



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

Mr. John P. Giliberti
City Attorney
City of Rockford, Illinois
425 East State Street
Rockford, Illinois 61104

OCT - 2 2007

Dear Mr. Giliberti:

This responds to your August 8, 2007, letter regarding Illinois Public Act No. 094-0916 in relation to the requirements of the Family Educational Rights and Privacy Act (FERPA) and summarizes conversations you had subsequently with Frances Moran of my staff about this matter. Under 34 CFR § 99.60, this Office is responsible for investigating complaints and violations of FERPA and for providing technical assistance to ensure compliance with the statute and regulations, 20 U.S.C. § 1232g and 34 CFR Part 99.

Your letter states that Rockford, Illinois School District Number 205 (District) has asked for an opinion from this Office whether its plan to implement Illinois Public Act 094-0916 complies with FERPA. In particular, you indicated that the law enforcement exemption under FERPA allows the deputized home/school counselors employed by the District to provide student attendance information to Rockford police to enforce the City of Rockford's truancy ordinance. You stated further that city ordinance violations are public information in Illinois and, therefore, a student's citation for a truancy violation is a public record that the City believes it can send to the Secretary of State, along with a list of students who are chronically truant under Illinois Compiled Statutes, 105 ILCS 5/26-2a, under FERPA's law enforcement exemption. You asked us to suggest other ways in which the City or the District could implement Illinois Public Act 094-0916 consistent with FERPA requirements.

An educational agency or institution subject to FERPA generally may not disclose education records, or personally identifiable information from education records, unless a parent has provided written consent in accordance with § 99.30 of the regulations. Exceptions to this requirement are set forth in § 99.31. Enclosed is a copy of our August 7, 2007, letter to the Illinois State Superintendent regarding a potential conflict between FERPA and the disclosure of information from education records to the Secretary of State required under Illinois Public Act No. 094-0916. In that letter we explain why school districts may not disclose to the Secretary of State information from education records indicating that a student is truant or had dropped out unless a parent or eligible student has provided written consent in accordance with § 99.30 of the FERPA regulations.

In regard to the City's proposal for addressing the problem, nothing in FERPA would prevent the City or District from sending the Secretary of State information from public records showing which students have been found in violation of the City's truancy ordinance or adjudged

chronically truant pursuant to State law. As you discussed with Ms. Moran, however, the disclosure of attendance information from *education records* to City police to prosecute students for violating the truancy ordinance appears to violate FERPA requirements. In particular, you explained that the deputized home/school counselors employed by the District obtain access to the District's database of education records for the attendance information they send to local police for prosecution of truancy violations. The District may allow the home/school counselors to have access to students' attendance records without parental consent if they have been identified as school officials with legitimate educational interests under § 99.31(a)(1) of the FERPA regulations consistent with the notice requirements in § 99.7(a)(3)(iii). Note that the home/school counselors may be considered school officials with legitimate educational interests in attendance records even if they are also the District's law enforcement unit under § 99.8, discussed below. However, the home/school counselors may not redisclose class attendance information from students' education records to local police for enforcement of the City's truancy ordinance (or for enforcement of State laws regarding chronic or habitual truant) without parental consent unless one of the exceptions in § 99.31(a) applies. (Local or State prosecutors and other law enforcement officials may not be identified as school officials under § 99.31(a)(1) of the regulations.

The "law enforcement exemption" you mentioned in your letter would allow home/school counselors employed by the District to send *law enforcement unit records* to the Rockford police without parental consent because records of an educational agency's or institution's law enforcement unit are excluded from the definition of "education records." See 34 CFR § 99.3 ("Education records"). The definition of "law enforcement unit" is set forth in § 99.8(a) and means:

[A]ny individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to –

- (i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or
- (ii) Maintain the physical security and safety of the agency or institution.

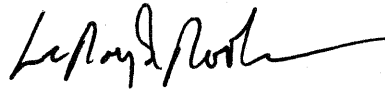
Under § 99.8(b), records of a law enforcement unit are those records that are created and maintained by a law enforcement unit for a law enforcement purpose. It appears that the deputized home/school counselors may be considered the District's law enforcement unit because they are authorized or designated to refer truancy violations to State and local authorities for enforcement. Under § 99.8 of the regulations, the home/school counselors may create and maintain their own attendance records for purposes of enforcing State and local truancy laws and send those records to outside law enforcement authorities without parental consent.

Finally, § 99.31(a)(5) of the FERPA regulations allows an educational agency or institution to disclose *education records* without consent to State and local officials and authorities if the disclosures are allowed by a State statute and concern the juvenile justice system and its ability

November 19, 1974, then under § 99.38 the reporting or disclosure must concern the juvenile justice system and its ability to effectively serve, prior to adjudication, the student whose education records are released and the officials and authorities to whom the records are disclosed must certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided by State law, without the prior written consent of the parent. While disclosures to local police for enforcement of the City's truancy laws may fall under this exception, you indicated that currently there is no State law authorizing the District to disclose attendance information from education records to local police for these purposes and, therefore, this exception to the consent requirement in FERPA could not apply.

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

Sincerely,

A handwritten signature in black ink, appearing to read "LeRoy S. Rooker", with a long horizontal flourish extending to the right.

LeRoy S. Rooker
Director
Family Policy Compliance Office