



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF MANAGEMENT

August 3, 2018

[Letter to Parent]

Dear [Parent]:

This letter is in response to your May 17, 2018 complaint filed with the Family Policy Compliance Office (FPCO or Office) in which you allege that Tynes Elementary School (School) violated your rights under the Family Educational Rights and Privacy Act (FERPA) with regard to the education records of your children, [Students]. Due to the volume of correspondence received by this Office and limited resources, we are currently not able to respond to all complaints in an as timely manner as preferred. We hope that you have been able to resolve your concerns with the School.

FERPA is a federal law that protects the privacy of students' education records. The term "education records" is defined under FERPA, with certain exclusions, as those records that are directly related to a student and which are maintained by an educational agency or institution (e.g., a school or postsecondary institution), or by a party acting for the agency or institution, to which funds have been made available under any program administered by the Secretary of Education. FERPA affords parents certain rights with regard to their child's education records. When a child reaches 18 years of age or begins attending a postsecondary institution at any age, he or she becomes an "eligible student," and all of the rights under FERPA once afforded the parent transfer to the student. These rights include your right to inspect and review your child's education records, the right to seek to have the education records amended, the right to have some control over the disclosure of personally identifiable information from the education records, and the right to file a written complaint with FPCO regarding an alleged violation of FERPA. Under FERPA, a school is prohibited from disclosing personally identifiable information from your child's education records, without consent, unless the disclosure meets an exception to FERPA's general consent requirement.

FPCO reviews and processes written complaints of alleged violations of FERPA. This Office investigates written complaints filed by a parent alleging a violation of FERPA only if the complaint:

- Is filed by a parent who maintains FERPA rights over the education records which are the subject of the complaint;

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*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

- Is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation; and,
- Contains specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred.

Under FERPA's enforcement provisions, this Office investigates timely complaints containing sufficient allegation of fact that would lead us to believe that a violation of FERPA may have occurred. In reaching this determination, FPCO reviews the information provided by the parent, and considers all relevant statutory and regulatory requirements and the Department's interpretation of those requirements, when reaching a decision as to whether there are sufficient facts of a potential violation of FERPA that supports our conducting a formal investigation of a complaint.

You allege in your complaint that the School violated the rights afforded you under FERPA when information from your children's education records was disclosed. FERPA is intended, in part, to afford parents the right to have some control over disclosure of information from their children's education records. In this regard, it provides that information from a student's education records cannot, with certain exceptions, be disclosed without parental written consent. FERPA is not, on the other hand, intended to interfere with a school's, or a classroom teacher's, ability to carry out what are generally considered to be normal and legitimate educational activities and functions. Thus, a thoughtful, common sense, and flexible approach is necessary in judging the impact of some classroom activities on a student's right to privacy and vice versa.

Further, FERPA would not prohibit teachers from allowing students to grade a test or homework assignment of another student or from calling out that grade in class, even though such grade may eventually become an education record. Such papers being graded and the grades which will be assigned would fall outside the FERPA definition of education records as they are not, strictly speaking, "maintained" by an educational agency or institution at that point, which means they are not yet "education records" as explained in the above definition. This Office has historically interpreted this routine classroom practice to not be in violation of FERPA and that interpretation was upheld by the U.S. Supreme Court in 2002.

Accordingly, the factual information provided in your complaint does not give this Office reasonable cause to believe that there has been a violation of FERPA or support our conducting a formal investigation. Specifically, it does not appear that personally identifiable information from your child's education records was disclosed without your consent, but rather that the scenario outlined in your complaint would be a permissible classroom activity as discussed above. Therefore, this Office is dismissing your complaint.

For more information regarding your rights under FERPA please review the [Guidance for Parents](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/for-parents.pdf) at [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/for-parents.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/for-parents.pdf). You also will find more information regarding [FERPA](#) on our website at:

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<https://studentprivacy.ed.gov/>. We regret that we are unable to assist you with your concerns. Again, please accept our sincerest apology for the delay in our response.

Sincerely,

A handwritten signature in blue ink that reads "Dale King". The signature is written in a cursive style with a large initial "D" and a prominent "K".

Dale King  
Director  
Family Policy Compliance Office