

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, 2007

Dr. Christopher Koch
State Superintendent
Illinois State Board of Education
101 N. First Street
Springfield, Illinois 62777

Dear Dr. Koch:

This responds to your request during our conference call on Wednesday, August 1, that we provide you with a written summary of our concerns about recent amendments to the Illinois School Code in Public Act No. 094-0916 in relation to the requirements of the Family Educational Rights and Privacy Act (FERPA). As you know, we also received a request from the City of Rockford for confirmation that the new State law and the City's procedures for implementing it comply with FERPA. Under 34 CFR § 99.60, 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.

An educational agency or institution subject to FERPA generally may not release education records, or personally identifiable information from education records, unless a parent has provided written consent in accordance with § 99.30 of the regulations. Exceptions to this requirement are set forth in § 99.31.

Recent amendments to the Illinois School Code require school districts to report to the Secretary of State on a quarterly basis the names and addresses of students who have been expelled or have withdrawn since the previous report; the reason, if known, that the student is no longer in attendance and the date of removal from attendance rolls; the names of students whose withdrawal is due to extraordinary circumstances, including but not limited to economic or medical necessity or family hardship; names of students certified to be chronic or habitual truants as defined in State law, and certain other information not relevant to our discussion. § 105 ILCS 5/26-3a. The Secretary of State is responsible for issuing driver's licenses in the State. Under the Illinois Vehicle Code, a "chronic or habitual truant" may not obtain a driver's license or an instruction permit. § 625 ILCS 5/6-107 and 5/6-107.1. Further, the Secretary of State is required to cancel the license or permit of any minor upon receipt of information under § 26-3a of the School Code that a license-holding minor no longer meets school attendance requirements. § 625 ILCS 5/6-108.

School districts may disclose personally identifiable information from education records, without parental consent, to authorized representatives of State and local authorities in connection with the audit or evaluation of Federal or State supported education programs, or enforcement of or compliance with Federal requirements related to those programs. 34 CFR §§ 99.31(a)(3) and 99.35. These provisions include, for example, disclosures to the State Board of Education and the Illinois Board of Higher Education. The Secretary of State is not a “State or local educational authority” under this FERPA exception to the consent requirement. Likewise, disclosures under the provisions of the Illinois School and Vehicle Codes, referenced above, are not in connection with the audit or evaluation of publicly funded education programs or enforcement of or compliance with Federal legal requirements related to those programs.

FERPA allows school districts to disclose directory information without meeting the written consent requirements in § 99.30 provided that the district complies with the notice and opt out provisions set forth in § 99.37. “Directory information” is defined as information contained in an education record “that would not generally be considered harmful or an invasion of privacy if disclosed.” 34 CFR § 99.3. It includes information such as a student’s name; address; telephone listing; email address; photograph; date and place of birth; dates of attendance; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); degrees, honors and awards received, etc. *Id.* Regulations published on July 6, 2000, explain that that “dates of attendance” means the period of time during which a student attends or attended an institution, such as an academic year, semester, or quarter, and does not include specific daily records of a student’s attendance at an institution. 65 FR 41852, 48152. The fact that parents may opt out does not allow agencies and institutions to include information that would be considered harmful or invasion in their directory information disclosures.

Under the directory information exception, school districts may disclose to the Secretary of State the fact that a student attended an institution, that the student attended for specified terms or years, and that the student did or did not receive a degree. As we discussed, however, the information that school districts are required to disclose to the Secretary of State under the Illinois School Code is not “directory information” under FERPA. In particular, status as a truant or a drop-out, or that a student has been expelled, carries a negative connotation or image that is harmful or an invasion of privacy and is not like the neutral or positive image associated with general attendance and degree information that is permitted under the directory information exception. Likewise, information about a student’s withdrawal due to economic or medical necessity or family hardship is the kind of information that generally would be harmful or an invasion of privacy and, therefore, may not be disclosed as directory information under FERPA.

During our call we discussed briefly this Office’s guidance to Kentucky officials that the disclosure of a student’s status as truant or a drop-out to the State driver’s licensing agency does not fall under the “juvenile justice system” exception in FERPA. See 34 CFR §§ 99.31(a)(5) and 99.38. On January 28, 1996, we notified the Calloway County School District that it violated FERPA when it reported to the State Department of Transportation (DOT) in accordance with KRS § 159.051 that a student had dropped out of school. (Kentucky law also required reporting to the State DOT that a student was academically deficient.) We explained that the State DOT is not part of a juvenile justice system and that State law did not require a State official to certify that the information would not be redisclosed to a third party, as required under §§ 99.31(a)(5)

and 99.38 of the FERPA regulations. Thereafter, we advised the Kentucky Department of Education that the most effective way to resolve the problem was to require parents to provide written consent to the student's school district for ongoing disclosure of the necessary attendance or academic performance information to the DOT in connection with the student's application for a driver's license or permit. This Office provided similar guidance on April 19, 2000, to the Metropolitan Board of Education in Nashville, Tennessee, in regard to the disclosure of information to the State Department of Safety. A copy of that letter is enclosed for your review.

We indicated in our conversation that this Office has recently undertaken a comprehensive review of a number of juvenile justice system issues under FERPA and that we are looking in particular at whether truancy or drop-out programs that include disclosure of education records to State driver's licensing agencies may be considered part of a juvenile justice system under this FERPA exception. Until that review is concluded, however, we must advise you that disclosures to the Secretary of State do not fall under this or any other exception to the consent requirement in FERPA.

In regard to requiring parental consent for the disclosure of attendance and other information from education records as part of the licensing process in Illinois, we note that State law provides that the application of a minor for a driver's license or permit must be accompanied by "the written consent of either parent of the applicant; otherwise by the guardian having custody of the applicant, or in the event there is no parent or guardian, then by another responsible adult." § 625 ILCS 5/6-107. As we discussed, the definition of "parent" under FERPA includes "a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian." 34 CFR § 99.3. We believe that a "responsible adult" who provides consent for a driver's license under the State Vehicle Code in the event there is no parent or guardian qualifies as a parent under the FERPA definition for purposes of consenting to the disclosure of to the Secretary of State required under the School Code. Therefore, we suggest that the most efficient and expedient way to resolve the potential conflict between State law and FERPA is to require a parent to provide written consent for the disclosure of the necessary information to the Secretary of State in connection with the student's ability to obtain and maintain a driver's license or instruction permit.

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