

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](mailto:FERPA@ed.gov).

April 24, 1990

Mr. Clifford Scott  
Assistant General Counsel  
University of South Carolina  
System Legal Department  
Columbia, South Carolina 29288

Dear Mr. Scott:

This is in response to your letter of January 11, 1990, in which you requested an opinion regarding the Family Educational Rights and Privacy Act (FERPA). You inquired whether FERPA would preclude the University of South Carolina from providing, without consent, "certain student information to two-year postsecondary institutions via the CHE [State Commission on Higher Education]." Although this Office has determined that the University may disclose information from students' education records to the CHE, FERPA would preclude the CHE from disclosing this information, in personally identifiable form, to the two-year colleges. The reasons for this determination are discussed more fully below.

I understand that the CHE has proposed that the University provide it with information from the education records of student who have transferred to the University from two-year colleges. The information would include the students' identification numbers and grade point averages. You stated in this regard:

Our understanding is that the CHE intends to evaluate the success of students transferring from two year institutions in an effort to improve the quality of courses offered at those institutions. [Emphasis added.]

FERPA generally precludes disclosure of personally identifiable information, without consent, from a student's education records. The term "education records" is defined under section 99.3 of the FERPA regulations as those records that are directly related to a student and maintained by an educational institution. Section 99.3 of the regulations defined "personally identifiable information" as including "[a] personal identifier, such as the student's social security number or student number." Therefore, the students' identification numbers would fall under the FERPA consent provisions.

Section 99.31 of the regulations sets forth conditions under which prior consent is not required to disclose information from a student's education records. Section 99.31(a)(6)(1) states:

The disclosure is to organizations conduction studies for, or on behalf of, educational

agencies or organizations to –

(C) Improve instruction.

Your letter indicates that the CHE will be collecting the information on behalf of the two-year colleges. If the outcome of the information-collection is that the CHE will make recommendations to the two-year colleges regarding instructional improvement, then the CHE would be considered an “organization conducting studies for, or on behalf of,” the two-year colleges. As a result, the University of South Carolina may disclose the information to the CHE under certain conditions specified in section 99.31(a)(6)(ii) of the regulations. This section states:

The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if –

- (A) The student is conducted in a manner that does not permit personal identification of ... students by individuals other than representatives of the organization; and
- (B) The information is destroyed when no longer needed for the purpose for which the study was conducted.

Therefore, the CHE would be precluded by FERPA from disclosing, without consent, the collected information in personally identifiable form to the two-year colleges. In addition, the CHE must destroy the information when it is no longer needed for the purposes for which the student is conducted.

You stated in your letter, “The CHE intends to eventually establish a data bank which will contain the records of all the student attending public post-secondary institutions.” As noted above, it is the opinion of this Office that FERPA would preclude the CHE from establishing such a data bank, without the consent of the involved students, under the conditions you have presented.

I trust the above satisfactorily explains the scope and limitations of FERPA as it pertains to your concerns. Enclosed for your review is a copy of the FERPA regulations.

Sincerely,

/s/

LeRoy S. Rooker  
Director  
Family Policy and  
Regulations Office

Enclosure

