

March 10, 1999

Dr. Robert Wagoner
Superintendent
Henry County Public Schools
326 South Main Street
Newcastle, Kentucky 40050

Complaint No. []
Family Educational Rights and Privacy Act

Dear Dr. Wagoner:

This is to inform you of the finding in the complaint filed with this Office by Mr. [], attorney, on behalf of Mr. and Mrs.[]. Mr.[] alleged that the Henry County Public Schools (District) violated the []s' rights under the Family Educational Rights and Privacy Act (FERPA) when you disclosed personally identifiable information from []'s education records to [a newspaper]. By letter dated December 17, 1998, this Office advised you of the allegation and by letter dated January 20, 1999, Mr. [], attorney, responded on behalf of the District.

As stated in our January 20 letter, Mr. [] has specifically alleged that:

On [date], an article appeared in the [newspaper], with the headline, "Student's school plan Falsified. . . ." This article quotes from the Superintendent of the [District] . . . discussing details about [the student], his disability, and his educational successes and failures. Specific information from []'s records including what his disabilities are, what his placement is, and the fact that he failed second grade, was included in this article. Also included in the article was information about the complaints filed by the [parents] to the U.S. Department of Education and the Kentucky Department of Education. [Emphasis added.]

Mr. [] states that while Mrs. [] "addressed an open meeting of the [District] Board to raise concerns about the District[]'s record policies and [the] way that the District resolves disputes," they did not discuss [their] case specifically.
In his response, Mr. [] states:

[W]e can find no connection between any statements or comments by the Superintendent and any personally identifiable information regarding the subject student. In fact, the quotes from the Superintendent consist of an acknowledgment that someone in the District falsified educational records, statements concerning the investigation thereof, a discussion of the teachers' disciplinary action, and comments related to the district's response to the allegations. No quote coming from the Superintendent appeared in the article that was related to the student's personally identifiable information. . . . It is our belief that any such information was provided to the paper by the complainants and by other sources. [Emphasis added.]

Mr. [] also provided a copy of a January 18, 1999, letter addressed to him from Mr. [], editor of the [newspaper] from 1996-1998. In that letter, Mr. [] states that he had found his interview with you "frustrating at times because of [your] inability to answer questions directly about the subject and student in question." He further states that you "would only answer questions directly about the subject in question in terms that related to information that was public knowledge C because the parents had brought it up at a school board meeting." Mr. [] also said in his letter:

Dr. [] was also in the unenviable position of trying to answer specific questions, based on documents I obtained between [the District], the parents, and the state and federal departments of Education, while not answering specifically about this child. . . .

I obtained my story by piecing together the generalities and policies I received from Dr. [], interviews with the parents, and the correspondence I obtained.

Mr. [] contends in his letter that the complaint does not contain "specific allegations of fact" and he asks that we require "the complainant's [sic] to delineate succinctly just what they contend the district did to violate FERPA." Mr. [] also asserts that the complaint is not timely because "such complaints must be submitted to [this] office within 100 days of the alleged violation."

Preliminarily, this Office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. A complaint is timely if it is submitted to this Office within 180 days of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation. The timeliness requirement is an administrative factor, and, in this regard, the FERPA regulations provide that this Office may extend the time limit for filing a complaint under FERPA if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit or for other reasons considered sufficient by the Office.

Nonetheless, with regard to this specific complaint, the complainants were aware of the alleged violation on or about [date], when the article was published, and they contacted this Office with their allegation through their attorney Mr. [] on August 17, 1998, well within the 180 day time limit. This Office, due to the current backlog and staff limitations, is responsible for any delay in the investigation of this complaint.

With regard to Mr. []'s assertion that the complaint does not contain specific allegations of fact, please refer to the above-quoted allegation presented to this Office by Mr. []. This quotation, which was included in our previous letter to you, contains a clear and specific allegation that the District violated FERPA when you disclosed information from []'s education records to the [newspaper]. Determining whether the information that is presented in the article was information derived from []'s education records and was disclosed by the District is the essence of this investigation.

Notwithstanding the fact that the allegation presented to this Office contained specific facts, we note the following statements contained in the article. These are offered by way of example, and are not intended to be all-inclusive of the specific information that may have been disclosed by the District to the newspaper. The examples include:

Wagoner acknowledged that the couple's accusation was true.

