



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

April 4, 2014

Ms. Karen Feuchtenberger
Senior Assistant Counsel
Pennsylvania Department of Education
333 Market Street
Harrisburg, Pennsylvania 17126

Dear Ms. Feuchtenberger:

This is in response to your November 19, 2013, letter requesting informal guidance relative to the nonconsensual release by the Pennsylvania Department of Education (PDE), through its contractor, of certain education records of charter school students to the Chartering School District (District) that granted the charter school its charter. This letter is also in follow-up to your March 18, 2013, telephone conversations with Frank Miller and Dominica Donovan of my staff. As you know, this office is responsible for the administration of the Family Educational Rights and Privacy Act (FERPA), which protects the privacy interests of parents and eligible students in the students' education records. See 20 U.S.C. §1232g and 34 CFR Part 99.

Specifically, your letter states that the District requested that the PDE "allow it to receive the test scores of students enrolled in charter schools to which the Charting School District has granted charters." In your letter, you indicate that while the Pennsylvania School Charter Law provides that the District "must annually assess the charter school to determine whether it is meeting the goals of its charter and is in compliance with its charter" and also "is to have ongoing access to charter school records," your historical position has been that this obligation does not include access to PII from individual student records, but rather includes only access to aggregate data. Further, your letter describes the three exceptions to FERPA's written consent requirement that the District believes affords it access to this personally identifiable information (PII) of students in attendance at those charter schools. The specific PII requested includes the students' names, their state-issued identification numbers, and their test scores. The justification presented by the District for receiving this PII is so that it can assess the academic performance of the charter schools to which it has granted charters, assess charter school performance relative to the other charter schools, and compare the academic performance of the charter schools to the District's schools. Your letter also points out that the District argued that it needs this PII to make informed decisions about the renewal, nonrenewal, revocation, or modification of the charter schools' charters. In your letter, you provide the PDE's analysis of §§ 99.31 (a)(1)(i)(A) (i.e., FERPA's school official exception), 99.31 (a)(6) (i.e., FERPA's studies exception), and 99.31 (a)(3) and 99.35 (i.e., FERPA's audit and evaluation exception), and their applicability to the District's

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request for PII. As FERPA's audit and evaluation exception appears to be the most applicable exception to the PDE's situation, we are only addressing this exception in our response.

Because it is not clear whether it is necessary for the District to obtain access to PII from individual student records maintained by the charter schools to which the District has granted charters in order to perform its duties of annually assessing the charter schools under the Pennsylvania Charter School Law, we expressly would defer to the Pennsylvania Attorney General to advise the PDE and the District on this question of State law. If so, then the PDE may re-disclose the requested PII to the District, which is a local educational authority under FERPA, pursuant to FERPA's audit and evaluation exception (§§ 99.31(a)(3) and 99.35) SQ that the District may perform the required assessment. In this event, it would be the responsibility of the PDE: (1) to redisclose to the District only the PII that is necessary for the District to conduct the assessment of its charter schools' education programs, and (2) to ensure compliance with FERPA's recordation requirements in § 99.32(b)(2).

Alternatively, if the PDE, as a State educational authority, is authorized to audit or evaluate the charter schools' education programs, then under §§ 99.31(a)(3) and 99.35 the PDE also would have the discretion to designate other individuals or entities as its authorized representative to carry out the audit or evaluation, subject to the requirements of FERPA and its implementing regulations, and to determine what PII from education records is necessary to redisclose to its authorized representative for this purpose. Thus, if the PDE were to designate the District as its authorized representative for the purpose of conducting an audit or evaluation of the charter schools to which the District has granted a charter, it would be the responsibility of the PDE to determine what PII would be necessary for the District to perform the audit or evaluation. In this event, FERPA would permit the PDE to re-disclose, without the prior written consent of the parents, the PII for those students in charter schools to which the District has granted charters, if the PDE: (1) determines that the PDE is authorized to conduct the underlying audit or evaluation of the charter schools' education programs, (2) rediscloses to the District only the PII that is necessary to conduct the audit or evaluation of these charter schools' education programs, and (3) complies with the reasonable methods and written agreement requirements in FERPA's audit and evaluation exception (§ 99.35(a)(2) and (a)(3)) as well as the recordation requirements in § 99.32(b)(2).

I trust the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concerns. Please feel free to contact our office, if further clarification and/or assistance is needed.

Sincerely,

/s/

Dale King
Director
Family Policy Compliance Office