

NOTE: This letter was reformatted to make it more accessible on the Student Privacy Policy Office's (SPPO's) website. Please note that SPPO administers FERPA and the office's prior name was the Family Policy Compliance Office (FPCO). Some citations in this letter may not be current due to amendments of the law and regulations. SPPO has not revised the content of the original letter. Any questions about the applicability and citations of the FERPA regulations included in this letter may be directed to FERPA@ed.gov.

May 28, 1996

Complaint No. XXXX
Family Educational Rights
and Privacy Act

Dr. Thomas B. Day
President
San Diego State University
5500 Campanile Drive
San Diego, California 92182-4611

Dear Dr. Day:

This is in regard to the complaint filed with this Office by [Student]. [The Student] alleged that the San Diego State University (University) violated her rights under the Family Educational Rights and Privacy Act (FERPA) when [...], a professor in the San Diego State University/University of California at San Diego Joint Doctoral Program in Clinical Psychology, obtained unauthorized access to and improperly disclosed information from her education records to other faculty members on a search committee.

By letter dated February 6, 1996, this Office informed the University that it had violated FERPA as alleged. Our finding was based on the University's student records policy which did not specify any criteria for a school official to have a legitimate educational interest in a student's education records. On February 29, 1996, the University informed this Office that it did not agree with some elements of our analysis and requested that we reconsider our finding in this complaint. We reviewed the additional information provided and determined that our original finding regarding this allegation was in error. Following is a discussion of our decision.

The University's student records policy defines "officials and employees" as:

faculty, staff, student employees, or committees (when members of the committee are appointed or elected to an officially constituted committee) who perform a function or task on behalf of and at the request of the University.

The policy further defines "legitimate educational interest" as "University personnel who have a demonstrably legitimate need to review records in order to fulfill their official professional responsibilities."

In your February 29 letter you state:

We believe that a correct reading of the statute is that an educational interest relates to the educational institution's interest as a university. If it were otherwise, the legislation would clearly have referred to the student's interest rather than an educational interest.

You further state: "An institution has a legitimate interest in seeking to verify the accuracy of an application in order to employ honest persons as instructors."

Our revised determination is based primarily on the recent statutory change to FERPA made by the Improving America's Schools Act of 1994 which amended FERPA to state that education records may be released without the consent of the student to "other school officials .. who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required." (Emphasis added.) 20 U.S.C. § 1232(b)(1)(A). We believe that the congressional intent was not to limit the scope of intra-school releases because the statute states that the interests of the student are included in the definition of legitimate educational interests. The language does not limit releases to cases where the official only has an educational interest in a particular student.

In summary, we agree that, as stated in the February 29 letter, the University has a legitimate interest in employing honest persons as instructors. We have therefore determined that the University's broad definition of "legitimate educational interest" as "university personnel who have a demonstrably legitimate need to review records in order to fulfill their professional responsibilities" meets the requirements of FERPA. We are therefore reversing our previous determination to a finding that the University did not violate FERPA as alleged, and are also closing the investigation of this complaint. [The Student] will be informed of this determination by copy of this letter.

Should you have further concerns regarding this investigation, please feel free to contact this Office again.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office

cc: [Student]