



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

December 23, 2013

Dear Superintendents, Principals, and Guidance Counselors:

This is in response to a request from Learning for Life, a non-profit organization, to provide guidance to public schools involved in the Learning for Life Exploring program on the applicability of the Protection of Pupil Rights Amendment (PPRA) and the Family Educational Rights and Privacy Act (FERPA) when administering the Learning for Life Exploring (Exploring) Career Interest Survey (Exploring Survey) to students. Specifically, this letter discusses the applicability of PPRA and FERPA to the paper Exploring Survey utilized by many of Exploring's associates around the country, as well as the Exploring Survey which students complete online.

The U.S. Department of Education (Department) is familiar with Exploring and its career education program designed to help young men and women from the 6th grade through 20 years old make more informed future career decisions by providing students with real-life career experiences. In order to find out in what careers students are interested, the Exploring Survey, which is voluntary, is administered to students. The Exploring Survey captures personally identifiable information (PII) such as name, address, email, gender, date of birth, phone number, school, grade, ethnicity, and career interests. The Department understands that the Exploring Survey is provided to students in one of three ways: (1) a Web site in which students provide direct response to the Exploring Survey and submit to Exploring through the Web site; (2) Exploring associates ("local executives") around the country come into the schools, administer the Exploring Surveys, and take the completed Exploring Surveys with them; and (3) the local Exploring executives drop off the Exploring Surveys with guidance counselors or other school officials, who then give the Exploring Surveys, take them up, and return them to Exploring. The Exploring Survey results are provided to the schools for use by guidance counselors and Exploring programs in schools to assist students in making career decisions.

Local educational agencies (LEAs) and individual schools that receive funding under any program administered by the Department are obligated to be compliant with the requirements under PPRA and FERPA. Thus, schools must assure that the Exploring Survey is administered in a manner that is compliant with these laws. Below we discuss the provisions in PPRA and FERPA that may be applicable to the administering of the Exploring Survey.

Protection of Pupil Rights Amendment

The PPRA applies to the programs and activities of an LEA, or other recipient of funds under any program funded by the Department. The PPRA statute is found at 20 U.S.C. § 1232h. It governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering national educational excellence and ensuring equal access.

1. political affiliations or beliefs of the student or the student's parent;
2. mental or psychological problems of the student or the student's family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or student's parent; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

We have been assured that none of these types of questions are being asked in the Exploring Survey. If that is the case, the right for parents to opt out of surveys that contain one or more of the eight protected areas would not apply to the Exploring Survey. However, you should be aware of another provision of PPRA that would relate to the Exploring Survey.

The PPRA requires LEAs to work with parents to develop and adopt policies on certain items, unless the LEA or State educational agency (SEA) established comparable policies on or before January 8, 2002. In relevant part, the LEA must adopt a policy that addresses the right of parents to inspect, upon request, a survey created by a third party before the survey is administered or distributed by a school to students and the procedure for granting a request by a parent for such access. (The survey does not have to include any of the eight protected areas of information listed above.) Accordingly, if the school administers the Exploring Survey, parents have a right to inspect, upon request, the survey before it is administered to students. Additionally, if a school does not have a policy in place about surveys, including third party surveys, then the school cannot issue the Exploring Survey until such a policy is implemented. See 20 U.S.C. § 1232h(c)(1)(A)(i). Depending on the school policy, parents may or may not have an opportunity to opt their children out of participation in the Exploring Survey.

Family Educational Rights and Privacy Act

FERPA is a Federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. These rights transfer to the student when he or she turns 18 years of age or enters a postsecondary educational institution at any age ("eligible student"). Education records are those records that are directly related to a student and that are maintained by the school or LEA or a party acting for the school or LEA. Parents or eligible students must provide written consent prior to the disclosure of PII from education records to third parties, unless one of the exceptions to FERPA's general consent requirement applies. The FERPA regulations are found at 34 CFR Part 99, which you can find on our Web site:

<http://www2.ed.gov/policy/gen/reg/ferpa/index.html>.

While FERPA does not address whether or not a school may administer a survey to students, it does address whether a school can disclose completed surveys that include personally identifiable information to a third party. In the case of the Exploring Survey, there are two ways in which the completed Exploring Surveys may be shared with the Exploring executives. One way is to have parents and eligible students provide consent before disclosing the Exploring Survey to Exploring or any other party. A second way is to have local Exploring executives come into the schools,

administer the Exploring Surveys, and take the completed Exploring Surveys with them. The Exploring Surveys administered in this scenario are not at any time maintained by the school or LEA or a party acting for the school or LEA, and thus would generally not meet the definition of an “education record” under FERPA.

Similarly, if students choose to take the Exploring Survey online at the Exploring Web site, FERPA would not generally apply as the Exploring Survey is not maintained by the school. However, the results of the students’ Exploring Surveys that include PII from student education records and are provided to and maintained by the school would meet the definition of an education record under FERPA. Thus, the PII in the Exploring Survey results maintained by the school can only be disclosed to a third party with the written consent of the parent or eligible student, unless an exception to the written consent provision applies. School officials should ensure that parents and students are informed of the purpose of the Exploring Survey, that it is being conducted by Exploring and not the school, and that their participation is completely voluntary. Further, if this is the case, school officials should also ensure parents and students that the completed Exploring Surveys are not going to be maintained by the school or become part of their education records.

For a more complete explanation of an LEA’s responsibility under both FERPA and PPRA, please see “Notices to LEAs and SEAs Regarding Responsibilities under FERPA & PPRA” on our Web site: <http://www2.ed.gov/policy/gen/guid/fpco/hottopicindex.html> . Additionally, if you have any questions about these laws in general or this letter in particular, please do not hesitate to contact us at FERPA@ed.gov or by calling (202) 260-3887.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dale King".

Dale King
Director
Family Policy Compliance Office