



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

April 18, 2008

Mr. John P. Giliberti
City Attorney
City of Rockford, Illinois
425 East State Street
Rockford, Illinois 611104

Dear Mr. Giliberti:

This responds to your April 7, 2008, request for our assistance in ensuring that your proposed State law regarding enforcement of local truancy ordinances meets the juvenile justice system exception in the Family Educational Rights and Privacy Act (FERPA). This Office administers FERPA and provides technical assistance to ensure compliance with the statute and regulations, 20 U.S.C. § 1232g and 34 CFR Part 99.

Under § 99.30 of the regulations, a parent or eligible student (i.e., a student who is 18 years of age or attends a postsecondary institution) must provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from education records. Exceptions are set forth in § 99.3 l(a). "Education records" are defined in § 99.3 as records that are directly related to a student and maintained by an educational agency or institution, or by a party acting for the agency or institution. Students' daily attendance records maintained by a school district are education records under FERPA. We note that daily attendance records may not be disclosed without consent as "directory information" under § 99.3 l(a)(11); "dates of attendance" listed as "directory information" in § 99.3 refers to years or terms that a student attends an institution, not daily records that reflect whether a student was present in class.

Under § 99.31 (a)(5)(i), an educational agency or institution may disclose education records, without consent to –

State and local officials or authorities to whom this information is specifically ...

(B) Allowed to be reported or disclosed pursuant to a State statute adopted after November 19, 1974, subject to the requirements of § 99.38.

Section 99.38 provides:

- (a) If the reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under § 99.31 (a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

See 20 U.S.C. § 1232g(b)(1)(E)(ii).

In telephone discussions with Frances Moran of my staff, you indicated that currently there is no Illinois State law that addresses the disclosure by local school districts of students' attendance and other education records to officials and authorities that enforce local truancy ordinances. You indicated that the city's ordinance is intended to help prevent and address problems known to be associated with truancy, including in some instances juvenile delinquency, and asked us for help in drafting a State law that would meet FERPA requirements. The underlined text below is the proposed amendment to the Illinois Municipal Code that you submitted to our Office for review:

Sec. 11-5-9. Truants. The corporate authorities of any municipality may adopt ordinance to regulate truants within its jurisdiction. These ordinances may include a graduated fine schedule for repeat violations, which may not exceed \$100, or community service, or both, for violators 10 years of age or older and may provide for enforcement by citation or through administrative hearings as determined by ordinance. If the violator is under 13 years of age, the parent or custodian of the violator is subject to the fine or community service, or both. As used in this Section, "truants" mean persons who are within the definition of "truant" in Section 26-21 of the School Code. For enforcement purposes, each school district may disclose to local officials or authorities who enforce, prosecute, or adjudicate municipal ordinances to regulate truants and/or local officials or authorities who work with students to address truancy problems, any education records of students enrolled in the school district's schools, given that truancy is related or leads to juvenile delinquency and therefore, there is a need to effectively serve students, by assisting students to avoid their involvement in the juvenile justice system. A home rule unit may not regulate truants in a manner inconsistent with the provisions of this Section. This section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise of home rule units of the powers and functions exercised by the State.

The Department has specifically declined to define the terms "juvenile justice system" or "prior to adjudication" under the statutory exception, 20 U.S.C. § 1232g(b)(1)(E)(ii), in order to "give States flexibility to define these terms consistent with State law and practice." See Proposed Rules at 61 Fed. Reg. 10664 (Mar. 14, 1996). Therefore, as recognized in our 1996 proposed rules, we would look to "State law and practice" to determine whether the disclosures "concern" the Illinois "juvenile justice system" and that system's ability to effectively serve the student whose records are released prior to adjudication.

The Joint Report issued in 1997 by the Department and the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention, Sharing Information: A Guide to [FERPA] and Participation in Juvenile Justice Programs (Program Report), explains (at page 8) that the disclosure or reporting of records under § 99.31(a)(5) must be to a State or local juvenile justice

system agency (along with other requirements, discussed below). It has been well-established for some time now that truancy is a gateway to crime and one of the most powerful predictors of juvenile delinquent behavior. See, e.g., Manual to Combat Truancy: The Problem of Truancy in America's Communities, July 1996, at <http://www.ed.gov/pubs/Truancy/index.html>. As such, we believe that preventing students from entering the State's juvenile justice system through the enforcement of municipal truancy ordinances "concerns the juvenile justice system" and qualifies for disclosure under § 99.31 (a)(S)(i) so long as the disclosure is to a juvenile justice system agency as defined under State law and practice. In order to ensure that the disclosures would fall under this FERPA exception to the consent requirement, we recommend that the State Legislature make findings or statements about the link between truancy and juvenile delinquency and provide in State statute that its juvenile justice system includes administrative enforcement of municipal truancy ordinances and working with students to address truancy problems, or that local officials and authorities who enforce municipal truancy ordinances and work with students to address truancy problems are part of the State's juvenile justice system or a juvenile justice system agency. In regard to the "prior to adjudication" requirement in § 99.38(a) for statutes enacted after 1974, we note that the Joint Report provides (at page 9):

If the juvenile justice system seeks the disclosure of information on a student in order to identify and intervene with a juvenile at risk of delinquency, rather than to obtain information solely related to supervision of an adjudicated delinquent, the juvenile could be classified as a preadjudicated delinquent for purposes of this exception. The Secretary of Education believes that each school, working in conjunction with State and local authorities, can best determine whether a release of personally identifiable information from an education record "concerns the juvenile justice system's ability to effectively serve a student prior to adjudication." Thus, FERPA gives schools flexibility in determining whether an education record of a juvenile may be released without the prior written consent of the parent.

Based on this guidance, the State Legislature would comply with the "prior to adjudication" requirement in § 99.38(a) if it provides in State law that addressing truancy problems through administrative enforcement of local ordinances is serving the student prior to adjudication as a delinquent.

Finally, we note that the FERPA statute and regulations require officials and authorities to whom records are disclosed to certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student. See 20 U.S.C. § 1232g(b)(1)(E)(ii)(II); 34 CFR § 99.38(b). While State law does not have to contain this requirement in order to comply with FERPA's juvenile justice system exception, if it is not included then educational agencies and institutions may fail to obtain the required certification and thereby violate FERPA. In order to avoid FERPA violations if agencies and institutions fail to obtain the required certification, we suggest that you include this requirement in your proposed amendments to State law.

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

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office