

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.

March 3, 1993

Honorable John J. Duncan, Jr.
House of Representatives
Washington, D.C. 20515-4202

Dear Mr. Duncan:

This is in response to your letter dated January 4, 1993, in which you ask whether the Family Educational Rights and Privacy Act (FERPA) protects "accident reports" which detail the nature of an accident that occurs on school property resulting in either fatal or non-fatal injury to students over or under 18 years of age. Specifically, you ask if it is permissible for a school district to release an accident report to the press if such report were personally identifiable to a student and maintained by the school, absent parental consent. You also ask under which circumstances would an accident report be considered an education record under FERPA.

As you are aware, FERPA is a Federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. When a student becomes 18 years of age or attends an institution of postsecondary education the student becomes an "eligible student" and all FERPA rights transfer from the parents to the eligible student.

Under FERPA, education records are defined as those records that are 1) directly related to a student and 2) maintained by an educational agency or institution or a party acting for such agency or institution. 34 CFR § 99.3, "Education records.. " Accordingly, an accident report prepared by school authorities, whether it concerns a fatal or non-fatal accident, is an "education record" subject to FERPA if it is directly related to a student, and maintained by a school district.

In this regard, a non-fatal accident report for either an eligible or non-eligible student is protected under FERPA. Accordingly, a school may only disclose a non-fatal accident report regarding an eligible student if it has obtained the prior written consent of that student. Similarly, a school may only disclose a non-fatal accident report of a non-eligible student if it has obtained the prior written consent of his or her parents.

FERPA provides specifically that the rights afforded by FERPA belong to the student once he or she becomes an eligible student. With respect to the education records of a deceased eligible student, including accident reports, it has long been the Department's position that the FERPA rights of eligible students lapse or expire upon the death of the student. This interpretation is based on the common law principle that a cause of action based upon an invasion of privacy is personal, and the right to bring such an action lapses with the death of the person who held it.

See, e.g., Cordell v. Detective Publications, Inc., 419 F.2d 989, 990 and n.3 (6th Cir. 1969). Therefore, FERPA would not protect a fatal accident report of an eligible student and a school may disclose such records at its discretion.

Regarding the education records of a deceased non-eligible student, including accident reports, parents' FERPA rights do not lapse or expire upon the death of their child. FERPA provides specifically that the right to inspect and review, consent to disclosure, and seek to amend records shall be afforded to the parents of students who are or have been in attendance in a school subject to FERPA until that student reaches 18 years of age or attends an institution of postsecondary education. There is nothing in the text of FERPA or its legislative history to suggest that parents' rights under FERPA should terminate solely because their child is deceased. Rather, since the parents hold the FERPA rights in these circumstances, they may exercise those rights so long as the education records exist. Therefore, absent some provision for non-consensual disclosure under 34 CFR § 99.31, an accident report concerning a deceased non-eligible student may not be disclosed to the press without parental consent.

I trust that the above information is helpful in explaining FERPA as it relates to your concern. If you have further questions or comments concerning this matter, please do not hesitate to contact this Office again.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office