

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 19, 2001

Mr. David A. Anderson
General Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Dear Mr. Anderson:

This responds to your April 13, 2000 request for guidance under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. Specifically, you asked how the disclosure provisions of FERPA apply to § 51.803 of a Texas statute that grants automatic admission to State colleges and universities to high school students who rank in the top 10% of their class. Section 51.804 of the statute provides that colleges and universities have the option of extending the automatic admission policy to students graduating in the top 25 % of their class. This Office is responsible for investigating complaints and violations of FERPA and for providing technical assistance to educational agencies and institutions to ensure compliance with FERPA and its implementing regulations found at 34 CFR Part 99.

In your letter, you state the following:

This agency [the Texas Education Agency (TEA)] collects information from Texas school districts and charter schools regarding the students eligible for automatic admission under Section 51.803. We do not collect categories of directory information as defined by each school district or charter school and are unable to verify whether the parent of any individual student has given permission for the release of any particular information about that student. As you are aware, a student's name and address, as well as "awards received" are within the definition of directory information. However, the ability to disclose directory information is limited by a parent's right to refuse to allow disclosure. [Footnotes deleted.]

Additionally, you state that several postsecondary institutions have asked the TEA for access to names and address of students eligible for automatic admission under Section 51.803. These institutions want to mail information about their programs to some or all of the eligible students, directly approaching eligible students. You also state that some of these institutions have also asked for "additional information such as race or ethnic origin."

As explained more fully below, we believe that the TEA may not redisclose personally

identifiable information from education records obtained from schools. However, Texas schools and the TEA may disclose, without prior written consent, “directory information” – as defined under FERPA – to postsecondary institutions for the purpose of recruiting students who rank in the top 10 % to 25 % in their high schools. In order for the TEA to be able to share information as “directory information,” Texas secondary schools providing this information to the TEA or others must: (1) designate “honors and awards” as “directory information” under FERPA; and (2) insure that “directory information” on those students whose parents have opted out of disclosure of “directory information” under FERPA is not disclosed. In addition, schools that do not have a “directory information” policy that includes an “honors and awards” category or have students whose parents have opted out of “directory information” may disclose this and additional information to the TEA and may authorize the TEA to redisclose the information to postsecondary institutions if the parent or eligible student provides prior written consent, as specified under 34 CFR § 99.30.

I. Redisclosures by the TEA

FERPA is a Federal law that protects a parent’s privacy interest in his or her child’s “education records.” In particular, FERPA affords parents the right to inspect and review 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. The term “education records” is broadly defined as:

[T]hose records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4). *See also* 34 CFR § 99.3 “Education records.” When a student reaches the age of 18 or attends a postsecondary institution at any age, all the rights afforded by FERPA transfer from the parents to the student (“eligible student”).

FERPA provides that education records, or personally identifiable information from such records, may be disclosed by educational agencies and institutions only after obtaining prior written consent of the parent, except in statutorily specified circumstances. 20 U.S.C. § 1232g(b)(1) and (d). *See also* 34 CFR § 99.30. Accordingly, if one or more of the exceptions are met, an educational agency or institution may disclose education records, without prior written consent. 20 U.S.C. § 1232g(b); 34 CFR § 99.31. To date, Congress has provided 16 exceptions to this general consent rule.

One of the exceptions to FERPA’s prior consent rule is found under 34 CFR § 99.31(a)(3) of the FERPA regulations. (*See also* 20 U.S.C. § 1232g(b)(1)(C), § 1232g(b)(3), and § 1232g(b)(5).) Under this provision, schools may disclose, without the consent of the parent or eligible student, information from students’ education records to authorized representatives of State and local educational authorities. 34 CFR § 99.31(a)(3) provides that such officials may have access to education records “in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.”

You indicate that the TEA collects information from Texas school districts and charter schools “regarding the students eligible for admissions under Section 51.803.” While we are unaware of the TEA’s statutory authority to collect these records, we have assumed that the collection “is necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program. . . .” 20 U.S.C. § 1232g(a)(3) and (5).¹

We interpret the phrases “State educational *authorities*” and “State and local educational officials,” used in 20 U.S.C § 1232g(b)(1)(C) and (b)(5) and 34 CFR § 99.31(a)(3) and § 99.35, as including State educational agencies (SEAs) and local educational agencies (LEAs), as well as other educational entities with authority and responsibility under State or local law for the administration of educational functions, including supervision, control, direction, or evaluation of educational services and activities at the postsecondary level. Thus, we believe that the TEA is a “State educational authority.”

Under 34 CFR § 99.31(a)(3) and 20 U.S.C. § 1232g(b)(3), information collected by the authorized representatives of State and local educational authorities *must not be redisclosed to another party and must be destroyed when no longer needed for the purposes for which it was collected.* See also 20 U.S.C. § 1232g(b)(1)(C) and (b)(5); 34 CFR §§ 99.31(a)(3) and 99.35. Therefore, the TEA may not generally redisclose to another party information from education records it collected pursuant to the authority contained in 34 CFR §§ 99.31(a)(3) and 99.35 and 20 U.S.C. § 1232g(b)(1)(C), (b)(3), and (b)(5).

