the conditions for the aid; or (4) enforce the terms and conditions of the aid.

Based on our review of the proposed legislation, it is the opinion of this office that the contemplated data disclosure between California public schools and CSAC in AB 2160 would be consistent with the financial aid exception provisions in the FERPA statute at 20 U.S.C. § 1232g(b)(1)(D) and in the regulations at 34 CFR § 99.31(a)(4). Our opinion is based on the understanding that, through AB 2160, all twelfth grade students enrolled in California public schools would be considered to have applied for a Cal Grant (unless parents or eligible students opt out of the Cal Grant) and that the GPA information that would be required to be submitted by California public schools to the CSAC on all twelfth grade students would be necessary in order for CSAC to determine students' eligibility for the Cal Grant. We hope this is responsive to your request. Please feel free to contact our office, if further clarification or assistance is needed.

Sincerely,

/s/

Dale King
Director
Family Policy Compliance Office

Enclosure