

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.

January 3, 2006

Ms. Mary Kay Carney
Associate Director of Program Integrity & Accountability
Youth Consultation Service
60 Evergreen Place, 2nd Floor
East Orange, New Jersey 07017

Dear Ms. Carney:

This responds to the September 27, 2004, request for guidance submitted to this Office by Youth Consultation Services (YCS) about the release of special education records to an accrediting organization for health care organizations. This Office administers the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g and 34 CFR Part 99. Under that authority we investigate, process and review complaints and violations of the law and provide technical assistance to ensure compliance with the statute and regulations. 34 CFR § 99.60(b).

The September 27, 2004, letter explained that YCS is a private, not-for-profit children's social service/behavioral healthcare provider that operates a variety of behavioral health programs including group homes; residential treatment centers; foster homes, partial care programs; and special education schools. You explained that YCS provides special education programs for students referred by local school districts and that these records are governed by FERPA.

According to your letter, YCS is accredited by the Joint Commission on the Accreditation of Health Care Organizations (JCAHO). JCAHO regularly reviews the medical and social service programs offered by YCS, as well as the medical and social service components of every other program provided by YCS. In particular, you explained that JCAHO does not exempt from the accreditation review process the medical and social service components of the special education school programs offered by a social service/behavioral healthcare provider, such as YCS. You asked us to confirm your conclusion that in these circumstances JCAHO qualifies as an "accrediting organization" under § 99.31(a)(7) of the FERPA regulations.

FERPA protects the privacy interests of parents and students in a student's education records. It applies to an "educational agency or institution" that receives funds under any program administered by the U.S. Secretary of Education, including public school districts that refer students to YCS for services under Part B of the Individuals with Disabilities Education Improvement Act (IDEA). 34 CFR § 99.1(a). Under these provisions, FERPA applies to the education records that YCS maintains on behalf of public school districts that have referred students to YCS for special education and related services under IDEA.

FERPA provides that no funds administered by the Secretary of Education shall be made available to an educational agency or institution that has a policy or practice of permitting the release of education records or providing access to personally identifiable information in education records without the prior written consent of a parent or eligible student (as defined in § 99.3 of the regulations) except as authorized by law. See 20 U.S.C. § 1232g(b)(1) and (b)(2). Under § 99.30 of the regulations, a parent or eligible student must provide a signed and dated written consent before education records are disclosed, except as provided in § 99.31.

The term "education records" is defined 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, such as YCS. 34 CFR § 99.3. Records related to a student's special education and related services, including medical and social services, are considered education records under this definition. (Certain "treatment records" of "eligible students," i.e., students who are 18 years of age or older, are excluded from the statutory definition of "e.ducation records.")

As noted in your letter, one of the exceptions to the prior written consent requirement in FERPA allows educational agencies and institutions to disclose information to "accrediting organizations to carry out their accrediting functions." The terms "accrediting organization" and "accrediting functions" are not defined in FERPA, but this Office has followed a commonly accepted understanding of these terms to mean organizations that are legally authorized to evaluate and recognize the quality of the instruction, training and other services provided to students by an educational agency, institution, or program. See, e.g., 34 CFR §§ 602.1(a) and 602.3, which describe accrediting agencies recognized by the U.S. Secretary of Education.

This Office recognizes an organization that accredits health care organizations, such as JCAHO, as an "accrediting organization" under § 99.31(a)(7) of the FERPA regulations if the organization subject to the accreditation process provides health care operations along with services that result in the maintenance of "education records" under FERPA and is required to disclose those records as a condition of obtaining or renewing its accreditation. You stated that JCAHO reviews and accredits the medical and social service components of the special education programs offered by YCS and, as a consequence, requires YCS to make available the medical and social service components of the special education records maintained by YCS. We conclude that in these circumstances JCAHO qualifies as an "accrediting organization" for purposes of § 99.31(a)(7) of the FERPA regulations.

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

cc: Ms. Barbara Gantwerk
Director Office of Special Education Programs
New Jersey Department of Education