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Illinois State Board of Education
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JAN 30 2009

Dear Ms. Theorharis:

In October 2004 you presented several questions to this Office regarding the applicability of the Family Educational Rights and Privacy Act (FERPA) to the Illinois State Board of Education (ISBE) Student Information System. This Office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations, which are codified at 34 CFR Part 99.

Since your initial inquiry the Department has issued amendments to the FERPA regulations that we believe address many of the issues you raised. See 73 *Fed. Reg.* 74806 (Dec. 9, 2008). For example, the new regulations amend § 99.35(b) by allowing State educational authorities, such as ISBE, 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). You may view the Final FERPA Regulations and related information on our website at www.ed.gov/policy/gen/guid/fpco/index.html. You may also wish to review the preamble to the Notice of Proposed Rulemaking (NPRM), 73 *Fed. Reg.* 15574 (Mar. 24, 2008), which contains detailed information about many of the new amendments that you may find useful.

One issue that you raised that is not addressed in the new regulations is whether a parent's right to inspect and review education records under FERPA applies to the ISBE's Student Information System. FERPA applies to "educational agencies and institutions" that receive funds under any program administered by the Secretary of Education. 34 CFR § 99.1. Most public schools and school districts are subject to FERPA because they receive Department funds and meet the description of an "educational agency" or "educational institution" provided in § 99.1 of the regulations. Even though a State educational agency (SEA), such as ISBE, typically receives Department funds, historically we have interpreted FERPA so that it does not apply directly to SEAs because, unlike local educational agencies (LEAs), SEAs generally do not operate schools attended by students. (The "attendance" requirement as it relates to applicability of FERPA is

derived from the definition of "education records," which is records that contain information directly related to a "student," which in turn is defined to exclude an individual who has not been in attendance at the educational agency or institution.)

Congress amended FERPA in 1994 to apply those provisions related to a parent's right to inspect and review education records (subpart B of the regulations) to records maintained by SEAs on students who have attended any school subject to FERPA, regardless of whether the SEA itself is considered an "educational agency or institution" under FERPA. See 20 U.S.C. §1232g(a)(1)(B) and 34 CFR § 99.12(a)(2). In other words, all student records maintained by an SEA are considered "education records" under FERPA for purposes of subpart B of Part 99 (except for any SEA records related to students who have not attended a school subject to FERPA).

Under § 99.10(b), an SEA must comply with a parent's request to inspect and review education records maintained by the SEA within a reasonable period of time but not more than 45 days after it has received the request. The SEA must also respond to reasonable requests for explanations and interpretations of the records, provide a copy of the records in certain circumstances, and refrain from destroying records if there is an outstanding request for inspection and review. See 34 CFR § 99.10(c) and (d).

SEAs generally are not subject directly to other FERPA provisions, including procedures for seeking amendment of education records set forth in subpart C of the regulations. A parent or eligible student who wishes to amend education records, or personally identifiable information from education records, that ISBE has received from a local school district may be instructed to contact the local school district for that purpose.

Once you have had an opportunity to review the new FERPA regulations, please feel free to contact this Office if you have any further questions.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office