



Commonwealth of Pennsylvania
PENNSYLVANIA COMMISSION
ON CRIME AND DELINQUENCY
Office of General Counsel
705-0888, Ext. 3034

DATE: July 18, 2003

TO: Douglas Hoffman
Manager
Evaluation, Research and Statistical Analysis Division

FROM: Dave Markowitz 
Assistant Counsel, PCCD

RE: Pennsylvania Youth Survey not subject to requirements of FERPA and PPRA

Douglas Hoffman, Division Manager of the Evaluation, Research & Statistics Division of the Office of Information and Analytical Services, has requested that the Office of Chief Counsel issue an interpretive opinion regarding the applicability of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and the Protection of Pupils Rights Amendment (PPRA), 20 U.S.C. § 1232h, to the Pennsylvania Youth Survey (Survey). Mr. Hoffman's request arose as a result of concerns raised by some school districts that have been hesitant to administer the Survey out of fear of violating the provisions of the No Child Left Behind Act, which amended FERPA and PPRA (but did not, for purposes of this memo, substantively change them). After reviewing the policies used in administering the Survey and the relevant law, I have concluded that the FERPA and PPRA should not have any impact on the Survey.

The PA Youth Survey is based on a similar survey developed by the Channing-Bete Company in conjunction with the Communities That Care program. The Communities That Care survey is administered in several other states. The Survey asks students to provide information regarding delinquent behavior and associated risk factors. Parents are notified several weeks before the Survey is to be administered and are instructed of their right to inspect the survey and/or opt their children out of participating in it. The Survey is administered anonymously and on a voluntary basis. Instructions provided to school districts state that Survey forms, once completed by students, should be placed in an envelope without names or other identifying information. The forms are then returned to a contractor employed by PCCD for analysis.

FERPA

FERPA requires, in relevant part, that education records of students be available for inspection by students' parents (subsection (a) of 20 U.S.C. § 1232h) and that educational institutions

receive parental consent before releasing education records to outside entities (subsection (b)). "Education records" are defined as "contain[ing] information *directly related to a student*" and "maintained by an *educational agency or institution* or by a person acting for such agency or institution." 20 U.S.C. § 1232h(a)(4)(A)(emphasis added).

Under that definition, the Survey does not constitute an "education record" because it is administered anonymously, and, therefore, cannot be "directly related" to a particular student. Furthermore, neither PCCD nor the contractor to whom the forms are returned is "an educational agency or institution" or "acting for" such an entity.

PPRA

PPRA provides that all instructional materials must be made available to parents for inspection (20 U.S.C. § 1232h(a)) and that a student may not be required to participate in surveys revealing certain information without the prior written consent of the parent (20 U.S.C. § 1232h(b)). The former provision does not apply to the Survey since it is not "instructional material," as it has no "instructional content," 20 U.S.C. § 1232h(c)(6); the latter provision does not apply because the Survey is voluntary. In addition to notifying parents of the Survey and their right to refuse to allow their children to participate, students are instructed that they need not participate or answer any questions they do not wish to. These measures ensure that the Survey is completely voluntary, and thus not "required."

In short, it is the opinion of the Office of Chief Counsel that a school district participating in the Survey would in no way be in violation of FERPA and PPRA.