

August 20, 2004

Parent

Dear Parent:

This is in response to a May 5, 2004, letter this Office received from Kay Hastings, Assistant Attorney General, Open Records Division of the Office of the Texas Attorney General. Along with her letter, Ms. Hastings forwarded to us your March 29, 2004, letter to Greg Abbott, the Attorney General of Texas. This Office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues that relate to students' education records.

In your letter, you raise a number of issues, some of which are addressed by FERPA. For example, it appears that you allege that Irving Independent School District (District) violated FERPA when it did not provide your wife with "Three-Weeks Reports" which you state is required by the State's "No Pass—No Play" law. You also appear to allege that, even though your wife, has provided consent, requesting that the District provide you with access to the records of (Student), that the District has not complied. You enclosed a letter from Mr. Jack Singley, Superintendent, in which he replied to your wife's request by asking that she submit a copy of the most current court degree granting custodianship of her children. It is not clear whether your wife complied with Mr. Singley's request. Some of your other allegations that may relate to FERPA are also not clear. However, we trust that the following guidance regarding FERPA will be of assistance to you. The other issues you raise concerning State law are not addressed by FERPA.

FERPA is a Federal law that gives parents or eligible students the right to have access to a student'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 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. 34 CFR § 99.3 "Education records."

The term "parent" is defined as including natural parents, a guardian, or an individual acting as a parent in the absence of a parent or a guardian. 34 CFR § 99.3 "Parent." The Department has determined that a parent is absent if he or she is not present in the day-to-day home environment of the child. Accordingly, a stepparent has rights under FERPA where the stepparent is present on a day-to-day basis with the natural parent and child and the other parent is absent from that home. In such cases, stepparents have the same

rights under FERPA as do natural parents. Conversely, a stepparent who is not present on a day-to-day basis in the home of the child does not have rights under FERPA with respect to such child's education records.

Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is not, however, required to provide a parent with copies of education records unless a failure to do so would effectively prevent the parent from obtaining access to the records. A case in point would be a situation in which the parent does not live within commuting distance of the school. 34 CFR § 99.10.

While a school is required to comply within 45 days with each individual request for access, a school is not required by FERPA to honor standing requests, to provide immediate access to records, or to send out grades to parents at the end of marking periods. Additionally, FERPA would not require a school to provide parents documents such as school calendars, updates, or notices of parent/teacher conferences because such documents do not generally contain information that is directly related to individual students. Likewise, a school would not be required to notify parents about school plays, spelling bees, or sporting events in which their children may be participating. Also, schools are not required by FERPA to permit parents to attend parent/teacher conferences -- such decisions are made at the discretion of local and State officials.

Although a school district would be required to conduct a reasonable search for education records, it is the responsibility of the parent to clearly specify the records to which he or she is seeking access. If a parent makes a "blanket" request for a large portion of his or her child's education records and the parent believes that he or she was not provided certain records which were encompassed by that request, the parent should submit a follow-up request clarifying the additional records he or she believes exist.

FERPA affords parents the opportunity to seek amendment of their child's education records that they believe contain inaccurate or misleading information. 34 CFR §§ 99.20-22. While a school is not required to amend a record in accordance with a parent's request, it is required to consider the request for amendment of an education record, to inform the parent of its decision, and if the request is denied, to advise the parent of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the parent has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

This right is not unlimited, however, and FERPA does not require a school to afford a parent the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student. Thus, while FERPA affords parents the right to seek to amend education records that contain inaccurate information, this right cannot be

used to challenge a grade or an individual's opinion, unless the grade or the opinion has been inaccurately recorded.

The Texas Attorney General provided this Office with copies of letters indicating that in February and March 2004, you and the Parent submitted to the District requests to inspect and review the Student's education records, and requests for copies of the records. The letters also indicate that the Parent informed the District that she authorized you to obtain access to the Student's records on the Parent's behalf. Please note that a school is not required by FERPA to disclose information from a student's education records to a third party, even if the parent has provided consent. Rather, a school is required to provide a "parent" with an opportunity to inspect and review their child's education records. Accordingly, if you are a stepparent who is present on a day-to-day basis with the natural parent and child and the other parent is absent from the home, you would be considered a "parent" under FERPA. As such, the District would be required to provide you with access to your daughter's education records.

With regard to your requests to the District for the records of students who are not your children, with their names and grades redacted, this issue is addressed by the Texas Public Information Act, not by FERPA.

I trust this information is helpful to you.

Sincerely,

/s/

LeRoy S. Rooker  
Director  
Family Policy Compliance Office

cc: Ms. Kay Hastings  
Assistant Attorney General  
Office of Texas Attorney General