JAN 28 2010

Dr. John Keller
Director of Learning Technologies
Indiana Department of Education
151 West Ohio Street
Indianapolis, Indiana 46204

Dear Dr. Keller:

This responds to your May 4, 2009, letter in which you asked for guidance under the Family Educational Rights and Privacy Act (FERPA) concerning the use of a web portal system, Learning Connection, that Indiana schools desire to use "to create curriculum, manage classroom processes, record grades and assessments of classroom progress and access student achievement records." This Office investigates, processes, and reviews complaints and violations under FERPA and provides technical assistance to ensure compliance with the statute and regulations. See 20 U.S.C. § 1232g and 34 CFR part 99.

Your letter explains that the web portal system incorporates various software methodologies and policies designed to protect the improper use and disclosure of personally identifiable information from education records. In particular, "the design of the system uses the concept of 'roles' to determine the . . . access to student data that a user has," and requires users to provide a username and password to authenticate authorized users of the system. You state that the system "provides secure access to authorized users through industry standard encryption technologies." Where the system permits teachers and other professionals to "communicate and collaborate" through system messages and online forums, security is provided through several means. These include the acceptance of an agreement explaining the terms of use, an automatic reminder that personally identifiable information about students should not be used, and a required review before publication of user created content is permitted. Student records within the system will be available to school officials responsible for the education of the student within the limit of the "role" assigned to that individual that may permit access to information concerning the student's past performance "in order to support customized instruction."

In your telephone call on October 15, 2009, with Paul Gammill, former director of this Office, Mr. Gammill discussed with you the application of FERPA to the web portal system. He explained that this Office does not certify that any particular software package, design, or policy is compliant with FERPA. Rather, we will advise educational authorities of the requirements of FERPA concerning the protection of education records from unauthorized disclosure. In particular, this Office provides guidance about recommended actions and appropriate precautions that may assist in meeting this goal, particularly as related to the protection of education records in electronic format.

You may wish to review the most recent (December 2008) regulatory amendments to FERPA that address several areas relevant to use of the web portal system. The Final Regulations are available on our web site: http://www.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf. For example, the requirement that educational institutions use "reasonable methods" to ensure that school officials obtain access only to those education records in which the official has a legitimate educational interest and what kinds of methods may be deemed "reasonable" is discussed in the preamble of the Final Regulations at p. 74816-74818. The Final Regulations also contain recommendations for safeguarding education records on pp. 74843-74844. The Final Regulations require a school district or postsecondary institution to use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom they disclose education records. A discussion of the types of authentication methods that school districts may consider using is at p. 74840-74841.

In particular, you requested that we advise you concerning two questions:

- **Should the responsibility for appropriate access to student data rest with the school corporations and schools that elect to use the Learning Connection?**

Under FERPA, the responsibility for ensuring that school officials are permitted access only to education records in which the official has a legitimate educational interest rests with the disclosing entity. Accordingly, it is the responsibility of the disclosing entity, whether it is a school corporation or a school district or a school, to take appropriate measures to protect education records from improper access or disclosure.

- **Are there measures for protecting student information, beyond those described [in your letter], that should be considered?**

Your letter contains many of the frequently used measures designed to appropriately protect education records. Available methods, particularly those related to the protection of electronic records, remain an evolving field. Due to the rapid change this area

continues to experience, we believe that schools and districts are best able to determine the combination of physical, technological, and administrative controls needed to provide appropriate protections to its own education records.

I trust this is responsive to your inquiries. Please do not hesitate to contact us again should you need further assistance.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office