

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).

May 13, 1997

Ms. Paula N. Wilk  
Chief Civil Deputy County Attorney  
Office of the Cochise County Attorney  
P. O. Drawer CA  
Bisbee, Arizona 85603

Dear Ms. Wilk:

This is in response to your letter, dated April 23, 1997, regarding the Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g; 34 CFR Part 99. Specifically, you ask whether FERPA would prohibit a school district from disclosing information from education records to State correctional detention centers or prisons where students are incarcerated. In your letter, you state:

The inquiry arises in the context of state laws, requiring an educational program for school-age children be offered in juvenile detention centers and jails, and [Part B of the Individuals with Disabilities Education Act (Part B)] mandating educational services for certain individuals with disabilities. As a consequence, local school districts are being requested to transfer educational records to detention and prison authorities who will, presumably, assume some responsibility for the on-site provision of services.

While FERPA applies to educational agencies or institutions to which funds have been made available under any program administered by the Secretary of Education, Part B applies to all public agencies that have direct or delegated authority to provide special education and related services under Part B. As such, under 34 CFR § 300.2(b)(4), the Part B regulations stipulate that "State correctional facilities" are subject to those regulations and are required to provide students receiving services under Part B a free appropriate public education (FAPE). Although it is a Federal law, Part B is administered by the States. We are addressing the applicability of FERPA to the issue you have raised. However, you may also wish to contact your State special education director with regard to any questions and about the applicability of Part B to any of the specific correctional institutions that relate to your inquiry.

As you know, FERPA is a Federal law that protects privacy interests with regard to student "education records" in that it affords parents the right to inspect and review their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. When a student reaches the age of 18 or attends an institution of postsecondary education ("eligible student"), all of the rights

afforded by FERPA transfer from the parents to the student.<sup>1</sup>

The term "education records" is broadly defined as:

[T]hose 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). See also 34 CFR § 99.3 "Education records." FERPA provides that education records, or personally identifiable information from such records, may be disclosed by educational agencies and institutions only after obtaining prior written consent of the parent or eligible student. 20 U.S.C. § 1232g(b)(1) and (d). See also 34 CFR § 99.30. There are several statutory exceptions to this general rule.

One exception to the general prohibition on disclosure of information from education records without prior written consent states that a school may disclose education records under certain conditions to officials of another school where the student seeks or intends to enroll. 34 CFR §§ 99.31( a ) (2) and 99.34. Before making such disclosure, a school must make a reasonable attempt to notify the parent or eligible student unless the disclosure is initiated by the parent or eligible student or the school's annual notification<sup>2</sup> includes a notice that it forwards education records to other schools that have requested the records and in which the student seeks or intends to enroll.

Additionally, an institution that discloses information to another institution must also, upon request, provide the parent or eligible student with a copy of the records disclosed and, also upon request, provide the opportunity for a hearing under the FERPA amendment procedure. Accordingly, we believe that, in situations where a correctional facility is required to provide services under Part B to individuals who are incarcerated, §§ 99.31(a)(2), and 99.34 of the FERPA regulations apply and a school may disclose education records, or information from the education records, to such a facility.

For your information, the name and address of Arizona's special education director are:

Dr. Kathryn A. Lund  
Superintendent, Special Education  
Arizona Department of Education  
1535 West Jefferson  
Phoenix, Arizona 85007-3280

<sup>1</sup> This provision of FERPA should be read in conjunction with the provision under Part B ( § 300.122) which requires that States ensure that children with disabilities aged 3 through 21 are provided a FAPE. While the rights under FERPA transfer to the student when he or she turns 18, the rights under Part B also remain with the parent(s) until the student turns 22. Accordingly, in situations where students are receiving services under Part B, both the parent(s) and the student should be afforded rights under FERPA from ages 18 through 21.

<sup>2</sup> On November 21, 1996, the FERPA regulations were amended to remove the requirement under § 99.6 for a student records policy. Additional provisions were added to § 99.7, the section concerning annual notification of rights under FERPA.

I trust that the above is responsive to your inquiry. Should you have any additional questions regarding FERPA, please do not hesitate to contact this Office again. Enclosed are a copy of the November 21, 1996, FERPA regulations and a model notification of rights under FERPA.

Sincerely,

/s/

LeRoy S. Rooker  
Director  
Family Policy Compliance Office