



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

OCT 14 2004

Mary E. Bird, Esq., Director
Government Relations & Legal Department
National Accrediting Commission of Cosmetology Arts & Sciences
4401 Ford Avenue, Suite 1300
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Dear Ms. Bird:

This responds to your letter of August 27, 2004, in which you asked several questions about the disclosure of education records under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. This Office administers FERPA and provides technical assistance to ensure compliance with the statute and regulations found at 34 CFR Part 99.

FERPA is a Federal law that applies to educational agencies and institutions that receive funds from any program administered by the Secretary of Education. 34 CFR § 99.1. Under FERPA parents have a right to inspect and review their children's education records and a right to have them amended in certain circumstances. 34 CFR Part 99, Subparts B and C. FERPA also provides that an educational agency or institution may not have a policy or practice of disclosing education records, or personally identifiable information from education records, without the prior written consent of a parent except as provided specifically by law. 30 CFR §§ 99.30 and 99.31. When a student reaches 18 years of age or attends a postsecondary institution, the student becomes an "eligible student" and all FERPA rights transfer from the parents to the student. 34 CFR §§ 99.3 ("Eligible student") and 99.5.

Question: NACCAS accredits postsecondary cosmetology schools that may contract with a local high school or social services agency to train a group of vocational education students who still attend high school. Are these students considered "eligible students" under FERPA even if they are under 18 years of age or wards of the court? Is written consent required to provide information on their attendance and academic progress to the high school's program director? If so, who would provide written consent, the student or the student's parent or guardian?

Response: High school students who are under 18 years of age qualify as "eligible students" under FERPA if the postsecondary cosmetology school considers them students in attendance, awards them credits or certificates from the postsecondary institution itself, issues a transcript from the postsecondary institution, and otherwise treats these individuals as students in attendance. As noted above, an eligible student generally must provide a signed and dated written consent before the institution discloses information from their education records. However, one of the exceptions to the written consent requirement in FERPA allows postsecondary institutions to disclose the education

records of eligible students to their parents or guardians, without their written consent, if the students are dependents for Federal income tax purposes. See 34 CFR § 99.31(a)(8).

A postsecondary cosmetology school could also disclose the education records of an eligible student to the program director at the student's high school, without written consent, if the student is enrolled simultaneously at the both institutions, that is, the student maintains dual enrollment. See 34 CFR § 99.34(b). In addition, the students' parents or guardians have the right under FERPA to inspect and review any education records maintained by the high school, including records received from the postsecondary cosmetology school under this provision, so long as the student is under 18 years of age.

If a postsecondary cosmetology school provides training on behalf of a high school but only the high school awards credits and issues transcripts for these classes, then the students would not be considered "eligible students" under FERPA because they are not in attendance at a postsecondary institution. In that case, the parents or guardians retain all FERPA rights in regard to the students' education records (as long as the student is under 18 years of age). However, since in these circumstances the cosmetology school is providing services as an agent of the high school, any records it maintains on these students are considered education records under FERPA, and the cosmetology school could disclose this information from these records to the students' high school program director, without written consent from the parents or guardians, as a "school official" with a "legitimate educational interest" under 34 CFR § 99.31(a)(1).

Question: The local Department of Social Services (DSS) sends a ward of the court (under 18 years of age) to the cosmetology school for training. A counselor from DSS, who is not the student's legal guardian, calls the school for information. Can the school provide it without consent? Who would be required to provide written consent, the student (ward) or legal guardian? Can information-sharing requirements be written into a contract between the school and DSS? Would the answer change if the DSS counselor were the legal guardian?

Response: If the student is considered an "eligible student" under the circumstances described above, the cosmetology school may not provide any information from the student's education records to the DSS counselor without the written consent of the student.

If the student is not an "eligible student" because the student is considered to be in attendance at the high school (and is under 18 years of age), then the student's parents retain the right to inspect and review the student's education records and consent to the disclosure of those records. "Parent" is defined in § 99.3 of the regulations as "a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian."

