AUG 06 2010

Ms. Jennifer Bell-Ellwanger
Executive Director/Senior Advisor to the Chancellor
Research Policy and Support Group
New York City Department of Education
52 Chambers Street, Room 320
New York, New York 10007

Dear Ms. Bell-Ellwanger:

This letter is in follow-up to the telephone conversation that General Counsel Michael Best, you, and other New York City Department of Education (District) officials had with officials here at the Department of Education (Department), including General Counsel Charlie Rose, on Friday, July 30, 2010, regarding the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g; 34 CFR Part 99. Specifically, the District has concerns about potential misuse of information in education records, and we discussed whether the District could limit disclosure of "directory information" under FERPA to address those concerns, while at the same time permitting the District to participate in the Department's Free Application for Federal Student Aid (FAFSA) Completion Project.

As you know, FERPA generally prohibits the nonconsensual disclosure of information derived from education records, except in certain specified circumstances. 20 U.S.C. § 1232g(b); 34 CFR §§ 99.30 and 99.31. One of these exceptions permits the nonconsensual disclosure of information derived from education records that has been appropriately designated as "directory information" by the educational agency or institution. 20 U.S.C. § 1232g(b)(1); 34 CFR §99.31(a)(11). FERPA defines "directory information" as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. 20 U.S.C. § 1232g(a)(5)(A); 34 CFR § 99.3 "Directory information." Directory information could include the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

FERPA provides that a school may disclose directory information if it has given public notice of the types of information which it has designated as "directory information," the parent's right to restrict the disclosure of such information, and the period of time within which a parent has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." 20 U.S.C.§ 1232g(a)(5)(B); 34 CFR § 99.37(a). A school is not required to inform former students or the parents of former students regarding directory information or to honor their request that directory information not be disclosed without consent.

34 CFR § 99.37(b). However, if a parent or eligible student, within the specified time period during the student's last opportunity as a student in attendance, requested that directory information not be disclosed, the school must honor that request until otherwise notified.

In our phone conference, District officials asked whether the District may specify in its notice the specific parties who may receive directory information, and/or the specific purposes for which the directory information may be disclosed – e.g., whether it would be acceptable for the District to limit its disclosure of students' names, addresses, and dates of birth, directory information items, to the Department for the FAFSA Completion Project. We advised you that specifying recipients and purposes regarding disclosure of directory information is an acceptable option. While FERPA permits the District to disclose directory information about former students without complying with the public notification and opt-out provisions, we encourage you to make a good faith effort to reach former students with the notification and to accept any opt-outs that you may receive from them. We also discussed that you may want to include in the notice that directory information will also be used for the disclosure of information for inclusion in yearbooks, graduation, sports and other programs, as well as announcements concerning students who receive honors and awards. Generally, the directory information items that should be designated for these disclosure purposes are: name, photograph, grade level, participation in officially recognized activities and sports, weight and height of members of athletic teams, and honors and awards.

While we do not know how New York's open records law may be applied to a limited directory information disclosure policy, our office (the Family Policy Compliance Office (FPCO)) will enforce the District's policy under FERPA with regard to any disclosures that are inconsistent with your policy. That means, if the District elects to implement a policy of disclosing directory information only to certain parties, schools in the District must limit their disclosure of directory information to only those particular parties. FPCO will investigate the District if it becomes evident that it or one of its schools discloses directory information to any party or purpose that is not listed in the notice to parents and students.

In our conversation, Mr. Best also mentioned disclosures under the military recruiter requirements of the Elementary and Secondary Act (ESEA), which FPCO also administers. He indicated that the District has been working to minimize any privacy concerns in that regard, while still complying with the ESEA requirements. Section 9528 of the ESEA, 20 U.S.C. § 7908, as amended, as well as § 503(c) of 10 U.S.C. § 503, as amended, require local educational agencies (LEAs) to: (1) give military recruiters the same access to secondary school students as provided to postsecondary institutions or to prospective employers; and, (2) provide students' names, addresses, and telephone listings to military recruiters, when requested, unless a parent has opted out of providing such information.

Please note that, should the District not wish to combine its directory information notice with the notice to parents concerning the disclosure of students' names, addresses, and telephone listings to military recruiters, it is not required to do so. While we explained in the 2002 military

recruiter guidance that an LEA *may* issue a single notice to take care of notifying parents and students about the designation of directory information under FERPA and the disclosure of the required items for military recruiters, it is not required to do so. For example, should an LEA not have a directory information policy or prefer not to designate address and/or telephone listings as directory information, it may issue a notice to parents and students concerning only the disclosure of these items to military recruiters under the ESEA requirements. That way, the information can only be provided to military recruiters and not be treated as directory information under FERPA to be provided to other parties. Here is a web link to the 2002 guidance: http://www2.ed.gov/policy/gen/guid/fpco/hottopics/ht10-09-02.html.

I trust that this summary adequately reflects our discussion on July 30th. Should you or any other District official need assistance regarding FERPA in general or this matter in particular, please do not hesitate to contact us at (202) 260-3887 or FERPA@ED.Gov. You may also write to us at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office