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.

November 21, 2006

Ms. Barbara Jondahl, J.D.
Supervisor, Malreatment of Minors Program
Minnesota Department of Children,
Families, and Learning
1500 Highway 36 West
Roseville, Minnesota 55113-4266

Dear Ms. Jondahl:

This is to respond to your letter regarding Minnesota child abuse reporting and investigation laws. You asked whether FERPA would preclude school districts in Minnesota from disclosing information from education records in connection with investigations of alleged child abuse or neglect. As you know, your question also relates to provisions of the Federal Child Abuse Prevention and Treatment Act (CAPTA), which will also be discussed in this letter. This Office administers the Family Educational Rights and Privacy, Act (FERPA) and is responsible for providing technical assistance to educational agencies and institutions on the law.

You stated that the Minnesota Maltreatment of Minors Reporting Act was amended in 1999 to designate the Minnesota Department of Children, Families and Leaming (CFL) as the agency responsible for assessing and investigating reports of alleged child maltreatment in public schools. In addition, you stated that Minnesota further amended the Maltreatment Act in 2001 to reinforce the authority of CFL to access school maltreatment reports. That provision states:

> When a report of alleged maltreatment of a student in a school facility is made to the commissioner of CFL, data that are relevant to a report of maltreatment and are collected by the school facility about the person alleged to have committed maltreatment must be provided to the commissioner of CFL upon request for purposes of an assessment or investigation of the maltreatment report.

Minn. Stat.§ 13.4.3,Subdivision 14.

In addition, Minnesota law provides information on what kinds of education data are to be disclosed:

> To the commissioner of CFL for purposes of an assessment or investigation of a report of alleged maltreatment of a student. Upon request by the CFL commissioner, data that are

> relevant to a report of maltreatment and are from charter school and school district investigations of alleged maltreatment of a student must be disclosed to the commissioner, including, but not limited to, the following:
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> 1. information regarding the student alleged to have been maltreated;
> 2. information regarding student and employee witnesses;
> 3. information regarding the alleged perpetrator; and
> 4. what corrective or protective action was taken, if any, by the school facility in response to a report of maltreatment by an employee or agent of the school or school district.

Minn. Stat.§ 13.32, Subdivision 3(n).

Regarding the reporting of child abuse, another section of the Maltreatment Act states:

> In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require the assessment and investigation of the reports; and to provide protective and counseling services in appropriate cases.

Minn. Stat. § 626.5,56, Subdivision 1.

Another section of the Maltreatment Act provides further guidance about mandatory and voluntary reporting of child abuse:

> Persons mandated to report. A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately (as soon as possible, but within 24 hours) report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:
>
> 1. a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement; or
> 2. employed as a member of the clergy and received the information while engaged in ministerial duties,
>
> Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to phyical or sexual abuse.

Minn. Stat. § 626.556, Subdivision 3.

FERPA protects privacy interests of parents in their children's "education records," and generally prohibits the disclosure of education records without the consent of the parent. FERPA defines "education records" as "those records, files, documents, and other materials which - ·

(i) 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)(i) and (ii).

When a student reaches the age of 18 or attends an institution of postsecondary education, the student is considered an "eligible student" under FERPA and all of the rights under FERPA transfer from the parents to the student.

There are, however, a number of exceptions to the general rule that personally identifiable information from education records may not be released withourthe parent's consent. One of the exceptions permits disclosures made in compliance with a judicial order or lawfully issued subpoena so long as the school makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance so that they may seek protective action. 34 CFR § 99.3 l(a)(9). Thus, if a school district complied with the requirements of this exception, FERPA would permit disclosure of information from education records in connection with investigations of alleged child abuse or neglect.

Another exception permits disclosure of education records when the disclosure is made in connection with an emergency to appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons. 20 U.S.C. § l 232g(b)(1)(I); 34 CFR §§ 99.31(a)(l 0) and 99.36. In accordance with Congressional direction, the regulations provide further that these requirements will be strictly construed. 34 CFR § 99.36(c). More information on this disclosure exception is provided in our March 11, 2005, guidance letter to Strayer University. The letter is available on our website -- http://www.ed.gov/policy/qen/quid/fpco/ferpa/library/strayer031105.html. Given these FERPA requirements, the Strayer letter guidance, and the information you have provided, it appears that the FERPA health and safety exception would not generally permit disclosures to parties under the terms of the Minnesota laws that you reference.

