

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.

January 27, 2006

Ms. Kelly Rozmus Barnes
Assistant General Counsel
Field Services Legal Team
Los Angeles Unified School District
333 S. Beaudry Avenue, 20th Floor
Los Angeles, California 90017

Dear Ms. Barnes:

This responds to your inquiry of December 14, 2005, and follow-up inquiry of January 4, 2006, regarding the disclosure of certain information from students' education records to the National Student Clearinghouse (NSC) in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. This Office administers FERPA and provides technical assistance to ensure compliance with the statute and regulations, which are codified at 34 CFR Part 99.

You indicated that NSC asked the Los Angeles Unified School District (District) to enter into a contract for "StudentTracker" services under which the District would provide NSC with each student's name, high school, and year of graduation, and NSC would use this data to "track" the students in college. You asked whether parents must consent before the District discloses this information, or whether the District could simply inform parents of the disclosure and provide them with an opportunity to opt-out. You also referred to our April 16, 2004, letter to the National Association of Independent Colleges and Universities (NAICU), in which we provided guidance regarding NSC's EnrollmentSearch services, which are now known as "StudentTracker."

A parent (or eligible student, as defined in § 99.3) must provide a signed and dated written consent in accordance with the requirements of § 99.30 of the FERPA regulations before an educational agency or institution discloses personally identifiable information from education records. Exceptions to this requirement are set forth in 34 CFR § 99.31. One of the exceptions permits an educational agency or institution to disclose "directory information," as defined in § 99.3 of the regulations, without prior written consent provided the agency or institution has complied with the conditions in § 99.37 for notifying parents and eligible students of the designation and providing them with an opportunity to opt-out. "Directory information" means information "that would not generally be considered harmful or an invasion of privacy if disclosed" and includes the items you propose to disclose to NSC, i.e., a student's name, high school, and year of graduation (so long as the parent or eligible student has not opted-out of these

disclosures). Note that a student’s SSN or student identification number may not be designated and disclosed without consent as “directory information.”

This Office wrote to NSC on August 2, 1999, when it was known as the National Student Loan Clearinghouse, and explained that an institution that wishes to use EnrollmentSearch to obtain information about the current enrollment or graduation status of its former students, without prior written consent, may disclose to NSC only properly-designated directory information, and only for students who have not opt-out of directory information disclosures. This letter, available at www.ed.gov/policy/gen/guid/fpco/ferpa/library/herndonva.html), explains in detail that NSC may use only unblocked directory information, and not SSNs, for this type of search of its database because there is no FERPA exception to the consent requirement that allows an institution to disclose non-directory information in order to determine a former student’s subsequent enrollment or degree status.

Our review of NSC’s website indicates that the StudentTracker service operates essentially in the same manner as EnrollmentSearch and purports to use only unblocked directory information for determining “Subsequent Enrollment for Previously Enrolled Students,” as required under our August 2, 1999, letter. In that regard, however, we note that data record layout forms for this particular StudentTracker service permit an institution to submit “any data that you want returned with this record (e.g., cohort identification, unique student ID, etc.), which will assist you in processing the Clearinghouse response file.” Similarly, the StudentTracker response file layouts for this service include “your unique ID,” that is, the “Student Identifier provided in your request file.” An institution may not use these forms or any other means to disclose a student’s SSN or student identification number for purposes of determining subsequent enrollment (or degree status) without prior written consent.

In summary, FERPA permits the District (or educational institutions in the District) to designate a student’s name, high school, and year of graduation as “directory information,” and disclose this information to NSC (or any other party) without a parent’s or eligible student’s prior written consent, provided the District or institution has complied with the notice and opt-out procedures in § 99.37 of the regulations. The District may not disclose anything other than properly designated “directory information” for the StudentTracker service described above unless a parent or eligible student has provided prior written consent.

You also asked whether the District is required to designate NSC as its “agent,” as described in our April 16, 2004, letter to NAICU. The District (or its educational institutions) must enter into an agreement establishing NSC as its agent only if it wishes NSC serve as an outside “school official,” and disclose education records other than unblocked directory information, such as SSNs or student identification numbers, to NSC without prior written consent. Educational agencies and institution may use the “school official” exception in § 99.31(a)(1) to disclose education records to contractors and other outside parties, such as NSC, only if the contractor or other outside party provides services that would otherwise have to be performed by employees; the contractor would have “legitimate educational interests” in the information if the service were performed in-house; and the contractor provides services as an agent under the direct control of the educational agency or institution that discloses the information. FERPA does not require the District to enter into this type of principal-agent agreement with NSC in order to

disclose unblocked directory information to under StudentTracker service, as described above.

Finally, you asked whether the District may release information without prior written consent under a State law provision analogous to the exception in § 99.31(a)(6) of the FERPA regulations for disclosures without consent to organizations conducting studies for or on behalf of an educational agency or institution to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. StudentTracker is able to provide information about a student's subsequent enrollment or degree status because other educational institutions have agreed to allow NSC to maintain this information in its database and provide it in response to an inquiry under the StudentTracker service. The so-called "studies" exception in § 99.31(a)(6) of the FERPA regulations would not apply because even if the District entered into an agreement with NSC to conduct a study for the District, other institutions whose data is maintained in NSC's database would not be parties to that agreement as "organizations conducting studies for or on behalf of" the District and, therefore, NSC could not disclose to the District information from the education records in maintains for those other institutions. This is a reason why, as noted above, the StudentTracker service for determining subsequent enrollment or degree status of former students must be based solely on the use of unblocked directory information.

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