JAN 30 2009

Mr. Doug Kosty. Assistant Superintendent
Mr. Tony Alpert, Manager of Assessment Reporting
Office of Assessment and Information Services
Oregon Department of Education
255 Capitol Street NE
Salem, Oregon 97310-0203

Dear Mr. Kosty and Mr. Alpert:

In late 2004 you asked this Office for guidance regarding the disclosure of information by the Oregon Department of Education (ODE) to local school districts under the Family Educational Rights and Privacy Act (FERPA). You explained that ODE maintains an electronic database that contains some of the same information that local school districts maintain on students in paper form, including results of the Statewide assessment used for reporting under the No Child Left Behind (NCLB) Act. You asked whether ODE may essentially follow the process used by school districts with paper records when a student transfers to a new school and allow a district to view records in the ODE database for any student currently enrolled in that district regardless of which district submitted demographic and other information on the student to ODE. We assume for purposes of this inquiry that the student information that ODE wishes to make available to local school districts is an "education record" under FERPA.

Since your initial inquiry the Department has issued amendments to the FERPA regulations that address directly the issue you raised. See 73 *Fed. Reg.* 74806 (Dec. 9, 2008). You may view the Final FERPA Regulations and related information on our website at www.ed.gov/policy/gen/guid/fpco/index.html. The new regulations amend § 99.35(b) by allowing State educational authorities, such as ODE, and other officials listed in § 99.31(a)(3) to make further disclosures of personally identifiable information from education records on behalf of an educational agency or institution, without parental consent, in accordance with the requirements of § 99.33(b). Under § 99.33(b), a non-consensual redisclosure must fall under one of the exceptions listed in § 99.31(a), and the State or Federal official must comply with the recordkeeping requirements in § 99.32(b).

Section 99.31(a)(2) allows an educational agency or institution to disclose education records to a student's new school without consent (subject to the conditions in § 99.34). Under the new regulations, ODE may perform this function and redisclose education records to a student's new school on behalf of a school district. The preamble to the Final FERPA Regulations explains in

detail the conditions surrounding these regulatory provisions. See 73 *Fed. Reg.* 74820-74824. This issue is also discussed at length in the preamble to the Notice of Proposed Rulemaking (NPRM), 73 *Fed. Reg.* 15574 (Mar. 24, 2008) at 15586-15587. Please let us know if you have any further questions in regard to this matter.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc: Donna Foxley, Secretary's Regional Representative for Region X