

May 26, 1995

Ms. Cathy R. Paul  
Assistant to the General Counsel  
Office of the General Counsel  
Yale University  
451 College Street  
P.O. Box 208255  
New Haven, Connecticut 06520-8255

Dear Ms. Paul:

This is in response to your May 1, 1995, letter of inquiry and in follow-up to your conversations with me and a member of my staff. You asked whether Yale University (University) could disclose a former student's education records to the State's attorney to assist in the investigation and prosecution of the student for larceny in the first degree. You state that the former student allegedly obtained financial aid, in the form of Federal loans and grants and University loans and scholarships, "through fraud and deceit by forging numerous documents in his admissions application." You ask whether the student's education records can be disclosed to the State's attorney under the provision in the Family Educational Rights and Privacy Act (FERPA) which permits the nonconsensual disclosure of education records when the disclosure is in connection with a student's application for, or receipt of, financial aid.

As you are aware, FERPA affords students certain rights with respect to their education records. As relevant here, FERPA generally provides that an educational agency or institution may only disclose a student's education records to a third party if the student has given appropriate written consent. 20 U.S.C. § 1232g(b)(1) and (b)(2)(A); 34 CFR § 99.30. However, FERPA permits the nonconsensual disclosure of education records in certain limited circumstances. As discussed in the telephone conversations, we believe two of the exceptions apply to this situation.

First, FERPA permits the nonconsensual disclosure of education records when the disclosure is made 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. 20 U.S.C § 1232g(b)(2)(B). 34 CFR § 99.31(a)(9). While § 99.32 of the

FERPA regulations generally requires that an educational agency or institution maintain a record of all requests for access to and disclosures from education records, we have determined that such recordation would not be required when the disclosure was made in compliance with a judicial order or subpoena so long as the school was successful in its attempt to notify the student of the order or subpoena in advance of compliance.

Additionally, we have also determined that the redisclosure provisions at 34 CFR § 99.33 do not apply to records that have been disclosed pursuant to a court order or lawfully issued subpoena. Once an institution determines that the subpoena or judicial order is valid and makes a reasonable attempt to provide advance notice in sufficient time to allow the student to take appropriate action, the institution is not responsible for taking any further action to protect the records against redisclosure, even to the press.

Further, FERPA was recently amended by the Improving America's Schools Act of 1994 so that advance notification is not required when a disclosure of education records is made in compliance with subpoenas or court orders issued for law enforcement purposes. The waiver of the advance notification requirement applies only when the law enforcement subpoena or court order contains language that specifies that the subpoena or court order should not be disclosed.

20 U.S.C. § 1232g(b)(1)(J). (See enclosed.) We would like to note here that the recordation requirements at 34 CFR § 99.32 would not apply when disclosure of education records is made in such instances, even though no prior notification will be made when a court order or subpoena prevents disclosure of the fact that it exists.

FERPA also permits the nonconsensual disclosure of education records when the disclosure is "in connection with a student's application for, or receipt of, financial aid." 20 U.S.C. § 1232g(b)(1)(D). The regulations provide that consent is not required when:

[t]he disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to--

- (A) Determine eligibility for the aid;
- (B) Determine the amount of the aid;
- (C) Determine the conditions for the aid; or
- (D) Enforce the terms and conditions of the aid.

34 CFR § 99.31(a)(4).

When disclosures are made pursuant to this financial aid exception, the record-keeping and redisclosure provisions apply. 34 CFR §§ 99.32 and 99.33.

Based on the circumstances you have presented, the disclosure to the State prosecutor would be permissible under the financial aid exception because the disclosure would be to enforce the terms and conditions of financial aid the student received. 34 CFR § 99.31(a)(4)(d). Additionally, if the record of the disclosure states the legitimate interest as investigating and prosecuting the student for suspected larceny, any redisclosures which are necessary to investigate and prosecute would be permissible. Such redisclosures would be permissible because, unlike the other exceptions to the prior written consent provision, the disclosure of records in connection with financial aid is not limited to a certain party; rather, it is limited only to a certain purpose.

Finally, you stated that the University has disclosed documents to the Department's Office of the Inspector General (OIG) under the financial aid exception. You ask whether OIG could redisclose the information to the State prosecutor for the investigation. As discussed above, when a disclosure is made pursuant to the financial aid exception to the prior written consent provisions, the information disclosed may be redisclosed as necessary to fulfill the purpose for which the disclosure was made. The record-keeping requirements apply and the record of disclosure must state the legitimate interest of OIG and of the State prosecutor in the information.

I trust that the above information is helpful to you. Should you have additional questions regarding this matter or FERPA in general, please do not hesitate to contact this Office again. Please note that our correct address is:

Family Policy Compliance Office  
U.S. Department of Education  
600 Independence Avenue, SW  
Washington, DC 20202-4605

Sincerely,

LeRoy S. Rooker  
Director  
Family Policy Compliance Office