

January 16, 2004

Dr. Omero Suarez
Chancellor
Grossmont-Cuyamaca Community
College District
8800 Grossmont College Drive
El Cajon, California 92020-1799

Dear Dr. Suarez:

This is in response to your letter, dated June 2, 2003, regarding a possible conflict between the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g) and California Education Code § 76031. As you know, 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.

You stated that you submitted your letter pursuant to FERPA requirements. Specifically, you noted that § 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. California Education Code § 76031 states, in relevant part:

Whenever a minor is suspended from a community college, the parent or guardian shall be notified in writing by the president or the president's designee.

You explained that the Grossmont-Cuyamaca Community College District (the College) enrolls a number of minors in its programs, either as high school graduates, holders of equivalency diplomas or certificates, or as specially enrolled part-time students. Occasionally, such students are suspended for misconduct and the suspension is part of the students' education records. You state that under FERPA this information from a student's education records "may not be disclosed to a parent of a student enrolled in a postsecondary institution." As explained more fully below, the California law would conflict with FERPA in some circumstances but under other limited circumstances the College would be able to disclose information on minors to their parents.

An educational agency or institution subject to FERPA may not have a policy or practice of disclosing education records, or non-directory, personally identifiable information from education records, without the written consent of the parent or eligible student, except as provided by law. 34 CFR Part 99, Subpart D. When a student reaches the age of 18 or attends an institution of postsecondary education, the student is considered an

"eligible student," and all of the rights afforded by FERPA transfer from the parents to the student. 34 CFR § 99.3 "Eligible student." 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." Clearly, a record on a student concerning a disciplinary action is "a protected 'education record' within the meaning of FERPA." See, *United States of America v. Miami University, Ohio State University*, 294 F.3d 797 (6th Cir. 2002).

Generally, FERPA provides that an educational agency or institution may not disclose education records, or personally identifiable information from education records, without the prior written consent of an eligible student. 20 U.S.C. § 1232g(d); 34 CFR § 99.30. An exception to this rule permits disclosure of the education records of an eligible student to a parent if the student is a dependent for federal income tax purposes. 34 CFR § 99.31(a)(8). You state that in some instances these FERPA provisions do not permit disclosure because the student will not provide consent and is not a dependent.

Another FERPA disclosure exception, set forth in § 99.31(a)(14) of the regulations, permits an institution of postsecondary education to disclose the final results of a disciplinary proceeding, if it determines that:

1. the student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and
2. with respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies.

When an institution determines that an accused student is an alleged perpetrator and has violated the institution's rules, then there are no restrictions on disclosure or redisclosure of the final results of a disciplinary proceeding.

Based on the California law and circumstances that you describe, it appears that California law requires disclosures in some circumstances where FERPA does not permit disclosure. Specifically, if a student does not provide prior written consent, is not a dependent under the FERPA disclosure exception, and the § 99.31(a)(14) FERPA exception does not apply, then FERPA would not generally permit the disclosure of a suspension action, notwithstanding California law. An institution would be in violation of FERPA to the extent that it has a policy or practice of disclosing education records in circumstances where FERPA does not permit disclosure. Where there is such a violation, the Department of Education may withhold further payments under any applicable Department program, issue a complaint to compel compliance, terminate an institution's eligibility to receive funding, or take any other action authorized by law. 34 CFR § 99.67; 20 U.S.C. 1232g(f); 20 U.S.C. 1234c. These FERPA provisions have been reaffirmed by the U.S. Court of Appeals in its *U.S. v. Miami University* decision, referenced above.

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Thank you for contacting this Office about this important matter. Should you have any questions about the guidance provided herein, please do not hesitate to contact me directly, or Dann Brittenham of my staff, at:

Family Policy Compliance Office
Office of Innovation and Improvement
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5901

Additionally, the telephone number of this Office is (202) 260-3887.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office