

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](mailto:FERPA@ed.gov).

January 31, 2007

Richard J. Gaumer, Esq.  
Webber, Gaumer & Emanuel, P.C.  
111 West Second Street  
P.O. Box 601  
Ottumwa, Iowa 52501-0601

Dear Mr. Gaumer:

This responds to your letter of November 10, 2005, in which you asked for guidance about old school records maintained by Southern Prairie Area Education Agency 15. This Office is responsible for investigating complaints and violations of the Family Educational Rights and Privacy Act (FERPA) and for providing technical assistance to ensure compliance with the statute and regulations, which are codified at 20 U.S.C. § 1232g and 34 CFR part 99 respectively.

According to your letter and a follow-up conversation with Frances Moran, a program specialist in our office, Iowa is currently served by 12 area education agencies (AEAs), including Southern Prairie Area Education Agency 15 (Southern Prairie AEA), which provides special education and related services to school districts in Southeastern Iowa. You explained that prior to the legislature's creation of AEAs in 1974, rural school districts provided public education under the administration and control of an elected school board and county superintendent. The office of the county superintendent was the repository for school records. Your letter states that during the first 60 years of the twentieth century, rural school districts closed and were consolidated with existing K-12 school districts, and the county superintendent's records were transferred to the AEA. (We understand from a follow-up conversation you had with Ms. Moran that records of students who attended a K-12 school district after closure of their rural school were most likely transferred to that K-12 district and not to an AEA.) Each AEA in the State now maintains some of these old rural school records, which contain personally identifiable information but are not maintained in any readily accessible manner.

You indicated that the University of Northern Iowa (University), a State Regents' Institution, has offered to serve as the repository for all of these old rural school district records and make them available "for appropriate historical and historical/educational research." According to your letter, the vast majority of individuals whose records would be transferred are probably now deceased and finding the survivors would be virtually impossible. You asked whether these records are "education records" under FERPA, whether Southern Prairie AEA may transfer them to the University subject to FERPA restrictions, and whether educational or historical research falls within one of the FERPA exceptions to the written consent requirements.

FERPA applies to any “educational agency or institution” to which funds have been made available under any program administered by the Secretary of Education. 34 CFR § 99.1(a). This includes virtually all K-12 public school districts in the United States. FERPA protects “education records,” which are 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. 34 CFR § 99.3 (“Education records”). “Student” is defined as “any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.” 34 CFR § 99.3 (“Student”).

FERPA was enacted on August 21, 1974, with an effective date of November 19, 1974. Based on the definition of “education records” (i.e., records of individuals who have attended an “educational agency or institution” as a student), we interpret FERPA to apply to records maintained by a K-12 school district on individuals who attended a school in that district before FERPA was enacted, including those who were no longer in attendance by 1974. In other words, once a K-12 district became subject to FERPA in 1974, all student records maintained by that district became “education records” subject to FERPA, including records of students who ceased attending the K-12 district before FERPA was enacted, because the student attended a school or district that eventually became subject to FERPA.

Based on the information you provided, we conclude that rural school districts in Iowa were never subject to FERPA because they closed before FERPA was enacted. The fact that K-12 districts took over the functions of rural school districts through consolidation does not alter our conclusion that, unlike the K-12 districts, rural school districts themselves did not become subject to FERPA in 1974 because they were closed or dissolved. Therefore, records of individuals who attended rural school districts are not “education records” under FERPA because these individuals never attended an institution that was subject to FERPA and, therefore, they were never “students” under the FERPA definition. Even if Southern Prairie AEA is considered an “educational agency or institution” under FERPA, records from closed rural school districts did not become “education records” when they were transferred to Southern Prairie AEA because these individuals never attended the AEA as students. (In contrast, records of students who transferred from closed rural school districts to a K-12 district are “education records” under FERPA because these students attended an institution subject to FERPA.) Accordingly, FERPA places no restrictions on Southern Prairie AEA’s transfer to the University of the records of students whose rural district closed and who thereafter did not attend a K-12 school district.

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