



UNITED STATES DEPARTMENT OF EDUCATION
STUDENT PRIVACY POLICY OFFICE

March 27, 2025

Honorable Tony Thurmond
Superintendent of Public Instruction
1430 N Street, Suite 5602
Sacramento, California 95814-5901

Via email: tthurmond@cde.ca.gov

Complaint No. 25-0382
Family Educational Rights
and Privacy Act

Dear Superintendent Thurmond:

It has come to the attention of the U.S. Department of Education's (Department) Student Privacy Policy Office (Office or SPPO) that numerous local educational agencies (LEAs) in California may be implementing policies and practices that violate the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g; 34 CFR Part 99. FERPA provides that parents have a right to inspect and review their children's education records, which 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. 20 U.S.C. § 1232g(a)(1)(A); 34 CFR Part 99, Subpart B, and § 99.3 ("Education records"). Once a student reaches 18 years of age or attends a postsecondary institution, all FERPA rights transfer from parents to the student. 34 CFR §§ 99.3 ("Eligible student") and 99.5. We assume for purposes of this letter that the students in question are not "eligible students" and that the parents retain their right to inspect and review their children's education records under FERPA.

Given the number of LEAs potentially involved, SPPO is concerned that the California Department of Education (CDE) played a role, either directly or indirectly, in the adoption of these practices in supporting the recently enacted California Assembly Bill 1955 ("AB 1955"). Therefore, pursuant to its authority under 34 CFR § 99.60 and 20 U.S.C. § 1232g(f), this Office is taking appropriate actions to enforce FERPA by conducting an investigation in accordance with, among others, the procedures outlined in 34 CFR §§ 99.64 and 99.65¹. These sections state, in summary and relevant part:

¹ <https://studentprivacy.ed.gov/node/548/>.

- The Office conducts its own investigation, when no complaint has been filed, to determine whether an educational agency or institution or other recipient of Department funds under any program administered by the Secretary has failed to comply with FERPA. 34 CFR § 99.64(b).
- The Office notifies in writing the complainant, if any, and the educational agency or institution, the recipient of Department funds under any program administered by the Secretary, or the third party outside of an educational agency or institution if it initiates an investigation under § 99.64(b).
- The written notification under this section includes the substance of the allegations against the educational agency or institution, other recipient, or third party; and directs that agency or institution, other recipient, or third party to submit a written response and other relevant information, as set forth in § 99.62, within a specified period of time, including information about its policies and practices regarding education records.

This letter serves as the written notification discussed above, and to provide you the opportunity to submit a written response as requested below.

By letter dated January 31, 2025, the California Justice Center (CJC)² informed this Office that, on January 1, 2025, California Assembly Bill 1955 (“AB 1955”) took effect, and appears to conflict with FERPA as it recognizes “a nonexistent right of privacy in minors from their parents regarding a child’s gender identity at school under the California Constitution,” as an exemption that currently does not exist under FERPA. Further, as a result “every public school in California has a policy of denying, or effectively preventing, the parents of students who are in attendance at a school the right to inspect and review the education records of their children.”

Additionally, as provided by CJC regarding FERPA, the legislative analysis for AB 1955³ states:

While parents/legal guardians have the right to review and amend their students’ educational records, courts have recognized that outing a minor to their parents or guardians can violate the minor’s constitutional right to privacy, even if the minor is out at school or socially (see Cal. Const., art. I, § 1; *C.N. v. Wolf* (C.D. Cal. 2005) 410 F.Supp.2d 894, 903; see also *Sterling v. Borough v. Minersville* (3d Cir. 2000) 232 F.3d 190, 196). By prohibiting school policies that require outing a student to their parents or legal guardians, regardless of the circumstances, this bill would reduce instances where teachers and administrators violate students’ right to privacy.

Subsequently, in its letter to this Office, CJC notes the following:

AB 1955 purports to create a confidential relationship between a child and a school district, and a constitutional right to privacy in a child’s identity from that child’s

² California Justice Center, APC is a public interest law firm founded to dismantle government barriers to freedom and prosperity in California. See <https://www.justiceca.com/>

³ California Senate Committee on Education, May 24, 2024 Bill Analysis for AB 1955, p. 7

parents— which does not exist in the state or federal constitution. AB 1955 classifies providing education records pertaining to a child’s gender dysphoria as “outing” a child to the child’s parents. If a school is facilitating and accommodating a child’s name and gender change at school, however, those documents must be disclosed to a parent upon request under FERPA. Likewise, a child’s school work must be produced in response to a FERPA request, even if it discloses a child’s new “gender identity.”

AB 1955 purports to exempt records pertaining to a child’s gender identity from disclosure under FERPA absent consent of the student. FERPA provides no such exemption, and provides full rights to parents before a child turns 18.

Our preliminary analysis of the information provided by CJC in conjunction of our reading of AB 1955, gives this Office reasonable cause to believe that the LEAs throughout California may be violating FERPA as discussed above. As noted in *United States v. Miami University, Ohio State University*, 294 F.3d 797 (6th Cir. 2002), Congress provided in FERPA that "no funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records" except as provided in FERPA. The court explained that legislation, like FERPA, enacted pursuant to the constitutional spending power (art. I, § 8, cl. 1) "is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." 294 F.3d at 808, citing *Pennhurst State School and Hospital*. 451 U.S. 1, 17 (1981) (holding that Congress may fix the terms on which it disburses Federal money to the states, and likening the relationship to a contract where the receipt of Federal monies is conditioned upon a state's compliance with Federal laws). That is, "Spending clause legislation, when knowingly accepted by a fund recipient, imposes enforceable, affirmative obligations upon the states." 294 F.3d at 808, citing *Wheeler v. Barrera*, 417 U.S. 402, 427 (1974), modified on another ground, 422 U.S. 1004 (1975). Accordingly, the CDE must ensure that all LEAs comply with FERPA regarding parents' rights to inspect and review any education records maintained by the LEA.

There are a number of enforcement options available to the Department in achieving compliance with FERPA, including withholding further payments, issuing a cease and desist order, and recovering funds. See 34 CFR § 99.67 and 20 U.S.C. § 1234c. The court of appeals in *Miami University, supra*, also concluded that the United States has the inherent power to sue to enforce conditions imposed under FERPA on the recipients of federal grants. 294 F.3d at 808. However, this Office is committed to working with your office and with LEAs to ensure voluntary compliance with FERPA as provided under § 99.66(c)(2) of the regulations. As part of that effort, please report to me in writing by April 11, 2025, the steps CDE has taken, or will take, including the submission of relevant policy statements or other communications, to ensure that LEAs in California comply with FERPA requirements as described in this letter, or provide a statement and justification explaining why you believe this action is unwarranted.

In an effort to expedite the processing of this investigation, please email your response to FERPA.ComplaintResponse@ed.gov, including the complaint number in the subject line. In lieu of sending your response electronically, you may send your written response to the following address:

Student Privacy Policy Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202 – 8520

You may also forward questions specific to this investigation to FERPA.Complaints@ED.Gov, or contact this Office, referencing your complaint number, via phone at 202-260-3887. For general information concerning FERPA and the Office's complaint procedures, please visit our website at <https://studentprivacy.ed.gov/>.

We look forward to working with you to resolve this issue as expeditiously as possible. Should you have any questions, do not hesitate to contact me directly at the address noted above.

Sincerely,

A handwritten signature in blue ink that reads "Frank E. Miller Jr." in a cursive style.

Frank E. Miller Jr.
Acting Director
Student Privacy Policy Office