Mr. Gilbert Hermosillo
Dean of Admissions, Assessment, Student Aid
Miracosta Community College District
One Barnard Drive
Oceanside, California 92056

NOV 30 2009

Dear Mr. Hermosillo:

This is in response to your inquiry relative to the Family Educational Rights and Privacy Act (FERPA) and California Education Codes 76030(c) and 76032 which you state relate to "minors on campus" as follows. Education Code 76030(c) states:

> Whenever a minor is suspended from a community college, the parent or guardian shall be notified in writing by the president or the president's designee.

And, Education Code 76032 states:

> If the student removed by an instructor is a minor, the college president or the president's designee shall ask the parent or guardian of the student to attend a parent conference regarding the removal as soon as possible. If the instructor or the parent so requests, a college administrator shall attend the conference.

You ask this Office whether FERPA preempts state law and you cite the court case of Rim of the World Unified School District v. Superior Court of the County of San Bernardino, #No. E032252 (CAL. Ct. APP. 12/31/2002), and ask whether we agree that "this court case applies in this situation." As you know, this Office administers FERPA.

As a preliminary matter, FERPA does not address who will attend parent/teacher conferences or when a parent/teacher conference should take place-- such decisions are made at the discretion of local and State officials. Rather FERPA applies to the disclosure of education records. "Education records" means those records that are:

(a) Directly related to a student; and

(b) Maintained by an educational agency or institution or by a party acting for the agency or institution.

34 CFR § 99.3 "Education records." The fact that a student is suspended from the College is personally identifiable information from that student's education record and

cannot be disclosed absent the prior written consent of the student, even if the student is a "minor" under State law, unless one of the FERPA exceptions discussed below applies.

You did not explain the term "minor" in light of the California Education Codes, but FERPA affords 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 reaches the age of 18 or attends an institution of postsecondary education, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the student. 20 U.S.C. § 1232g(d); 34 CFR § 99.3 "Eligible student."

FERPA generally prohibits the nonconsensual disclosure of information derived from education records, except in certain specified circumstances. 20 U.S.C. § 1232g(b); 34 CFR §§ 99.30 and 99.31. One of these exceptions permits the nonconsensual disclosure of information derived from education records to that student's parent if the student is a dependent student, as defined in section 152 of the Internal Revenue Code of 1986. 20 U.S. C. § 1232g(b)(1)(H); 34 CFR § 99.31(a)(8). Thus, if a parent of a student attending the College claims the student as a dependent for income tax purposes, the College may disclose any student education records, including a notice of suspension, to the parent under FERPA.

Also, § 99.31(a)(15) permits nonconsensual disclosure of education records to a parent of a student at an institution of postsecondary education regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance if-

(A) The institution determines that the student has committed a disciplinary violation with respect to that use or possession; and

(B) The student is under the age of 21 at the time of the disclosure to the parent.

Also, paragraph (a)(15) of this section does not supersede any provision of State law that prohibits an institution of postsecondary education from disclosing information.

In sum, to the extent that § 99.31(a)(8) and § 99.31(a)(15) would apply there does not appear to be any conflict between the above cited California Education Code and FERPA. If neither of these exceptions apply and the student does not provide prior written consent allowing for the disclosure of his or her education records, then the College cannot comply with these State law requirements.

With regard to your question about the above court case and whether this Office agrees that FERPA preempts state law, educational agencies and institutions are required to comply with all FERPA requirements as a condition for receipt of funding under

programs administered by the Department. Thus, if an educational agency or institution wishes to continue receiving funding, it must choose to comply with FERPA.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure