

March 2, 2005

Dr. Pascal D. Forgione, Jr.
Superintendent
Austin Independent School District
1111 West 6th Street
Austin, Texas 78703-5300

Dear Dr. Forgione:

This is in response to your January 25, 2005, request for technical assistance under the Family Educational Rights and Privacy Act (FERPA). You state that the District has received a request for information from students' education records that raises confidentiality concerns under FERPA, the Individuals with Disabilities Education Act (IDEA), and the Rehabilitation Act of 1973, Section 504. Specifically, the District has received a request from a third party for information on students in the deaf education program so that the party (a cheerleading company for the deaf) may send the students recruitment letters. This Office administers the Family Educational Rights and Privacy Act (FERPA) and is responsible for providing technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations (20 U.S.C. § 1232g; 34 CFR Part 99).

FERPA applies to an educational agency or institution that receives funds under any program administered by the Secretary of Education, which includes virtually all public school districts. 34 CFR § 99.1. 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 prior written consent of the parent or eligible student¹ except as provided by law. 20 U.S.C. § 1232g(b); 34 CFR Subpart D. "Education records" are defined as "those 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)(i) and (ii). See also 34 CFR § 99.3 "Education records."

An agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA is also a "participating agency" subject to the Part B Confidentiality of Information requirements codified at 34 CFR §§ 300.560 – 300.577. See 34 CFR § 300.560(c). These requirements contain many of the same provisions

¹ "Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary institution at any age. See 34 CFR § 99.3 "Eligible student." The rights under FERPA belong to the parents of students under the age of 18 at the elementary/secondary level and transfer to the student when he or she becomes an "eligible student."

that exist in FERPA and apply, along with FERPA, to any public school district that provides Part B services to students. The records of a student which pertain to services provided to that student under IDEA are “education records” under FERPA and are subject to the confidentiality provisions under IDEA (*see* 34 CFR § 300.560-300.576) and to all of the provisions of FERPA. Please note that while Section 504 of the Rehabilitation Act of 1973 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive federal funds from the U.S. Department of Education, it does not generally address the disclosure of personally identifiable information from student’s education records.

An 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. 41853, July 6, 2000.

A school may disclose directory information to third parties if it has given public notice of the 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, ethnicity, and disability may not be designated as “directory information” for the same reason. Please note that, under FERPA, a school may not disclose the names, addresses, and other “directory information” that is linked to non-directory information. For instance, a school may not disclose “directory information” on all students who are receiving services under IDEA or, like in the case before us, all children in the deaf education program.

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In sum, FERPA would not permit the District to disclose the requested information to the requesting third party, without consent. However, please note that nothing in FERPA would prohibit the District from obtaining the recruitment information from the third party and providing it to the students and parents.

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

cc: Edward Anthony
Office of Special Education
and Rehabilitative Services