

January 27, 2005

Ms. Jeanne-Marie Pochert  
Deputy Assistant General Counsel  
Clark County School District Legal Department  
2832 East Flamingo Road  
Las Vegas, Nevada 89121

Dear Ms. Pochert:

This is to respond to your August 25, 2004, e-mail message on behalf of the Clark County School District (District), stating that you believe there is a conflict between Nevada law and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. This Office administers FERPA and is responsible for providing technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations found at 34 CFR Part 99.

Section 99.61 of the regulations provides that an educational agency or institution that determines that it cannot comply with FERPA due to a conflict with State or local law shall notify this Office within 45 days and include the text and citation of the conflicting law. You stated that Nevada law requires the release of certain education records to the Clark County Child Death Review Team (Team). The Team is a multi-disciplinary committee that assesses and evaluates selected cases of deaths of children 17 years of age and younger. The Team exists as the result of a statutory mandate (NRS 432B.403 to 432B.409, inclusive). Its purpose and mission is to evaluate and analyze the circumstances involved in selected cases of deaths of children in order to make recommendations for improvements to laws, policies and practice, support the safety of children, and prevent future deaths. You add that at the Team meetings, there are often questions regarding student health issues, discipline, and attendance of the deceased student/child.

You also provided the following information about Nevada law:

NRS 432B.406 provides that a multi-disciplinary team to review the death of a child that is organized by an agency which provides child welfare services must include, among others, a representative of any school that is involved with the case under review. NRS 432B.407 further provides that: "Each organization represented on a multidisciplinary team to review the death of a child shall share with other members of the team information in its possession concerning the child who is the subject of the review, any siblings of the child, any person who was responsible for the welfare of the child and any other information deemed by the organization to be pertinent to the review." NRS 432B.407(2). Section 432B.407 also provides that a team may petition the district court for the issuance of, and

the district court may issue, a subpoena to compel the production of any books, records, or papers relevant to the cause of any death being investigated by the team.

FERPA provides that a parent must provide signed and dated written consent before an educational agency or institution discloses personally identifiable information from education records. 34 CFR § 99.30. Exceptions to this general rule are set forth in § 99.31. The term “education records” is defined as records, files, documents, and other materials that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for the agency or institution. 20 U.S.C. § 1232g(a)(4)(A); 34 CFR § 99.3 “Education records.” Based on these provisions, and assuming that public school districts in Nevada receive funds from the U.S. Department of Education, records maintained by the District that contain the names of students and information concerning their health, disciplinary matters, or attendance constitute “education records” under FERPA.

A FERPA exception permits disclosure without prior consent to comply with a judicial order or lawfully issued subpoena so long as the District makes a reasonable effort to notify the parent of the order or subpoena in advance of compliance, so the parent may seek protective action. 34 CFR § 99.31(a)(9). It should also be noted that FERPA permits disclosure to a Team if a parent provides prior written consent. 34 CFR § 99.30.

In general, an actual conflict of laws arises if it is impossible for a party to comply with both federal and state law, or when a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of a federal law. Taubman Realty Group Ltd. Partnership v. Norman Mineta, 198 F.Supp 2d 744, 761 (E.D. Va. 2002), *citing* English v. General Electric, 496 U.S. 72 (1990). Based upon our review of the information you have provided and applicable law, we have determined that Nevada law does not conflict with FERPA in that it is possible for the Teams that assess and evaluate the deaths of children to comply with both laws when they investigate student deaths. Specifically, Nevada law provides that the Teams may review selected cases of deaths of children, and that a Team may petition the district court for the issuance of, and the district court may issue, a subpoena to compel the production of any books, records or papers relevant to the cause of any death being investigated by the Team.

In summary, we find that there is no conflict between State law regarding Child Death Review Teams and FERPA. A parent may provide prior written consent for the disclosure of education records to a Team, or the Team may petition a court to issue a subpoena or court order to compel the District to provide it with education records and the District may provide those records, without prior written consent, in accordance with § 99.31(a)(9) of the FERPA regulations.

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I trust this information is responsive to your inquiry. Should you have additional questions regarding this or other FERPA issues, please do not hesitate to contact this Office again.

Sincerely,

*/s/*

LeRoy S. Rooker

Director

Family Policy Compliance Office

cc: Mr. Keith W. Rheault  
Superintendent  
Nevada Department of Education