II. Directory Information Exception

Another exception to FERPA’s prior consent rule is the disclosure of information that has been appropriately designated as “directory information” by educational agencies and institutions. FERPA defines directory information as “information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed.” 34 CFR 99.3 (“Directory Information”). Directory information includes, but is not limited to, the following items:

student’s name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended.

See Family Educational Rights and Privacy; Final Rule, 65 Fed. Reg. 41852-41853 (July 6, 2000).

A school may disclose directory information to third parties if it has given public notice of the

¹ Schools disclosing this information to the TEA under this provision are subject to FERPA’s recordation requirements in § 99.32 of the regulations.

types of information which it has designated as “directory information,” the parent’s or eligible student’s right to refuse to let the school designate any or all of the types of information about the student as directory information, and the period of time within which a parent or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as “directory information.” 20 U.S.C. § 1232g(b)(5)(B); 34 CFR § 99.37(a). The Department has consistently advised that social security numbers and other student identifiers cannot be designated as “directory information” because disclosure of such information generally would be considered an invasion of privacy. Likewise, we have advised that categories of information such as race and ethnicity may not be designated as “directory information.”

The Texas statute you forwarded at § 51.803 indicates that students are eligible for automatic admission if they have graduated within two years preceding the application for admission. Please note that a school is not required to inform former students or the parents of former students regarding “directory information” or to honor their request that “directory information” not be disclosed without consent. 34 CFR § 99.37(b). However, please note that if a parent or eligible student, within the specified time period during the student’s last opportunity as a student in attendance, requested that “directory information” not be disclosed, the school must honor that request until otherwise notified. Therefore, a school may disclose “directory information” about former students to third parties without meeting the notice requirements of FERPA, such as when a school modifies its “directory information” policy by adding a new category of information.

Information that is properly designated by a local school district as “directory information” may be disclosed to any party – including officials of the TEA – and may be further shared or redisclosed to additional parties. These additional parties may include institutions that are not required to accept students under § 51.803, such as private or out-of-state universities, trade schools, etc. Moreover, the recordation requirements of § 99.32 do not apply to the disclosure of “directory information.”

As you advised in your letter to us, the TEA does not collect “directory information” from schools and is unable to verify from the information that it has which parents or eligible students have advised the local school district that he or she does not want “directory information” disclosed. Therefore, if the TEA wishes to redisclose the information that it collects, then we would advise that the TEA to ask school districts to provide “directory information” to the TEA on those students whose parents have not opted out of “directory information.” Also, the school district needs to have designated in its “directory information” notice a category of “honors and awards” – or something similar – that could include information about students who are in the top percentage of the class. Due to the specific program in Texas, the school districts may want specifically to advise parents and students in its “directory information” notice that it includes a category of students in a certain percentage – such as top 10 % or top 25 % -- as a “directory information” item. Please note that a student’s specific GPA may not be designated and disclosed as “directory information.” Rather, a general honor category must be designated, such as “principal’s list,” “top 10 %,” etc. This Office would be available to assist the TEA or schools in Texas in developing such a “directory information” notice for use statewide.

In response to your specific question, the TEA may rely on a representation of a school district or charter school that certain information was defined by them as “directory information” under FERPA and that none of the parents or eligible students opted out under 34 CFR § 99.37. We will not impose additional verification requirements on recipients of “directory information.” However, please note that if a school inadvertently misrepresents their “directory information” policy or the fact that a student has not opted out when in fact the parent or eligible student has opted out, and the TEA rediscloses the information as “directory information,” the local school district that disclosed the information to the TEA would be held responsible for any violation of FERPA.

III. Consent

As you are aware, information from student education records may be disclosed by a school to any outside party with the consent of the parent or eligible student. Any potential redisclosure of that information must also be authorized. Please note that the following requirements do not apply to “directory information.” The written consent required before an educational agency or institution may disclose personally identifiable, non-directory information from education records must:

- 1) Specify the records that may be disclosed;
- 2) State the purpose of the disclosure; and
- 3) Identify the party or class of parties to whom the disclosure may be made.

34 CFR § 99.30(b); see also 20 U.S.C. § 1232g(b)(2)(A). Upon request, the agency or institution must provide a parent or student with a copy of the records disclosed. 34 CFR § 99.30(c). FERPA’s recordation requirements does not apply to disclosures made with prior written consent. Should you desire, this Office is available to provide the TEA and/or Texas schools with any assistance relative to consent forms or “directory information” notices. School officials may write us directly for quick, informal advice by way of our email address – FERPA@ED.Gov.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your inquiry. Please do not hesitate to contact us again if you need further assistance.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office