

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.

April 9, 2008

Mr. John P. Giliberti
City Attorney
City of Rockford, Illinois
425 East State Street
Rockford, Illinois 61104

Dear Mr. Giliberti:

This responds to your March 12, 2008, request for guidance about the release of student information under the Family Educational Rights and Privacy Act (FERPA). This Office is responsible for investigating complaints and violations of FERPA and for providing technical assistance to ensure compliance with the statute and regulations, 20 U.S.C. § 1232g and 34 CFR Part 99.

Your letter states that the City of Rockford, Illinois Police Department would like to issue truancy citations in some of the City's public schools. According to your letter and discussions you had with Frances Moran of my staff, truancy citations would be based on direct observations of the police officers that a student was not in class as required but elsewhere in the school building in violation of the City's truancy ordinance. You asked for confirmation that the issuance of truancy citations by police officers in these circumstances would not violate FERPA.

On October 1, 2007, we responded to your previous inquiry about plans by the Rockford, Illinois School District Number 205 (District) to use deputized home/school counselors employed by the District as its "law enforcement unit" to provide student attendance information to local police to enforce the City's truancy ordinance. (This was part of the District's plan for implementing Illinois Public Act 094-0916, which requires the submission of attendance information to the Secretary of State in connection with the issuance of drivers' licenses to high school students.) Our letter explained that even if the home/school counselors were authorized to access the District's database as school officials with legitimate educational interests under § 99.31(a)(1), their redisclosure of that information from the students' education records to City police officers would violate FERPA. Further, the FERPA "law enforcement exemption" would allow home/school counselors to send *law enforcement unit records* to the Rockford police without parental consent because these records are excluded from the definition of "education records." See 34 CFR § 99.3 ("Education records") and § 99.8. However, there is no basis on which the District's law enforcement unit could release attendance data from the District's database of education records to local police for prosecution of truancy violations without parental consent.

FERPA prohibits the release of personally identifiable information from education records without parental consent. See 34 CFR § 99.30. It does not protect the confidentiality of information in general and, therefore, generally does not prevent the release of information about a student derived from a source other than education records, such as information obtained through personal knowledge or observation, even if that information is also contained in education records. (We note that this general rule does not apply to information known by a school official who makes a determination that generates the education record, such as a teacher who issues grades to students or a principal who suspends a student.) Accordingly, police officers (or the District's own law enforcement unit, for that matter) may create records based on their own personal knowledge or observation that a student was not in class as required, use those records to issue a truancy-violation, and release that information to other parties to enforce the City's truancy ordinance. The District may not, however, release any information from a student's education records to City police officers, without parental consent, in connection with their prosecution of violations of the City's truancy ordinance except in compliance with a lawfully issued subpoena or court order under § 99.31(a)(9) or if some other exception to the consent requirement applies.

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