

FEB 13 2013

Dear [REDACTED]:

This is to respond to your recent letter to this office and conversation with Bernard Cieplak of my staff for technical assistance regarding the Family Educational Rights and Privacy Act (FERPA) relating to the disclosure of education records to third parties. In your letter you state that a parent has requested access to the education records of another student as part of an Individuals with Disabilities Education Act (IDEA) due process hearing. You explain that the education records in question are the education records of more than one student and there are parts of the records relating to a disciplinary action that belong to each student, as both students were the subject of the same disciplinary event which occurred at the school. Although the parent of the student has denied consent to have that parent's child's education records disclosed, the hearing officer has ordered the school to disclose the education records of the other student to the due process hearing examiner absent that parent's written consent. Specifically, you ask whether FERPA permits a due process hearing officer to order the disclosure of education records in a manner that is inconsistent with FERPA. This office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations in 34 CFR Part 99.

Section 99.30 of the FERPA states:

The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records.

An educational agency or institution subject to FERPA may not have a policy or practice of disclosing personally identifiable information from education records, without written consent of the parent, except as provided by law. 20 U.S.C. § 1232g(b); 34 CFR Subpart D. "Education records" 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").

Under FERPA, "disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record. 34 CFR § 99.3.

FERPA does place certain limitations on a parent's right to inspect and review education records. In this regard, where education records contain information about more than one student, the parent may inspect, review, or be informed of only the specific information about his or her child, unless the parent(s) of the other student(s) has provided consent. 20 U.S.C. § 1232g(a)(1)(A); 34 CFR § 99.12(a). Accordingly, a school district should redact the names of, or information which would be directly related to, any other students mentioned in another student's education records before providing a parent access to the student's education records. In instances where joint records cannot be easily redacted or the information segregated out, the school district may satisfy a request for access by informing the parent about the contents of the record which relate to his or her child.

Please also note that the IDEA statute makes FERPA applicable to IDEA proceedings. 20 U.S.C. § 1417(c). Further, the IDEA regulations contain similar language limiting the right of a parent in an IDEA proceeding to inspect and review education records of another student that might be contained in their child's education records. Specifically, it states:

If any education records includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

34 CFR § 300.564. It is clear from the IDEA regulations that parents are not entitled to a greater right of access to the education records belonging to other students in the context of an IDEA proceeding.

Because the documents in the instance you describe contain personally identifiable information about more than one student, the documents receive FERPA's protections as education records of each student identified in such an education record. This office considers that the information pertaining to each of the students is directly related to that student, respectively. The parent in this instance did not consent to the disclosure of their child's education records to the other parent, and accordingly, any disclosure of education records of that parent's child's education records to any third party would be an improper disclosure. Accordingly, compliance with a hearing officer's order to disclose the education records of a student absent parental consent to another parent would be a violation of FERPA's provisions relating to the disclosure of education records. *See* 34 CFR § 99.30.

I trust this responsive to your inquiry as it relates to FERPA.

Sincerely,

Dale King
Director
Family Policy Compliance Office