

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 6, 1996

[Letter to Parent]

Dear [Parent]:

This is in response to your October 13, 1995, letter to this Office in which you allege that the Oceanside Unified School District (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA). As you know, this Office administers FERPA, which addresses issues that pertain to education records.

Specifically, you allege that [], your son's [Student] special education teacher at Jefferson Middle School, disclosed photographs of [the Student] to his classmates without your prior written consent. In your letter, you state:

On April 23, 1996, my son . . . was injured during a skate day at Jefferson Middle School.

[The Student] is 13 [years] old and is Special Education eligible and was at the time in a Special Day Class.

[The Student's] Special Education teacher took [photos] of him being treated by paramedics, and being loaded into the ambulance. The teacher then developed the [photos] and distributed the photos to the class . . . without his parents' verbal or written consent.

Under FERPA, a school may generally disclose personally identifiable information from the education records of a minor student only after the student's parent has provided written consent. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution.

Based on the information in your letter, it appears that the photographs at issue do meet the first condition in the definition of an education record because they are directly related to [the Student]. However, the photographs do not meet the second condition in the definition in that they are not maintained by the school. While the term "maintained" is not defined in FERPA, we believe that common sense should guide its application. It appears that the photographs were taken by [the teacher], developed at her expense, and maintained by her as personal property. If this is the case, the photographs are not education records subject to FERPA's privacy protections.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concern. If you have questions or concerns related to the above information or FERPA, in general, please let us know.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office