

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 17, 1995

Mr. James M. Black
Black & Black Lawyers
3627 Professional Drive
Post Office Box 3286
Port Arthur, Texas 77643

Dear Mr. Black:

This is in response to your July 21 and August 8, 1994, letters to this Office. You inquire whether the Family Educational Rights and Privacy Act (FERPA) would prevent the Port Neches-Groves Independent School District (District) from disclosing information to Epidemiology Resources Inc. (ERI), which requested information about all students who have attended school in the District between 1943 and the present. ERI specifically requested the following information about the students: full name, address, telephone number, gender, date of birth, and social security number.

You stated in your July 21 letter that it was your understanding that the District had not given any previous notice to the public regarding directory information. However, in your August 8 letter you explained that you reviewed the District's policy manuals and determined that annual notice regarding directory information had been given by the District since December 1991. You provided with your August 8 letter a copy of the District's "Annual Notice of Parent and Student Rights" which states in relevant part:

Certain information about District students is considered directory information and will be released to anyone who follows procedures for requesting it, unless the parent objects to the release of any or all directory information about the child. This objection must be made in writing to the principal within ten school days after the issuance of this notice. Directory information includes: a student's name, address, telephone number, date and place of birth, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, awards received in school, and most recent previous school attended.

I apologize for the delay in responding to your inquiry. However, we needed the time to review certain legal matters related to your questions. As will be explained more thoroughly below, the District can, in most instances, disclose to ERI the names, addresses, telephone numbers, and birth dates of students who attended school in the District between 1943 and the present.

FERPA affords parents certain rights with respect to their minor children's education records. The rights afforded under FERPA rest with a student's parents until the student reaches the age of 18 or attends an institution of postsecondary education. 34 CFR §§ 99.3 "Eligible student" and 99.5(a). "Education records" are records which contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." However, excepted from that definition are records that only contain information about an individual after he or she is no longer a student at that agency or institution. 34 CFR § 99.3 "Education records" (b) (5). Accordingly, any information relating to individuals after they were no longer students, such as current address and telephone number, are not subject to the protections of FERPA and can be disclosed without prior written consent.

FERPA generally prohibits the nonconsensual disclosure of information derived from education records, except in certain specified circumstances. 34 CFR §§ 99.30 and 99.31. Relevant to your inquiry, FERPA permits the nonconsensual disclosure of certain information derived from education records when the information has been appropriately designated as "directory information" by the educational agency or institution. 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. 34 CFR § 99.3 "Directory information." Directory information could include information such as name, address, telephone number, date and place of birth, participation in officially recognized activities and sports, and dates of attendance.

Social security numbers cannot be designated as directory information because disclosure of such information would be considered an invasion of privacy. Additionally, this Office has determined that, because gender is not like the types of information specified as directory information in the statute, it should not be designated as directory information by an educational agency or institution.

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." 34 CFR § 99.37(a).

An educational agency or institution may, however, generally release directory information about former students that is derived from education records (i.e. date of birth) without meeting the above-delineated requirements. 34 CFR § 99.37(b). Thus, a school is generally not required to comply with a request from a former student to withhold directory information from third parties. However, a school is required, unless otherwise so notified, to honor a request to not disclose directory information which was made at the last opportunity before a student left a school.

In sum, it appears that FERPA would permit the disclosure of some of the information that ERI has requested. In particular, information about former students, such as current address or telephone number, could be released since such information would not be derived from an "education record." However, any information, such as a social security number, that was maintained by the District before a student ceased attendance at a school in the District could not be disclosed without the student's consent.

With regard to directory information maintained on former students who ceased attendance at a school in the District prior to the enactment of FERPA, the District could disclose directory information, such as birth date or the student's address at the time the student was in attendance, without consent. As indicated above, an educational institution may disclose directory information from the education records of students who ceased attending the institution prior to 1974, when FERPA was enacted, without notifying them about directory information. 34 CFR § 99.37(b).

With respect to directory information maintained on students who ceased attending a school in the district between November 1974, when FERPA was enacted, and December 1991, when the District began appropriately notifying parents of its intent to disclose directory information, this Office has determined that directory information can also be disclosed on those students without prior notice or consent. However, we note that such former students (who ceased attending a school in the District between 1974 and 1991), or their parents, have not been informed about directory information under § 99.37. Accordingly, if such former students request, as a result of the disclosure of directory information to ERI, that the District not disclose directory information on them again, then the District would need to honor such requests, notwithstanding 34 CFR § 99.37(b).

Finally, with regard to directory information maintained on those students who have been in attendance at a school in the District between 1991 and the present, the District may disclose directory information on those students if the parents have not requested otherwise. If the parents of a former student who was in attendance between 1991 and the present exercised their right to restrict the disclosure of directory information during the most previous opportunity to do so before the student no longer attended the institution, the District could not disclose the types of information designated as directory information, such as addresses, which were obtained while the individual was still a student at the institution without prior written consent.

I trust that the above information sufficiently responds to your request. Should you have additional questions regarding this matter, or FERPA in general, please do not hesitate to contact this Office again. Our new address and telephone number are:

Family Policy Compliance Office
U.S. Department of Education
600 Independence Avenue, SW
Washington, DC 20202-4605
(202) 260-3887

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office

cc: Dr. Nancy A Dreyer
President
Epidemiology Resources Inc.