

April 6, 2006

[Letter to School District in Texas]

Dear [School District]:

This is in response to your letter, dated January 26, 2005, in which you seek guidance on a matter involving the Family Educational Rights and Privacy Act (FERPA) as it relates to a request for information from a student's education records under the Texas Public Information Act (PIA). (Tex. Gov't Code § 552.) Specifically, you have asked that we review a document that the [School District] (District) redacted in response to a PIA request from the [media]. The Texas Office of the Attorney General (OAG) asked that the District either provide an unredacted copy of the record to the OAG's Open Records Division or to this Office for review in order to ascertain whether the District had redacted too much information from the education record for release under the PIA. You also ask for guidance on whether FERPA would permit a school district to disclose education records in unredacted form to the OAG for the purpose of making a determination on a complaint filed under the PIA. This Office administers 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.

Specifically, the [media] requested, under the PIA, a report written by a student about an incident that occurred [at] an out-of-town athletic event. The District provided a copy of the report to the [media] in redacted form. The [media] filed a complaint with the OAG because it believes that the District redacted too much of the student's report. The OAG requested that you provide an unredacted copy of the student's report to its Open Records Division for review and so that it may make a determination in the complaint filed by the [media]. You refused to provide the OAG with a copy of the education records because you believe FERPA does not authorize you to do so. In a January 27, 2005, telephone conversation between this Office and the OAG, the OAG agreed to have this Office make a determination under FERPA regarding the redaction of the student report. By letter dated February 1, 2005, the OAG requested guidance from this Office regarding the matter you raise concerning the disclosure of education records to the OAG. We plan to address this issue separately in our response to the OAG and will provide you a copy of that response. Our immediate response to you will address the disclosure of personally identifiable information contained in students' education records pursuant to State open records requests.

As explained more fully below, this Office did not review the document submitted by the District to ascertain whether the District had redacted too much information. At least at the outset, this Office is not in a position to evaluate what information should be redacted and disclosed in response to an open records request because we do not have all the facts that a school would have to consider about a particular circumstance. For this reason, we have advised educational agencies and institutions that they are in the best position to analyze and evaluate whether a redacted document is “easily traceable” and, therefore, whether the information may be disclosed to a third party. If we were to get a complaint from a parent alleging that *too much* personally identifiable information was disclosed, we would then look at the specifics of the case and perhaps request access to all relevant information that the school relied on for redacting. However, we have no basis for reviewing whether too much information was redacted from an education record for purposes of a State open records law. Under FERPA, the right to inspect and review an education record belongs to the parent or eligible student; therefore, we have no basis for determining whether an educational agency or institution removed too much information from an education record that is to be disclosed to a third party.

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 student except as provided by law. (“Eligible student” means a student who has reached 18 years of age or is attending a postsecondary institution at any age.) 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.” Excluded from the definition of “education records” are records of the law enforcement unit of an educational agency or institution, but only under the conditions described in § 99.8 of the FERPA regulations. See 20 U.S.C. § 1232g(a)(4)(i) and (ii) and 34 CFR § 99.3 “Education records.”

“Disclosure” is defined in FERPA to mean transferring, releasing, or permitting access to “personally identifiable information contained in education records.” 34 CFR § 99.3 (“Disclosure”). Therefore, an educational agency or institution may release education records without meeting the written consent requirements in § 99.30 if it has removed all “personally identifiable information” from the records. “Personally identifiable information” includes, but is not limited to, the following information:

- (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.) That is, FERPA-protected information may not be released in any form that would make the student's identity easily traceable (unless there is written consent or a specific exception to the written consent requirement).

Occasionally, a student's identity may be "easily traceable," even after removal or redaction of direct identifiers and other nominally identifying information from student-level records. This may be the case, for example, with a highly publicized disciplinary action, or one that involved a well-known student, where the student could be easily identified in the community even after the record has been "scrubbed" of identifying data. In these circumstances, FERPA does not allow release of the education record in any form without consent because the irreducible presence of "personal characteristics" or "other information" make the student's identity "easily traceable."

A student's identity may also be "easily traceable" in the release of aggregated or statistical information derived from education records. See, for example, our September 25, 2003, letter to the Board of Regents of the University System of Georgia available at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/georgialtr.html>. The Board had asked about a newspaper's request for sensitive data about students in aggregate form categorized into specific groupings that the Board believed could be used to identify students, especially through multiple releases. This Office advised the Board of Regents that, in those circumstances, we had insufficient information to determine whether the disclosures would violate FERPA, that the institution itself had to make the determination whether a student's identity would be easily traceable and, if so, they could not disclose the information in that form. This decision was based on our recognition that, at least at the outset, agencies and institutions themselves are clearly in the best position to analyze and evaluate this requirement based on their own data, and under FERPA the burden is on the agency or institution not to release either aggregated or de-identified ("redacted") student level data if it believes that personal identity is easily traceable based on the specific circumstances under consideration. This Office has advised elsewhere that an educational agency or institution should use generally accepted statistical principles and methods to address the problem of small cell sizes and otherwise ensure that statistical or de-identified information from education records is reported in a manner that fully prevents the identification of students. If that cannot be done, the data must not be reported. See http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/nashville_tn2004.html.

Additionally, in a letter dated October 19, 2004, to Miami University (University) in Ohio, this Office advised that FERPA prohibits the disclosure of redacted or de-identified education records, without consent, even where an individual's identity is revealed only through **a series or**

combination of requests that are available to those in possession of the data. See <http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/unofmiami.html>. In particular, the University had redacted certain items of information from disciplinary records (student’s name, social security number, student ID number, and the exact date and time of an incident) in a manner that was generally sufficient to remove all “personally identifiable information” under FERPA for individual disclosures in response to an open records request. However, because the same requestor made multiple requests from various sources at the University, the cumulative effect of releasing the records in that form would be that the identities of the student victims and witnesses would be made easily traceable. As we had previously advised the Georgia Board of Regents, we advised the University that it must take into account other publicly available information and that the redaction of nominally identifying information may not be sufficient to prevent a student’s identity from being easily traceable with respect to a highly publicized incident, or with respect to a series of requests for information that make a student’s identity easy to trace due to the disclosure of related information.

In sum, where a disclosure of personally identifiable information in education records does not fall within an exception to the prior written consent rule, an educational agency or institution itself is in the best position to determine, at least at the outset, what information must be removed from education records in order to ensure that a student’s identity is not easily traceable. If, because of other records that have been released, or other publicly available information, the redaction of names, identification numbers, and dates and times of incidents is not sufficient to prevent the identification of a student involved in a disciplinary proceeding, including student victims and student witnesses, then FERPA prohibits an educational agency or institution from having a policy or practice of releasing the information. The educational agency or institution must either remove or redact all of the information in the education record that would make a student’s identity easily traceable or refuse to release the requested education record at all.

Thank you for contacting us regarding this matter. I trust this guidance will assist you in complying with FERPA in this regard.

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

cc: Texas OAG