

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.

May 21, 2008

Dr. Mark H. Jones
State Archivist
Connecticut State Library
231 Capitol Avenue
Hartford, Connecticut 06106-1537

Dear Dr. Jones:

This responds to your letter of May 31, 2007, in which you asked for clarification of the Family Educational Rights and Privacy Act (FERPA) in two areas of archival activity. This Office administers FERPA and provides technical assistance to educational agencies and institutions and other parties to ensure compliance with the statute and regulations, 20 U.S.C. § 1232g and 34 CFR Part 99.

Your letter states that you have accepted student records from a suburb of the City of Hartford for the mid-twentieth century; student records of the Vinal Vocational Technical School in Middletown for the period 1927-1944; student records from the A.I. Prince Vocational Technical School in Hartford for the period 1929-1945; and that you were expecting to receive student records from the E.C. Goodwin Vocational Technical High School in New Britain for 1936-1954. In a follow-up conversation with Frances Moran of my staff you explained that school districts must obtain the approval of both the State Archivist and Public Records Administrator in order to destroy student records. As Archivist, you determine whether the records have any long-term historical value and, if so, you take possession of the records. You indicated that you would like to strip out the academic and medical data from the education records you have accessioned and make the biographical data, including race/ethnicity, available for research purposes. You asked whether the biographical data could be made available to researchers and, if not, whether there is a date before which student files can be made available to researchers and families of deceased students.

You also asked for our guidance on a request that you and the Public Records Administrator received on August 26, 2006, from the Westport School District (District) to destroy school transcripts for the years 1900-1955. Shortly thereafter, a concerned citizen advised the State Library that these records were filled with valuable historical data and should not be destroyed. The Public Records Administrator directed the District Superintendent not to destroy these records pending your review of their informational value. The Superintendent then advised the Public Records Administrator by letter dated January 17, 2007, that the State Archivist is not authorized to inspect the records under FERPA. You asked whether the Superintendent's interpretation of FERPA is correct and under what conditions you may inspect these records to

carry out your responsibilities as State Archivist. (We note that the Public Records Administrator has directed the District not to destroy the records pending our response to your inquiry.)

FERPA applies to any “educational agency or institution” to which funds have been made available under any program administered by the Secretary of Education. 34 CFR § 99.1(a). This includes virtually all K-12 public school districts in the United States. FERPA protects “education records,” which are defined as records that are directly related to a “student” and maintained by an “educational agency or institution” or by a party acting for the agency or institution. 34 CFR § 99.3 (“Education records”). “Student” is defined as “any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.” 34 CFR § 99.3 (“Student”).

FERPA was enacted on August 21, 1974, with an effective date of November 19, 1974. Based on the definition of “education records” (i.e., records of individuals who have attended an “educational agency or institution” as a student), we interpret FERPA to apply to records maintained by a K-12 school district on individuals who attended a school in that district before FERPA was enacted, including those who were no longer in attendance by 1974. In other words, once a K-12 district became subject to FERPA in 1974, all student records maintained by that district became “education records” subject to FERPA, including records of students who ceased attending the K-12 district before FERPA was enacted, because the student attended a school or district that eventually became subject to FERPA. Conversely, if a school or district was closed or dissolved before the effective date of FERPA, then its student records never became “education records” subject to FERPA requirements. You advised Ms. Moran that none of the schools identified in your May 31, 2007, letter has closed. Therefore, based on the information you have provided, it appears that all of the records in question are “education records” under FERPA.

A parent or eligible student (i.e., a student who has reached 18 years of age or attends a postsecondary institution) must provide a signed and dated written consent in accordance with § 99.30 of the regulations before an educational agency or institution discloses personally identifiable information from education records. Exceptions to this requirement are set forth in § 99.31(a). In regard to your question whether you could review education records in connection with your duties as State Archivist, except for the records of deceased students, discussed below, there is no exception to the consent requirement in FERPA that allows an educational agency or institution to disclose education records in personally identifiable form to the State Archivist or the Public Records Administrator for a determination whether the records have informational value or whether the records should be destroyed.

Our August 26, 1997, letter to the Michigan Department of State, which you cited in your letter, explains that the FERPA rights of “eligible students” lapse or expire upon the death of the student based on common law of privacy rights. (Your letter indicates that all of the students whose records you have accessioned would be “eligible students” under FERPA based on the last date of attendance, 1955.) The Michigan Department of State had a policy of opening to the public any grade books dated prior to 1900 and restricting access to those dated from 1900 to the present (i.e., 1997, the date of their letter). Our response stated that Michigan’s policy of

protecting records from 1900 to the present was reasonable and that it should not release any of those records without consent unless the requester “provided proof that the student was no longer living.” Our guidance implicitly recognized as reasonable a presumption that students who attended school before 1900, i.e., students who in 1997 would have been at least approximately 100 years old, may be presumed deceased for purposes of releasing their records under FERPA without consent. Likewise, we would consider reasonable a policy under which educational agencies and institutions in Connecticut released to the State Archivist, the Public Records Administrator, or any member of the public, without consent, the education records of students who would be at least 100 years old as of the date of the release. Note also that nothing in FERPA prevents an educational agency or institution, or a party acting for the agency or institution, from destroying education records without consent provided there is not an outstanding request by a parent or eligible student to inspect and review the records. 34 CFR § 99.10(e).

In regard to your specific questions about the release of information from the education records in your possession to researchers, as noted above, the term “education records” means records maintained by an educational agency or institution that are “directly related” to a student. This includes not only academic and health information but general biographical or demographic information, such as the student’s name, address, date of birth, race/ethnicity, gender, and so forth. Some of this information, such as name, address, and date of birth, may be disclosed as “directory information” under §§ 99.31(a)(11) and 99.37 because it is not considered harmful or an invasion of privacy if disclosed. Race/ethnicity and gender, however, may not be disclosed without consent as “directory information” under FERPA. You may make available to historical researchers biographical data from the education records you have accessioned, without consent, only if you have first removed all “personally identifiable information” as defined in § 99.3 of the regulations, which includes small data sets that may identify an individual. There is no exception to the consent requirement that would allow you to disclose this information to historical researchers in personally identifiable form unless the information comes from records of deceased eligible students or students who may be presumed deceased, as explained above.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concern.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office

cc: Ms. Nancy J. Harris, Assistant Superintendent for Business
Westport Public Schools