

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 21, 2001

Ms. Sandra Denman
General Counsel
Youngstown State University
One University Plaza
Youngstown, Ohio 44555-0001

Dear Ms. Denman:

This is in response to your March 29, 2000, letter to this Office. Specifically, you requested our advice on whether the Family Educational Rights and Privacy Act (FERPA) allows the faculty at Youngstown State University (University) to have access to student complaints. You add that the complaints are placed in a professor's personnel file and are personally identifiable to a student because they contain the student's signature. You provided a copy of the University's annual notification in order that we could review the description of faculty teaching, service and research responsibilities to determine whether such faculty have a legitimate educational interest in obtaining access to these complaints under FERPA.

As you are aware, FERPA is a Federal law that affords parents and eligible students the right to have access to education records, the right to seek to have the records amended, and the right to have control over the disclosure of information from the records. FERPA broadly defines the term "education records" as those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." It appears that the complaints at issue are maintained by the University and identify the students by name, including his or her signature. As such, those evaluation forms are "education records" and may not generally be disclosed without the prior written consent of the students.

FERPA generally prohibits the disclosure of education records, or personally identifiable information from education records, without the prior written consent of a parent. 34 CFR § 99.30. The FERPA regulations define "personally identifiable information" as information that includes but is not limited to:

- (a) the student's name;
- (b) the name of the student's parent or other family member;
- (c) the address of the student or student's family;

- (d) a personal identifier, such as the student's social security number or student number;
- (e) a list of personal characteristics that would make the student's identity easily traceable;
- (f) other information that would make the student's identity easily traceable.

34 CFR § 99.3 "Personally identifiable information."

There are several limited exceptions to the rule regarding nonconsensual disclosure of education records. One of these exceptions permits the nonconsensual disclosure of information from education records to school officials. An institution may disclose education records to school officials, but only if these officials have been defined in a school's annual notification as school officials with a legitimate educational interest. 34 CFR § 99.7. Enclosed is a model notification for your reference. In most cases, legitimate educational interest would mean that a school official could have access to a student's education records to the extent necessary to fulfill his/her job function. 34 CFR § 99.31(a)(1).

The University's annual notification lists persons employed by the University, including faculty, as school officials. The annual notification goes on to state that:

A University official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility for Youngstown State University.

We have reviewed the Agreement you provided between the University and the University Chapter of the Ohio Education Association. The Agreement indicates that some of the required faculty tasks, duties and assignments include activities related to teaching, scholarship and certain services. Nothing in the material you provided would indicate that a need or legitimate educational interest exists allowing faculty to gain access to complaints filed against them by a student in personally identifiable form. Therefore, in general, FERPA would prevent faculty from gaining access to these complaints in personally identifiable form.

While an argument can be made that the professor has a legitimate educational interest in the record *if* he or she uses the complaint to improve instruction, it is our understanding that school personnel generally use end of the semester evaluations for that purpose. Unlike an evaluation, a complaint raises a specific charge by one student against a professor; as such we believe the faculty member must initially be denied access because the complaint is an "education record" under FERPA and, even though the faculty member is a school official, he or she does not have a "legitimate educational interest" in the student complaint. In other words, the faculty member's interest is strictly personal; that is, defending him or herself from the charges. Thus, unless the complaints can be redacted in such a fashion that the student's identity is not easily traceable, the professor cannot have access to the complaint. It is our understanding too, however, that with regard to redacting a student's name from a complaint, there will be some situations when the student's identity cannot be separated out.

If, however, a case progresses and the faculty member faces disciplinary action, then "due process" protections might allow him or her the right to review the complaints. Whether the

faculty member is allowed the opportunity to review the complaints depends on the seriousness of the charges (i.e., does it involve a property interest such as loss of pay or job) and the timing of the hearing (pre or post-termination). In this regard, the University would need to do legal research about what type of due process protections apply based on 6th circuit case law.

Finally, FERPA permits the release of information so long as the student has provided signed consent. FERPA's consent provisions require a specification of 1) the records that may be disclosed; 2) the purpose of the disclosure; and 3) the identity of the party or class of parties to whom the records may be disclosed. 34 CFR § 99.30. Thus, nothing in FERPA would prevent the University from obtaining the student(s) consent permitting the release of education records prior to commencing an investigation of a complaint against a school official.

I trust that the above information is responsive to your inquiry. Should you have any further questions on FERPA, please feel free to contact this Office again.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office

Enclosure