

NOTE: This letter was reformatted to make it more accessible on the Student Privacy Policy Office's (SPPO's) website. Please note that SPPO administers FERPA and the office's prior name was the Family Policy Compliance Office (FPCO). Some citations in this letter may not be current due to amendments of the law and regulations. SPPO has not revised the content of the original letter. Any questions about the applicability and citations of the FERPA regulations included in this letter may be directed to [FERPA@ed.gov](mailto:FERPA@ed.gov).

August 21, 1995

Mr. Thomas H. McTavish, CPA  
Auditor General  
State of Michigan  
Office of the Auditor General  
201 N. Washington Square  
Lansing, Michigan 48913

Dear Mr. McTavish:

This is in response to your August 3, 1995, letter to this Office in which you ask whether colleges and universities in Michigan can disclose personally identifiable information from education records to you and your staff in the Office of the Auditor General in connection with audits that are required by the State Constitution and State statutes. You explain in your letter that the Auditor General is required to conduct routine audits as well as audits of intercollegiate athletics and student enrollment. You cite Article 4, Section 53 of the Michigan Constitution, Section 808 of Michigan Public Act 312, 1994, and State Statute 21.46, Section 6, copies of which you provided with your letter.

As a matter of background, this Office was recently contacted by the University of Michigan at Dearborn regarding this matter. At issue was the fact that the University had previously disclosed personally identifiable information from education records to the Auditor General under FERPA's grandfather clause, the provision which permitted the disclosure of education records when the disclosure is required by State statute. As the University noted, that provision was inadvertently deleted from FERPA when certain amendments were made to the law by the Improving America's Schools Act of 1994. Congress is currently considering a technical amendment to FERPA to restore the deleted provision.

A member of my staff spoke with a member of your staff on August 1, 1995, regarding the possibility of other FERPA provisions permitting the disclosures of education records that are necessary for the Auditor General's Office to conduct its required audits. As discussed more fully below, we believe that, disclosures of education records to you and your office.

FERPA generally protects students' privacy interests in "education records." Education records are defined as:

[T]hose records files, documents, and other materials, which (1) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A); 34 CFR § 99.3 "Education records."

This Office has determined that the disclosures you have described could take place under 34 CFR § 99.31(a)(3), which implements section (b)(3) and (b)(5) of the statute. Section (b)(5), which was enacted in 1979, provides:

Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit or evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program.

20 U.S.C. § 1232g(b)(5). In enacting this provision, Congress stated that the amendment:

Would correct an anomaly which presently exists in FERPA. The Department of HEW is now interpreting that legislation as precluding State auditors from requesting records on students in order to conduct State audits of local and State-supported programs. The Department has recognized that this situation hampers States in carrying out necessary audits and evaluations and has recommended that the Committee adopt this amendment.

H.R.Rep.No.338, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. At 10 (1979), reprinted in 1979 U.S. Code Cong. & Admin. News 819, 824. It is evident that Congress intended that FERPA not preclude State auditors from auditing State and federally supported education programs. Therefore, to implement that intent, this Office has determined that the phrase “State and local education officials” in section 1232(g)(b)(5) can be interpreted to include State auditors. This provision would permit the Michigan State Auditor General to have access to personally identifiable information from education records if the information is “in connection with” the audit of State or federally supported education programs.

Please note, however, that FERPA provides that where nonconsensual disclosures are made to State and local auditors pursuant to the above-quoted exception, certain limitations apply which did not generally apply when the disclosures were made under the grandfather clause. Specifically, FERPA provides that State auditors must not disclose personally identifiable information about students or their parents and that such information be destroyed when no longer needed to complete the audit. 20 U.S.C. 1232g(b)(3). See also 34 CFR §99.35. Therefore, access to personally identifiable information from education records must be restricted to those individuals specifically authorized to conduct the audit and any documents containing personally identifiable information from education records maintained by the Auditor General must be destroyed when no longer needed for the purposes of the audit.

I trust that the above information sufficiently responds to your inquiry. Should you have additional questions regarding this matter, please do not hesitate to contact this Office again.

Sincerely,

/s/

LeRoy S. Rooker  
Director  
Family Policy Compliance Office