

March 10, 1999

Mr. [ ]  
[ ]  
[ ]

Dear Mr. [ ]:

This is in response to your September 15 and October 2, 1998, letters to this Office in which you allege that [ ] (College) violated your rights under the Family Educational Rights and Privacy Act (FERPA). This Office administers FERPA, which relates to your concerns.

You allege that the College violated your rights by denying you access to information regarding your application to a graduate program and to information "as to who (gender and age) and how many people had been denied admission to their Graduate Counseling Program and the reasons therefore." You also allege that the College violated your rights when the "[ ] Police did contact Dr. Richard Spencer by telephone to ascertain [your] address." You state that you "do believe that Dr. Spencer did disclose to the police information other than address and telephone. . . ." Finally you alleged that Any person from the [ ] College before, after or during the time that [you were] a student at the [College] ever informed [you] of [your] rights verbally or in writing regarding [FERPA]." It appears that all of your allegations relate to incidents which occurred in 1995 and 1996.

This Office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. A complaint is timely if it is submitted to this Office within 180 days of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation. Because it appears that each of your allegations relate to incidents that occurred in 1995 and 1996, it appears that they occurred well over 180 days prior to the date you contacted this Office. As such, your allegations do not meet the threshold requirement on timeliness necessary for this Office to consider them.

Notwithstanding the fact that it does not appear that your allegations are timely, it does not appear that any of your allegations contain sufficient facts giving reasonable cause to believe that a violation of FERPA has occurred. Below is a discussion of FERPA and how it relates to your individual allegations.

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#### Alleged Denial of Access to Records Related to You

You stated that "many times during the year, 1995, I did request information from Dr. Richard Spencer and various other members of the [ ] Behavioral Science program . . . regarding my educational records pertaining to Graduate Appeals meetings I initiated to appeal the college[']s decision to deny my education." It appears that you requested information regarding notes and written materials from telephone interviews of your references as well as notes and written materials recorded "in association with the final meeting of the Graduate Appeals Committee. . . ." You provided a copy of a July 12, 1996, letter to you from Dr. Michele Moran Zide, Associate Vice President for Academic Affairs. Dr. Zide states in that letter:

- In regard to your request for additional information concerning minutes of meetings and other students['] standing in academic programs, please be informed that I am unable to provide you with that information.
- You are not a[n] individual who has standing under [FERPA] to have access to information you are seeking. Under the FERPA, an individual who is or has been enrolled

in one component unit of an institution, who applies for admission to a second unit, has no right to inspect the records accumulated by the second unit until enrolled therein.

Section 99.3 of the FERPA regulations defines the term "student" as any individual who is or has been in attendance at an educational agency or institution. Also, the FERPA regulations provide that if an individual is or has been in attendance at one component of an educational institution, that attendance does not give the individual rights as a student in other components of the institution to which the individual has applied for admission but has never been in attendance. Consistent with the legislative history of FERPA, a rejected applicant for admission is not given rights under FERPA because a student who has been rejected by a component of a postsecondary institution has never attended the institution in that capacity.

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#### Alleged Denial of Access to Information About Others

You alleged that the College violated your rights when it denied you "information relevant to [your] allegations against the college as to who (gender and age) and how many people had been denied admission to their Graduate Counseling Program and the reasons therefor." You stated that the College responded that "they do not keep records of that type and are not obligated to compile "new" records." You state that "those records should have been in place without the college having to compile new records."

FERPA requires that schools comply with a student's request for access to his or her education records within 45 days of receipt of the request. FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records. Thus, a school would not be required to take information maintained in certain education records and compile it to create a new education record.

FERPA defines "education records" as those records that contain information that is directly related to a student and that are maintained by an educational agency or institution or a party acting for the agency or institution. A school is not required by FERPA to provide an individual access to any information contained in education records that is not directly related to that individual, even if that individual is a student. Further, except in certain limited circumstances, FERPA requires that an educational agency or institution ensure that a student has provided his or her prior written consent before disclosing information from a student's education records. Thus, a school generally cannot disclose information from a student's education records to another individual without the consent of the student to whom the information relates.

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#### Alleged Disclosure of Information to the Police

You alleged that it is "[your] understanding that the [ ] Police did contact Dr. Richard Spencer by telephone to ascertain [your] address." You further stated with respect to this allegation that you "do believe that Dr. Spencer did disclose to the police information other than address and telephone. . . ."

As noted above, FERPA generally requires that a student provide written consent before an educational agency or institution discloses personally identifiable information from the student's education records. There are several exceptions to the general prohibition on nonconsensual disclosures, some of which could apply to situations such as the one you have described. First, FERPA permits the nonconsensual disclosure of personally identifiable information from education records in connection with a health or safety emergency, such as in certain instances where the police are investigating a crime. Another exception permits the disclosure of education records in compliance with a lawfully issued subpoena or court order if the educational agency or institution makes a reasonable attempt to notify the student of the order or subpoena in advance of compliance.

A third exception permits the nonconsensual disclosure of address and telephone number if the information has been designated as "directory information," so long as certain conditions have been met. Directory information is defined in FERPA as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as name, address, telephone number, date and place of birth, participation in officially recognized activities and sports, and dates of attendance.

A school may disclose directory information to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the student's right to restrict the disclosure of such information, and the period of time within which a student has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." A school is not required to inform former students regarding directory information or to honor their request that directory information not be disclosed. However, if a student, within the specified time period during the student's last opportunity as a student in attendance, requested that directory information not be disclosed, the school must honor that request until otherwise notified.

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#### Alleged Failure to Notify of Rights under FERPA

You alleged that "no person from the [ ] State College before, after or during the time that [you were] a student at [the College] ever informed [you] of [your] rights verbally or in writing regarding [FERPA]."

Schools are required to notify students of the right to inspect and review the student's education records and the procedure to do so; the right to seek amendment of records the student believes are inaccurate and the procedure to do so; and the right to consent to disclosures of education records except to the extent FERPA authorizes disclosure without consent. The notification must also inform students of their right to file a complaint with this Office and it must include a specification of criteria for determining who are school officials and what constitutes a legitimate educational interest in education records. A school is not required to notify students individually, but rather is required to provide the notice by any means that are reasonably likely to inform parents of their rights. These means could include publication in the school activities calendar, newsletter, or student handbook.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concerns.

Sincerely,  
LeRoy S. Rooker  
Director  
Family Policy Compliance Office