

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.

November 13, 1991

Ms. Karol Johnson
Assistant Superintendent
Great Falls Public Schools
1100 4th Street South
P.O. Box 2428
Great Falls, Montana 59403

Dear Ms. Johnson:

This is in response to your letter of July 16, 1991, in which you request an opinion concerning the provisions of the Family Educational Rights and Privacy Act (FERPA). Specifically, you ask the following:

What obligation does the Great Falls School District have if a former male student who graduated from our school district requests the district to amend his educational record by changing the gender and name on the student record because the student underwent a gender-physiological change after graduation?

You state that you have received similar requests from two individuals.

You provided the following facts. You state that the education records of both individuals accurately reflect the names and gender of the individuals at the time they were in attendance. Subsequent to a surgical gender change after graduation, the individuals each requested that their education records be amended to reflect their new names and that they were females during the course of their attendance in the District. You state further that there is currently an Arizona court order pertaining to one of the former students which grants a name change. You explained that the court order is not directed to the District nor does it mention education records.

FERPA generally protects a student's privacy interests in "education records." FERPA defines "education records" as:

those records, files, documents, and other materials, which

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. 1232g(a)(4)(A). See also 34 CFR 99.3 "Education Records."

Under FERPA an eligible student has the right to request that inaccurate information be amended. Subpart C of the FERPA regulations describes the amendment procedure. A school is not required to amend an education record in accordance with a student's request. The school is required to consider the request, to inform the student of its decision, and to advise the student of the right to a hearing on the matter. If, as a result of the hearing, a school decides not to amend the record, then the student has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

Although FERPA generally affords eligible students the right to request that their education records be amended, the opportunity to challenge the contents of the education records of a student is not unlimited. This fact is indicated in the legislative history of FERPA. The primary source of legislative history regarding FERPA is contained in the "Joint Statement in Explanation of Buckley/Pell Amendment," Volume 120 of the Congressional Record, pages 39862-39866. The Joint Statement indicates that FERPA was "not intended to overturn established standards and procedures for the challenge of substantive decisions made by an educational institution." (Emphasis added.) 120 Cong. Rec. 39862. FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments.

The information you provided indicates that the students' request for amendment are not based on allegations that their records contain recordkeeping errors but on the students' desire to have their education records changed to reflect the results of their surgical gender change. Thus, the decision regarding whether to amend the students' education records to reflect a name and gender other than that of the students' during their attendance would be considered a substantive decision of the District. Accordingly, FERPA's amendment provisions do not apply to this situation, and the District would not be required by FERPA to afford the students a hearing with respect to the matter. With respect to your inquiry about the effects of an Arizona court order granting a name change for one of the former students, it is not within this Office's authority to speak to issues that are beyond the scope of FERPA's requirements.

I trust the above satisfactorily responds to your inquiry. Enclosed for your information are a fact sheet on FERPA, a copy of the regulations, and a model student records policy for use on the elementary and secondary level. The correct name and address of this Office are as follows:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-4605

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office