In your letter, you referenced this Office's October 10, 1997, letter to Ms. Stacy Ferguson that discussed FERPA, CAPTA, and Texas law as they-relate to the.privacy of education records. As you know, the Ferguson letter addressed the matter ofreporting known or suspected child abuse, but did not address disclosure of education records for,the purpose of investigating such reports. Based on our review in Ferguson and the present review of CAPTA, FERPA, and Minnesota law as they relate to your inquiry, we conclude the conflict here is between FERPA and CAPTA rather than between Minnesota law and FERPA. Further, when there is an irreconcilable conflict between two Federal laws, the more recently enacted statute governs. In addition, the State laws enacted pursuant to CAPTA must be in harmony with CAPTA requirements in order to effectively repeal a FERPA provision by implication.

CAPTA and Federal regulations provide that a State must meet certain requirements in order to receive a grant for child abuse prevention and treatment programs, as follows:

1. The Secretary of the United States Department of Health and Human Services (HHS) shall make grants to the States ... for purposes of assisting them in improving the child protective services system of each State in the intake, assessment, screening, -and investigation of reports of abuse and neglect. 42 U.S.C. § 5106a(a)(l). To be eligible for the grants, States are required to have a state plan that includes provisions for the (1) *reporting* of known and suspected instances of child abuse and neglect, and (2) prompt *investigation* of such reports. 42 U.S.C. §§ 5106a(b)(2)(A)(i) and (iv).
2. In addition, HHS regulations require that a State must provide by statute that specified persons must report, and also must provide by statute or administrative procedure that all other persons are permitted to report, known and suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority. The regulations also require that a State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect. 45 C.F.R. §§ 1340.14(c) and (d).

The Minnesota statutes cited above appear to meet the CAPTA reporting and investigation requirements. Additionally, based on the reportable items described in Minn. Stats. § 13.43, Subdivision 14 and§ 13.32, Subdivision 3(n) above, we believe, for purposes of this analysis, that a typical report and investigation will involve the release of information from a child's education records. Furthermore, to the extent that Minnesota has enacted laws that CAPTA requires, and they are in harmony with CAPTA, the potential conflict is between FERPA and CAPTA. Based on the information you have provided about Minnesota laws, it appears that they are laws that CAPTA requires, and that they are in harmony with CAPTA. Thus the potential conflict is between FERPA and CAPTA. In determining which of two Federal laws controls, it is especially important to try to avoid reading them as being in conflict, which Congress presumably does not intend. Legislative intent to repeal must be "clear and manifest," and therefore, repeals by implication are disfavored. See, e.g., Watt v. Alaska, 451 U.S. 259, 267-268 (1981), quoting United States v. Borden Co., 308 U.S. 188, 198 (1939), quoting Red Rock v. Henry, 106 U.S. 596,602 (1883) and Morton v. Mancari, 417 U.S. 535,449 (1974), quoting Posadas v. National City Bank, 296 U.S. 497, 508 (1936).

The United States Supreme Court has stated that it "must read the statutes to give effect to each if [it] can do so while preserving their sense of purpose." Watt v. Alaska, 451 U.S. at 268. If the statutes are in irreconcilable conflict, then the more recently enacted statute governs. Id. at 267, citing 2A C. Sands, Sutherland on Statutes and Statutory Construction § 51.02 (4th ed. 1973). We conclude that the conflict between CAPTA and FERPA cannot be reconciled. Thus, under these circumstances, we believe that given the choice between promoting the purposes of the later enacted Federal child abuse reporting and investigation requirements and a parent's right to protect against the disclosure of his or her child's education records without their consent, Congress intended that any suspected incidents of abuse should be reported and investigated.

I trust that the above information is responsive to your inquiry. If you have any additional questions, please do not hesitate to contact this Office again.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office

cc: Stephen Knutson, Esq., Knutson, Flynn & Deans Amy Naughton, Esq., Eden Prairie District