A DSS counselor may not obtain access to a non-eligible student's records as a "parent" unless the counselor is the student's legal guardian or is acting as a parent in the absence of a parent or guardian. We are aware of no other exception to the written consent rule in

FERPA that would allow disclosure of education records to the DSS counselor without written consent. In these circumstances, the school should obtain written consent from the student's parent or legal guardian before disclosing education records to the DSS counselor. There is no reason why these information-sharing requirements could not be written into a contract between the school and DSS.

Question: May an eligible student sign a "blanket release" granting permission to release information from his or her education records? For example, could a student sign a release authorizing the school to send the student's grades to his or her parents every time they are issued? Could a student authorize the school to include the student's name on a list of those who are about to graduate that the school sends to spa and salon recruiters? Must the student provide written consent for each employer, or can the consent authorize the school to send this information to all potential employers?

Response: Under FERPA, consent to release information from education records must be written, signed, and dated and must specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom the disclosure may be made. See 34 CFR § 99.30. An eligible student must provide written consent in accordance with these requirements before a school may send grades to the student's parents unless the student is a dependent for Federal income tax purposes, as noted above. Consent that meets these requirements may be written so that it authorizes a school to send the student's grades to his or her parents every time they are issued.

Schools may also disclose "directory information" about a student, without written consent, provided certain requirements have been met. Directory information is defined as "information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed" and includes a student's name, address, telephone listing, dates of attendance, grade level, degrees, honors and awards received, and certain other information. Note that grades and test scores may not be disclosed as directory information under FERPA. See 34 CFR § 99.3 ("Directory information"). An institution that discloses directory information about a student must provide public notice to parents and eligible students of the types of personally identifiable information that it has designated as directory information and their right to opt-out of the disclosure. See 34 CFR § 99.37 for further details.

A cosmetology school could send recruiters and potential employers the name, addresses, and anticipated graduation date of eligible students, without obtaining their prior written consent, provided it has designated these items as "directory information" and complied with the other procedural requirements in § 99.37. However, the school would have to obtain the prior written consent of eligible students who opted-out of directory information disclosures, or if it wished to disclose students' grades to prospective employers. If consent is required, it could be written so that it authorizes disclosure of information to all potential employers.

Question: Can school personnel provide information to a potential employer on class ranking or grades along with the name of the student or graduate without consent?

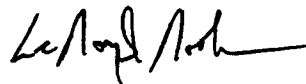
Response: As noted above, grades may not be disclosed as directory information under FERPA because this is information that would be considered harmful or an invasion of privacy if disclosed. Class rank is generally considered to be the same as grades for purposes of this exception to the written consent requirement in FERPA. However, the definition of “directory information” specifically includes “honors and awards.” This would allow a school to advise potential employers, for example, that a student had graduated with honors, which could be defined to mean in the upper 10 or 20 percent of the class.

Question: Are school personnel prohibited from revealing whether a student is attending or in class? For example, a parent, spouse, or loved one telephones the school to ask for the student, or a person calls the school and asks if his former spouse is there.

Response: As noted above, “directory information” may be disclosed without an eligible student’s prior written consent provided the student has not opted-out of these disclosures. Directory information includes “dates of attendance,” which means the semesters or other terms in which a student has been enrolled but does not include the student’s actual daily attendance at class. Therefore, school personnel may not reveal whether a student is in class on a particular day unless the student has provided written consent for the disclosure, or some exception to the written consent requirement applies, such as disclosures to parents of dependent students under § 99.31(a)(8) of the regulations. There is no exception for disclosure of non-directory information to a spouse, former spouse or other loved ones except for parents of dependent students.

I trust that this responds to your inquiry and appreciate the opportunity to be of assistance.

Sincerely,



LeRoy S. Rooker
Director
Family Policy Compliance Office