

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.

September 1, 1993

Ms. Eileen Cooke
Executive Director
Washington Office
American Library Association
110 Maryland Avenue, NE
Washington, D.C. 20002-5675

Dear Ms. Cooke:

This is in follow-up to our telephone conversations of last week and my memorandum to you dated August 26, 1993, regarding the Family Educational Rights and Privacy Act (FERPA) as it relates to student theses. As you are aware, the Department was recently asked for a written "formal opinion" as to whether FERPA, also known as the Buckley Amendment, applies to undergraduate and graduate theses and whether such theses could be made publicly available in university libraries for research purposes. The response provided, which stated that student theses would ordinarily be considered education records under FERPA and generally could not be released absent some form of prior written consent by the student, was apparently distributed through electronic mail to institutions around the country and was brought to the attention of the media. Because of the importance of theses for research purposes, the library community became concerned as to whether student theses could be maintained in libraries as research materials without violating FERPA. Below is additional information regarding the Department's position with regard to this issue.

FERPA regulation 34 CFR § 99.30 generally requires an educational institution to obtain written consent before releasing a student's education records, or disclosing personally identifiable information from a student's education records, except as provided specifically in 34 CFR § 99.1. "Education records" are defined as those records that are –

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

34 CFR § 99.3. Generally, any written examination or paper that is prepared by a student and that reveals or discloses the student's identity would be considered an "education record" under this definition (so long as it is maintained by the institution). That is, in ordinary circumstances FERPA prevents an institution from disclosing or publishing a student's written examination or paper without prior written consent, except in accordance with the specific exceptions set forth in 34 CFR § 99.31. This applies equally to the written work of both undergraduate and graduate students.

However, while these documents are clearly “education records,” as noted in our May 11, 1993, letter on this subject, we recognize that undergraduate and graduate “theses” often differ in nature from typical student research papers and other education records, such as written examinations, in that they are published or otherwise made available as research sources for the academic community through the institution’s library. It has been and remains our understanding that in these circumstances an educational institution would ordinarily have obtained the student’s permission to make his or her work available publicly before doing so, perhaps in connection with notifying the student of specific course or program requirements.

Consequently, an institution need not obtain a student’s signed and dated specific written consent to disclose or publish a thesis in the library or elsewhere at the institution. Neither the statute, the legislative history, nor the FERPA regulations require institutions to depart from established practices regarding the placement or disclosure of student theses so long as students have been advised in advance that a particular undergraduate or graduate thesis will be made publicly available as part of the curriculum requirements.

I trust that the above information clarifies the Department’s position with regard to the applicability of FERPA to undergraduate and graduate student theses. Should you have additional questions regarding this issue, please let me know.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office

