



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

Ms. Margaret Parker
Florida Department of Education
325 West Gaines Street
Room 1244
Tallahassee, Florida

FEB 20 2009

Dear Ms. Parker:

This is to respond to your September 29, 2008, letter regarding Florida's State Child Abuse Death Review Committee (Committee) that provides for the review of the circumstances of all deaths of children occurring as a result of abuse or neglect. In order to conduct the reviews, Florida law provides that certain State officials shall be provided with access to any information or records that pertain to a child whose death is being reviewed by the Committee and that are necessary for the committee to carry out its duties, including information or records that pertain to the child's family. You also note that Florida law provides the Committee with the authority to subpoena students' education records. This Office administers the Family Educational Rights and Privacy Act (FERPA) and is responsible for providing technical assistance to educational agencies and institutions on the law.

You ask whether a court order or subpoena is necessary when the Committee is requesting the education records of a deceased child. Specifically, you ask whether the protections and requirements of FERPA that pertain to education records still apply when the child is deceased. This Office has received many inquiries about this question, and our longstanding guidance on it is provided herein.

FERPA provides specifically that the rights afforded by FERPA belong to the student once he or she becomes an eligible student. 34 CFR § 99.3 "Eligible student." The FERPA rights of eligible students lapse or expire upon the death of the student. This interpretation is based on the common law principle that a cause of action based upon an invasion of privacy is personal, and the right to bring such an action lapses with the death of the person who held it. *See, e.g., Cordell v. Detective Publications, Inc.*, 419 F. 2d 989, 990 and n. 3 (6th Cir. 1969). Therefore, FERPA would not protect the education records of a deceased eligible student and an educational agency or institution may disclose such records at its discretion.

However, FERPA rights do not lapse or expire upon the death of a non-eligible student. FERPA provides specifically that the rights it affords rest with the parents of students until that student reaches 18 years of age or attends an institution of postsecondary education. There is nothing to suggest that parents' rights under FERPA should

Page 2 – Ms. Margaret Parker

terminate solely because their child is deceased. Rather, since the parents hold the rights in these circumstances, they may exercise those rights so long as the education records exist. Accordingly, FERPA would not permit the disclosure of the education records of a deceased non-eligible student without the parent's prior written consent or a subpoena. See §§ 99.30 and 99.31(a)(9) of the FERPA regulations.

I trust that the above information is responsive to your inquiry. If you have any additional questions, please do not hesitate to contact this Office again.

Sincerely,

A handwritten signature in black ink that reads "Paul Gammill". The signature is written in a cursive style with a large, sweeping "P" and "G".

Paul Gammill
Director
Family Policy Compliance Office