

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.

August 4, 1998

Tamara Walker Sieckmann, Esq.
Attorney for Mesa Unified School District #4
549 North Stapley Drive
Mesa, Arizona 85203-7297

Dear Ms. Sieckmann:

This responds to your letter of May 17, 1996, and follow-up letter of July 17, 1996, regarding applicability of the Family Educational Rights and Privacy Act (FERPA) to information concerning a student's selection for membership in the National Honor Society and the National Junior Honor Society. I apologize for the amount of time it has taken us to respond to your letter. Due to the large amount of correspondence this Office receives, we currently have a backlog that we are working to resolve.

You asked in your May 17 letter whether parents had the right under FERPA to inspect "teacher recommendations or evaluations submitted to the faculty council, or other documents considered by the faculty council, in connection with a student's consideration for membership in the National Honor Society or National Junior Honor Society." You also asked whether the faculty council is permitted to dispose of these documents after the selection decisions have been made and whether parents have the right to inspect the documents if the faculty council decides to retain them.

As explained more fully below, parents have the right under FERPA to inspect and review any recommendations or evaluations created or submitted by their teachers for purposes of selection to these honor societies so long as the records are maintained by their school or school district. FERPA does not require the school or school district to maintain these records, and FERPA does not provide parents with the right to inspect and review these records if they are maintained by the honor societies.

You explained that the National Honor Society and National Junior Honor Society are honorary organizations sponsored by the National Association of Secondary School Principals to recognize outstanding high school and junior high school students. These societies have national constitution and establish local chapters at junior and senior high schools. The local chapters are governed by the national constitution and by local chapter bylaws. The societies are nonmandatory organizations in which students are selected for membership by a faculty council created by the local chapter bylaws. These faculty councils voluntarily evaluate students based on their academic achievements, leadership abilities, character, and service to their school. After a decision has been made on

membership, the evaluation forms are not maintained by the district and there are no records kept by the schools that pertain to these honor societies or that indicate whether a student is a member of those organizations.

You stated further that these honor societies take the position that parents and students have no right under FERPA to review the evaluation sheets or other papers that may have been used by the faculty council in their selection decision because these are "working papers of the teachers involved unless and until they are made a permanent part of a student's personnel file or some other school file." You added that membership in either honor society is not a property right that is subject to a constitutionally protected interest and, therefore, parents and students do not have a right to challenge fair and non-discriminatory selection criteria.

FERPA provides that parents (or eligible students) have the right to inspect and review the student's education records. See FERPA regulations codified at 34 CFR § 99.10. FERPA defines "education records" as those records that are "directly related to a student" and "maintained by an educational agency or institution or by a party acting for the agency or institution. See 34 CFR § 99.3. An "educational agency or institution" is subject to FERPA if it receives funds under any program administered by the Secretary of Education and provides educational services or instruction or administrative control or direction of public elementary or secondary schools or postsecondary institutions. See 34 CFR § 99.1.

The teacher recommendations or evaluations you described are clearly "directly related to a student." Based on the information you provided, it appears that the National Honor Society and the National Junior Honor Society are not "educational agencies or institutions" subject to FERPA and, therefore, records pertaining to students maintained by these societies are not subject to FERPA. However, these societies perform their services through local chapters established at junior and senior high schools, where faculty councils are created by local chapter bylaws. You explained that these faculty councils voluntarily evaluate students based on their academic achievement and other school activities and, after a decision has been made on membership, the evaluation forms are not maintained by the school district.

In these circumstances, the recommendations, evaluation forms, and other documents or records created by teachers and submitted to the faculty councils are "education records" subject to FERPA so long as they are maintained or retained by the teachers. FERPA does not recognize an exception to the right to inspect and review education records for a teacher's "working papers" that have not yet been made part of a student's permanent record. The term "education records" does not include instructional records that are kept in the sole possession of the maker of the record if they are not accessible or revealed to any other person. See 34 CFR § 99.3. However, the recommendations and evaluation forms at issue here do not meet those requirements as the contents of those records, or the records themselves, are shared with the faculty councils and the honor societies. Further, a parent's FERPA rights do not depend on whether the educational institution decides to maintain records informally or make them part of the student's permanent record. Records that are directly related to students and maintained by teachers in any place and form are "education records" subject to FERPA unless they meet the exception noted above.

Finally, FERPA does not require an institution (or teacher) to retain education records unless there is an outstanding request to inspect and review the records. See 34 CFR § 99.10(e). So long as there is no outstanding request to inspect and review the teacher's records, they may be destroyed.

Once again, we regret the delay in responding to your request for guidance and would be pleased to answer any other FERPA questions you may have.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office