

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 17, 1994

Ms. Heidi Atkins Lieberman
Legal Counsel
Special Education Legal Services
Missouri Department of Elementary
and Secondary Education
P. O. Box 480
Jefferson City, Missouri 65102-0480

Dear Ms. Lieberman:

This is in response to your August 29, and September 2, 1994, letters to this Office in which you inquire whether the Family Educational Rights and Privacy Act (FERPA) would permit nonconsensual disclosures of information derived from education records in connection with seeking reimbursement from Medicaid for medical services provided by a school. Specifically, you state:

[M]any students with disabilities are receiving services under their Individualized Education Programs (IEPs) pursuant to Medicaid monies. Medicaid, when expending such monies, has a need to verify that school districts are indeed providing the services for which Medicaid has paid the school district. Such audits or surveillance [is] conducted by Medicaid through inspection of educational records (IEPs, progress reports, therapy service records, etc.).

Currently, when Medicaid requires a school district to allow access to such student records, Medicaid does not provide the school district with a consent from the parent to access the records. Likewise, the school district does not obtain a consent from the parent to allow access.

You explain further that the "Medicaid agency's statutory authority, to require disclosure of records, does not predate November 1974."

FERPA protects student's privacy interests with regard to "education records." "Education records" are defined as those records which are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records" are defined as those records which are directly related to a student and are maintained by an educational agency or institution. 34 CFR § 99.3 "Education records." FERPA prevents subject educational agencies and institutions from disclosing education records without parental consent, with specified exceptions. 20 U.S.C. § 1232g(b); 34 CFR §§ 99.30 and 99.31. Accordingly, if the circumstances are such that the conditions of one or more of the

exceptions are met, an educational agency or institution could disclose education records or personally identifiable information from education records without prior written parental consent. However, from the information you have provided, it does not appear that any of FERPA's exceptions to the prior written consent-provisions would permit the nonconsensual disclosure of personally identifiable information from education records to the State Medicaid agency. Accordingly, school districts should ensure that prior written parental consent is provided prior to any disclosures of personally identifiable information from education records to the State Medicaid agency.

Section 99.30(b) of the FERPA regulations requires that the written consent permitting disclosure of education records must be signed and dated and must specify the records that may be disclosed; state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made. Consent could be provided to either party, in this case the school or the Medicaid agency, so long as it meets the requirements of 34 CFR § 99.30. Enclosed for your reference is a copy of a letter from the Nebraska Department of Education and our response regarding a similar inquiry which discusses an appropriate consent for the disclosure of information to the Medicaid agency.

I trust that the above information is helpful to you. Enclosed for your reference is a copy of the FERPA regulations. Should you have further questions regarding this issue, please do not hesitate to contact this Office again.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office

Enclosures