

NOTE: This letter was reformatted to make it more accessible on the Student Privacy Policy Office's (SPPO's) website. Please note that SPPO administers FERPA and the office's prior name was the Family Policy Compliance Office (FPCO). Some citations in this letter may not be current due to amendments of the law and regulations. SPPO has not revised the content of the original letter. Any questions about the applicability and citations of the FERPA regulations included in this letter may be directed to FERPA@ed.gov.

May 8, 2002

Dr. Gary Toothaker
Superintendent
Mukilteo School District No. 6
Administrative Center
9401 Sharon Drive
Everett, Washington 98204

Complaint No. XXXX
Family Educational Rights
and Privacy Act

Dear Dr. Toothaker:

This is to advise you of the finding in the complaint filed with this Office by [Attorney] on behalf of his clients, [Parents], who alleged that the Mukilteo School District No. 6 violated their rights under the Family Educational Rights and Privacy Act (FERPA). By letter dated May 15, 2001, this Office advised you of the allegation, and by letter dated June 19, 2001, Mr. Fred J. Poss, Deputy Superintendent, responded on behalf of the District.

Specifically, [the Attorney] alleged that the District violated the Parents' rights when it disclosed during an assembly the fact that the Parents' son had not passed the Washington Assessment of Student Learning (WASL). He explained that at the assembly, all students who had passed were invited to come on stage and be recognized, and that the Parents' son was the only student who was not recognized, resulting in a public disclosure that he had not passed the WASL.

In response to this allegation, Mr. Poss explained that WASL certificates were given to students who had passed all four sections of the WASL at a monthly recognition assembly, and that of the approximately 276 students at that assembly, 226 did not receive certificates. He further explained that if a student was not recognized, it was not necessarily because the student had failed any or all of the WASL sections. Rather, students who were absent on any of the test dates and had not completed one or more of the sections of the test, or were excluded from the test by a parent, did not receive certificates. Therefore, he explains that an assumption that a student "did not meet [the] standard in all four areas" of the WASL based on the fact the student did not receive a certificate "is erroneous."

Mr. Poss further explained that the District "has numerous awards activities," such as naming students who "made Honor Society, who were National Merit Scholars, who won academic achievement awards or have a 4.0 GPA, [and] who achieved any other academic distinction." He states that " if this complaint were valid, the District would be unable" to recognize these students.

FERPA affords parents certain privacy rights with respect to their children's education records. FERPA defines education records as those records that contain information that is directly related to a student and that are maintained by an educational agency or institution or by a party acting for the agency or institution. 20 U.S.C. § 1232g(a)(4)(A); 34 CFR § 99.3 "Education records."

FERPA generally prohibits the disclosure of personally identifiable information from a student's education records without the prior written consent of the student's parent. 20 U.S.C. § 1232g(b); 34 CFR §§ 99.30 and 99.31. Section 99.3 of the regulations defines the term "disclosure," which means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records, to any party, by any means, including oral, written, or electronic means."

Section 99.3 of the regulations also defines "Personally identifiable information," which is 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.

34 CFR 99.3 "Personally identifiable information" (emphasis added).

When permissible disclosures about a large group of students are made to the extent that specific information from the education records of other students who are not included in a group can be easily identified, the disclosures about the larger group would generally result in a violation of FERPA. In this instance, only approximately 50 students out of approximately 276 students were identified as award recipients. That means that approximately 226 students in the auditorium did not receive an award, and that of those students who had taken at least part of the WASL, any of them could have passed some or all of the components they had taken, or they could have been excused from the tests. Since it could not be easily and specifically determined from the activity at the assembly that the Parents' son had failed the WASL, we find that the public acknowledgement in an assembly of those students who had passed all four components of the WASL did not result in an improper disclosure of information from the Parents' son's education records. We therefore find that no violation occurred and will so notify [the Attorney] by copy of this letter.

With regard to your concern that the essential question in this complaint relates to the District's ability to recognize students who have earned special honors or awards, FERPA permits the nonconsensual disclosure of information derived from education records that has been appropriately designated as "directory information" by the educational agency or institution. 20 U.S.C. § 1232g(b)(1); 34 CFR §99.31(a)(1). FERPA defines directory information as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. 20 U.S.C. § 1232g(a)(5)(A); 34 CFR § 99.3 "Directory information." Directory information could include, but is not limited to, information such as name, address, telephone number, date and place of birth, degrees and awards received, participation in officially recognized activities and sports, and dates of attendance.

FERPA provides that a school may disclose directory information if it has given public notice of the types of information which it has designated as "directory information," the parent's right to restrict the disclosure of such information, and the period of time within which a parent has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." 20 U.S.C. § 1232g(a)(5)(B); 34 CFR § 99.37(a). A school is not required to inform former students or the parents of former students regarding directory information or to honor their request that directory information not be disclosed without consent. 34 CFR § 99.37(b). However, if a parent or eligible student, within the specified time period during the student's last opportunity as a student in attendance, requested that directory information not be disclosed, the school must honor that request until otherwise notified.

Thank you for your cooperation with respect to the investigation of this complaint.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office

cc: [Parent's Attorney]

Mr. Fred J. Poss