

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.

August 7, 1998

Britt Silver, Esq.
Ingermann Smith, L.L.P.
167 Main Street
Northport, New York 11768

Dear Mr. Silver:

This responds to your letter of June 3, 1997, in which you asked for guidance regarding the status of certain standardized tests under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. This office administers FERPA and is responsible for providing technical assistance to educational agencies and institutions to ensure compliance with FERPA and its implementing regulations, 34 CFR Part 99. I apologize for the amount of time it has taken us to respond to your letter. Due to the large amount of correspondence this Office receives, we currently have a backlog that we are working to resolve.

Your letter states that your client, the Wantagh Union Free School District (District), has received requests from several parents to inspect a standardized examination that determines if a given student is to be classified as "gifted." The records maintained by the District contain both the questions and the student's answers on the same form and, therefore, appear to be "education records" subject to inspection and review by parents under FERPA. You identified an apparent conflict with § 87 of the New York State Public Officers Law (Freedom of Information Law), which provides that the District may deny access to examination questions or answers that are requested prior to the final administration of the questions. This includes examination questions that are intended for reuse, according to at least one State court. The District is similarly concerned that its ability to reuse these examination questions will be impaired if it is required to disclose them to parents.

Parents have the right to inspect and review their children's education records maintained by educational agencies and institutions subject to FERPA. See 20 U.S.C. § 1232g(a)(1)(A) and 34 CFR § 99.10. FERPA defines "education records" as:

- those records, files, documents, and other materials which –
- (i) contain information directly related to a student; and
 - (ii) are maintained by an educational agency or institution or by a persona acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A); 34 CFR § 99.3 "Education records."

This office has previously advised educational agencies and institutions that test instruments or question booklets that do not identify a student or that do not contain personally identifiable information are not considered "education records" under FERPA. See also 34 CFR § 99.3, "Personally identifiable information." In contrast, completed test instruments or question booklets containing information that identify a particular student, whether or not the actual name of the student appears on the booklet, constitute "education records" subject to the FERPA requirements. Therefore, in cases where an answer sheet is directly related to the student and is separate from the question booklet not directly related to a student, only the answer sheet would be considered an education record under FERPA. In cases where a question booklet includes both the questions and the student's responses, the question booklet is an education record subject to FERPA.

Although under FERPA a school district is not required to provide a parent with an opportunity to inspect and review information that is not personally identifiable to his or her child, such as test instruments and question booklets that are not directly related to the student, § 99.10(c) of the FERPA regulations provides that a school is required "to respond to reasonable requests for explanations and interpretations of the records." Accordingly, a school would be required to respond to a reasonable request for an explanation or interpretation of a student's answer sheet. Although, in this scenario, the school would not be required by FERPA to show the question booklet to a parent, providing an explanation or interpretation of the student's record may, in certain instances, include reviewing the question booklet with the parent.

Because answer sheets are usually directly related to a student, they generally fall within the definition of education records to which a parent has the right to inspect and review. Therefore, the parent has the right to have access to her child's answer sheet and an explanation or interpretation of that answer sheet which, in some cases, could require access to the question booklet. However, because FERPA requires a parent be given access and not copies, except when circumstances effectively prevent a parent from inspecting and reviewing the records, the school district is not required to provide the parent a copy of the answer sheet or the question booklet.

There is an alternative to providing copies of records for those parents who do not live within commuting distance of the school district. For example, if a school believes that providing a parent with a copy of a certain education record would violate any copyright laws or jeopardize test security, the school could make arrangements with the local school district in which the parent resides to provide the parent an opportunity to inspect and review the record. Please note that the sending school must ensure that officials at the receiving school do not gain access to the education records while acting on the sending school's behalf.

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I trust that the above information is helpful in responding to your concerns. Please do not hesitate to contact us if you have further questions.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office