Nancy G. Oyen
Assistant Attorney General
Office of the Attorney General
1275 W. Washington Street
Phoenix, Arizona 85007

JAN 30 2009

Dear Ms. Oyen:

In March 2005 you asked this Office for guidance regarding the disclosure of information by the Arizona Department of Education (ADE) to local school districts under the Family Educational Rights and Privacy Act (FERPA). You asked whether FERPA allows ADE to transmit a student's test scores, including scores from Statewide testing, to a district where the student has transferred since taking the test. We assume for purposes of this inquiry that the information that ADE wishes to transmit to a student's new school district 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 ADE, 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, ADE 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