

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 16, 2008

Complaint No. XXXX
Family Educational Rights
and Privacy Act

Mr. Norman Fainstein
President
Connecticut College
270 Mohegan Avenue
New London, Connecticut 06320

Dear Mr. Fainstein:

This is to inform you of the findings in the complaint filed with this Office by [Student], alleging that Connecticut College (College) violated rights afforded the Student under the Family Educational Rights and Privacy Act (FERPA) by improperly disclosing personally identifiable information from his education records. By letter dated May 1, 2006, this Office informed you of the Student's allegations. The College provided a written response to this Office on May 17, 2006.

As stated in this Office's May 1, 2006, letter to you, the Student alleges that the College violated § 99.30 of the FERPA regulations by disclosing personally identifiable information from the Student's education records without his prior written consent. The records were two documents, described as follows:

1. A letter from [], associate professor of geology, dated January 4, 2006, and addressed to the Judiciary Board. [The Professor] accused the Student of honor code violations.
2. A graded copy of the Student's final exam in Environmental Studies/Geophysics 115.

The Student further alleges the education records were disclosed on or about January 5, 2006, by [], associate dean of student life. The disclosures were to the Student's classmates, [and].

The College asserts in its May 17, 2006, response to the Student's complaint that the alleged improper disclosures involved an identical disciplinary complaint against three students at the College, alleging that they jointly engaged in misconduct. Specifically, a professor at the College filed a complaint against the Student and two other students, alleging that they had cheated on an examination in his course. The professor alleged that certain responses on the three students' examination papers were substantially identical, containing identical data and identical mistakes as well, and that the data in those responses appeared to have been taken from the web site of a professor at another university. The professor's complaint further alleged a possible violation of the academic integrity provisions of the College's Student Honor Code, and

attached the example papers of the three students. Pursuant to the College's judicial procedure for addressing disciplinary matters, the professor's complaint was forward to the Associate Dean of Student Life. The College further states that pursuant to its disciplinary procedures and the Student Bill of Rights, the College provided a separate written notice of the complaint to each of the three students, and that letter enclosed a copy of the complaint and its attachments, which also included for each student copies of each of the three student's exam papers. The College asserts that this disclosure was necessary in order to comply with the "Fair Practice" provisions of the Student Handbook, which require that a student be given full and fair notice of the alleged violations to enable the student to respond. The College asserts that given the nature of the complaints against each of the three students, which were based on the similarity of the three students' exam papers and the allegation that they had either jointly obtained and copied information from the internet or copied from each other's exam papers, the Fair Practice procedures required disclosure of the three students' exam papers to one another. After the student received notice and time to prepare, the College's Judicial Board conducted separate hearings for the three students to resolve the complaint.

As you are aware, FERPA provides that postsecondary educational agencies or institutions may disclose a student's education records, or personally identifiable information from such records, to third parties only after obtaining the student's written consent. 34 CFR §§ 99.30 and 99.5.

"Education records" means those records that are:

- (a) Directly related to a student; and
- (b) Maintained by an educational agency or institution or by a party acting for the agency or institution.

34 CFR § 99.3 ("Education records.")

One of the FERPA exceptions to the consent requirement permits disclosure of education records that are made to other school officials within the educational agency or institution whom the agency or institution has determined to have a legitimate educational interest. 34 CFR § 99.31(a)(1). A school official is a person employed by the school such as an administrator, supervisor, instructor, or support staff member. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibilities. Before an educational agency or institution may make disclosures under this provision, § Section 99.7(a)(3)(iii) of the FERPA regulations requires it to include in its annual notification of rights under FERPA a statement indicating that it has a policy of disclosing personally identifiable information under § 99.31(a)(1), and a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest.

1. Allegation: Improper disclosures of Student's education records to school officials.

The College's May 17, 2006, response to the Student's complaint included a copy of its FERPA annual notification, excerpts from the College's Student Handbook concerning violations of school rules, and information about disciplinary actions. On January 5, 2007, this Office provided the Student's attorney with copies of these records. The College's annual notification

states that it has a policy of disclosing education records to school officials with legitimate educational interests, and the annual notification identifies school officials whose responsibilities include actions or interests related to students' education and disciplinary matters. Furthermore, the College asserts that its officials with legitimate educational interests have complied with all FERPA requirements with respect to the Student's education records that were disclosed to the officials. Given the information provided by the College, its assertions regarding the conduct of its school officials, and no evidence to the contrary, this Office finds that the College did not violate § 99.30 of the FERPA regulations.

2. Allegation: Improper disclosure of Student's exam to his two classmates.

Based on the information provided by the College in its May 17, 2006, letter about the professor's identical complaints against each of the three students, which were based on the similarity of the three students' exam papers, in that (1) certain responses on them were substantially identical, (2) containing identical data and (3) identical mistakes as well, and based on the professor's allegation that the three students had either (4) jointly obtained and copied information from the internet or (5) copied from each other's exam papers, this Office concludes that each of the three exams contain information that is directly related to each of the three students. Thus, given these circumstances and the professor's charge that the three students jointly engaged in misconduct, we further conclude that each of the three exams is an education record for each of the three students. This conclusion is further supported by the fact that the three students' exams and information in them cannot be segregated, or examined and evaluated only separately, with respect to considering the charge that the three students worked together to cheat on the exam. Accordingly, under FERPA each of the three student exams is an education record of each of the three students. In summary, this Office has considered the Student's allegation that the College did not comply with FERPA disclosure requirements and the College's responses to the allegation. Based on our finding that the Student's exam contains information that is directly related to him and to his two classmates, we conclude that the Student's exam is his education record and also an education record of the other two students.

Thus, we find that the College did not violate § 99.30 of the FERPA regulations by disclosing the Student's exam to the two other students. The Student will be advised of our findings by copy of this letter. Thank you for your cooperation in this matter.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office

cc: Student