LEGAL MAILBAG – FEBRUARY 20, 2025

By Attorney Thomas B. Mooney, Neag School of Education, University of Connecticut

The "Legal Mailbag Question of the Week" is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors.
Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

We are very excited to begin to offer dual enrollment classes at our high school. We've partnered with several colleges and universities, and our students are excited about the opportunity. We have decided to create a student agreement to specify our expectations in the process. I dutifully scoured the Internet to see what others have done, and I came across a clause in another school's agreement that caught my attention. This provision will apply when the instructor is from the college or university, not our school:

> Contacting Instructors: Your student is enrolled in a college course, and it is important to understand that the instructor works directly with the student. Under FERPA (Family Educational Rights Privacy Act), instructors are not required to discuss student performance or other student-related issues with parents.

The majority of our students enrolling in our dual enrollment classes will be under eighteen years of age. While in practice we want our students to accept the challenge of a college course and be independent, self-directed learners, is this condition legitimate? Does FERPA prohibit college instructors from sharing student information with parents? Also, does Legal Mailbag have any recommendations of what should and what should not be included in a school's dual enrollment agreement?

Signed,
FERPA What?

Dear What:

Legal Mailbag will not be providing you with legal advice about dual enrollment contracts, but more general comments may be helpful. Simply put, as a general matter, teachers at institutions of postsecondary education may correctly assert that FERPA does not require that they discuss student issues with parents. Legal Mailbag adds the caveat "as a general matter" because this provision in FERPA only applies to students who are eighteen years of age and older, which will rarely be the case for students in your high school.

FERPA confers certain rights on families to obtain access to student information and to maintain confidentiality of that information (hence the name: "**Family** Education **Rights** and **Privacy** Act." (Emphasis added). FERPA provides that parents may exercise those rights until the student attains the age of eighteen. At that point, FERPA rights transfer to the student, whom FERPA describes as an "eligible student." "Eligible students," not parents, have the authority to exercise the rights of access and confidentiality conferred by FERPA.

Given that most students in post-secondary education are "eligible students" who have FERPA rights, colleges and other institutions of post-secondary learning often take the position that they will not share student grades and other information with parents (unless the student takes the affirmative step of authorizing the release of such information). Rather, such institutions typically provide grades and other information just to the student, and they leave to the student the decision whether to share such information with his or her parents (though parents who are paying tuition may have an opinion on that).

Given the foregoing, it is not entirely accurate to cite FERPA as the reason instructors will not talk to parents of a high school student in a dual enrollment course. For the most part, parents retain their FERPA rights as to their children, because very few students in high school will be eighteen and as such will be "eligible students." Nonetheless, it makes good sense to establish that expectation for students and their parents in dual enrollment courses at your school to promote your goal of helping them be independent, self-directed learners. Moreover, given the common practice for professors to deal directly with their students and not the parents, that expectation will be welcomed (and perhaps even required) by the professors teaching the dual enrollment courses. You can work out any wrinkles whereby a parent insists on access to educational records for their children who are younger than eighteen on an individual basis where necessary.

With all that said, Legal Mailbag offers one further observation about FERPA and "eligible students." While FERPA rights transfer to students when they attain the age of eighteen (even in high school), schools retain the right to send parents the grades of all students, including "eligible students" as long as the student is a dependent of the parent for tax purposes. The FERPA regulations provide that consent of an eligible student is not required when "[t]he disclosure is to parents, as defined in § 99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986." 34 C.F.R. § 99.31(a)(8). By contrast, colleges and other institutions of post-secondary education generally choose not to provide such information to parents, given that sharing such information about eligible students with their parents is permissible but not obligatory.