

March 28, 2006

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Dear Ms. Shay and Ms. Barnes:

This responds to your requests that this Office clarify whether releasing education records in compliance with the proposed “blanket order” issued by Judge Michael Nash on March 1, 2006, would violate the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. This Office administers FERPA and provides technical advice to ensure compliance with the statutes and regulations, which are codified at 34 CFR Part 99.

We are very concerned that compliance with the proposed order would not meet FERPA requirements for the following reasons. Section 99.31(a)(9) of the FERPA regulations, 34 CFR § 99.31(a)(9), permits an educational agency or institution to disclose personally identifiable information from students’ education records, without parental consent, if “[t]he disclosure is to comply with a judicial order or lawfully issued subpoena,” but only if:

the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action ....

(Exceptions to the advance notice requirements are not relevant here.) The regulatory language indicates that this exception applies to a court order to disclose education records needed in connection with a *specific legal proceeding* and not a general or “blanket” order governing a whole segment of the population. For example, the agency or institution is required to notify *the* parent or eligible student rather than parents and eligible students generally. Further, this FERPA exception to the consent requirement states clearly that advance notice is required *so that the parent or eligible student may seek protective action*. We believe that the “ability to seek protective action” contemplated in the regulatory language refers to a motion to quash or other routine action afforded by an ongoing legal proceeding and not an unspecified, generalized ability of an individual to seek to initiate a lawsuit to challenge a general court order.

Our comments focus on the “court order” exception in the FERPA regulations because that is the form of the judge’s proposed action in this matter. However, we would point out that other FERPA exceptions to the consent requirement may apply to some of the disclosures under consideration in the proposed court order. For example, 34 CFR § 99.31(a)(2) permits an educational agency or institution to disclose education records, without consent, to another school system where the student seeks or intends to enroll (subject to the requirements of § 99.34). Section 99.31(a)(10) permits disclosure of education records without consent “in connection with a health or safety emergency” (under conditions described in § 99.36).

Section 99.31(a)(5) also permits disclosure or reporting of education records without consent to “State and local officials or authorities” authorized by State statute (enacted after November 19, 1974) where the reporting or disclosure concerns “the juvenile justice system and the system’s ability to effectively serve, prior to adjudication, the student whose records are released....” 34 CFR § 99.38(a). Officials and authorities to whom records are disclosed under this exception must “certify in writing to the educational agency or institution” that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent or student.

The proposed order identifies certain provisions in the California Education and Welfare and Institutions Codes that authorize disclosures that may fall within these or other FERPA exceptions to the written consent requirement. Clearly, to the extent applicable in an individual matter, the Los Angeles Unified School District may comply with those particular disclosures identified in the proposed order that fall within a specified exception to the consent requirement (other than the exception for court orders, discussed above) without violating FERPA.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concern.

Sincerely,  
/s/  
LeRoy S. Rooker  
Director  
Family Policy Compliance Office