* * * * *

Wagoner said the district investigated the []'s claims and found them to be true.

* * * * *

Wagoner said . . . the altered documents, which included meeting summaries and Individual Education Plans. . . .

FERPA generally prohibits the disclosure of education records, or personally identifiable information from education records, without the prior written consent of a parent. Section 99.3 of

the regulations defines the "Personally identifiable information" as information that includes but is not limited to:

- a. the student's name;
- b. the name of the student's parent or other family member;
- c. the address of the student or the student's family;
- d. a personal identifier, such as the student's social security number or student number;
- e. a list of personal characteristics that would make the student's identity easily traceable; or
- f. other information that would make the student's identity easily traceable.

34 CFR 99.3 "Personally identifiable information" (emphasis added). As we previously informed you, FERPA states:

[A]n educational agency or institution shall obtain a signed and dated written consent . . . before it discloses personally identifiable information from the student's education records.

In addition to being signed and dated, the written consent must specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom the disclosure may be made. 34 CFR section 99.30.

We note that FERPA does not specifically define "easily traceable" and that situations regarding disclosures of information that could be considered easily traceable must be analyzed on a case by case basis. A school needs to take into consideration the types and quantity of information that is being released. Additionally, when a school district discloses information from an education record to a third party, it must take into consideration whether the party who is seeking access to the records has prior knowledge as to the names of the students to whom the records relate or may relate and whether any subsequent parties to whom the information may be further disclosed could ascertain the identities of the students to whom the records relate.

FERPA does permit the nonconsensual disclosure of information from education records in certain limited circumstances. However, none of these circumstances permits nonconsensual disclosure of education records to the public, even if a parent or student has made certain claims in public about the educational agency or institution or certain of its employees or representatives. This restriction applies to educational agencies and institutions even if the information could be obtained from another source. Moreover, verification or confirmation of facts contained in or which constitute education records without prior written consent violates FERPA because it requires disclosure of personally identifiable information from an education record, or at the least, a reliance on information contained in education records.

During the interview with Mr. [], you confirmed that "the couple's accusation was true." Additionally, you stated in the interview that the District investigated the allegations and that the altered records included meeting summaries and Individualized Education Plans (IEP). Thus, this Office finds that you disclosed information from []'s education records, including the fact that [] was receiving special education services (i.e., by means of the statement regarding the IEP). Further, even if you did not specifically identify [] or his parents by name, we find that the information disclosed was easily traceable to [] given the nature of the information and that it related to a specific complaint about which Mr. [] had other identifying information. Therefore, this Office finds that the District violated FERPA when you disclosed personally identifiable information from []'s education records to the local press. The [] will be so advised of this finding by copy of this letter to their attorney, Mr. [].

The District expressed in its response that you made an effort to only discuss information that was public knowledge. For future reference, when the District has a media inquiry of this nature, this Office would always advise that the parents provide consent for the disclosure. Accordingly,

in a situation where the District receives a request from the media and wishes to respond, the District should indicate that FERPA restricts the disclosure of information from education records, and that in order to discuss any details from such records, the parents will have to provide their prior written consent. The District may want to add that it would be free to discuss information from education records after it receives the parents' written consent to do so.

In order to close the investigation of this complaint, we will need assurance from the District that appropriate steps have been taken to prevent disclosures of information from education records in the future, including disclosures to the press. Please provide documentation of those steps along with an explanation as to how appropriate District officials are advised of the requirements of FERPA with respect to disclosure of information from education records.

While not directly a subject of this investigation, we note here that Mr. [] stated that the District provided him with copies of documents. He did not specify which documents were provided, the date they were provided, nor the name of the school official that provided them. If the documents provided by the District were education records, such as letters to the District from the [] or from other parties such as the state or federal departments of education regarding the [], FERPA would prohibit such disclosures absent prior parental consent.

Thank you for your continued cooperation with respect to the investigation of this complaint. Please provide the above-requested assurance within two weeks of your receipt of this letter.

Sincerely,
LeRoy S. Rooker
Director
Family Policy Compliance Office
Enclosures

cc:
[]
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