

Mr. Joseph W. Ambash
Seyfarth Shaw
World Trade Center East
Two Seaport Lane
Suite 300
Boston, Massachusetts 02210-2028

Dear Mr. Ambash:

This responds to your February 12, 2002, facsimile and recent conversation with Ms. Ingrid Brault of my staff asking for advice regarding the Family Educational Rights and Privacy Act (FERPA) as it relates to a request for information that the University of Massachusetts (University) has received from the Graduate Employee Organization, Local 2322, UAW (Union). As you are aware, this Office administers FERPA and is responsible for providing technical assistance to educational agencies and institutions regarding issues related to education records.

In your letter, you explain that part of the collective bargaining agreement between the Union and the University requires that the University disclose to the Union the following information on its graduate students: student ID number, social security number, waiver type, academic department, work department, employment category, number of hours contracted for, stipend, length of contract, entrance date, home address, phone number, and the fact that they may have been identified for lay-off. You explain that while the Union represents Teaching Assistants, Teaching Associates (graduate students who teach credit courses and whose names are listed in the schedule of courses), and Research Assistants, among others, the University has only defined Teaching Associates in its definition of directory information. You ask, therefore, whether the University may release the above outlined information on its Teaching and Research Assistants and Teaching Associates absent their prior written consent or absent a subpoena for such.

FERPA defines "education records" as "those records, files, documents and other materials which -

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. 1232g(a)(4)(1) and (ii). FERPA specifically includes in the term, those records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student. 34 CFR § 99.3 (b)(3)(ii). Therefore, under FERPA records of Teaching Assistants, Teaching Associates, and Research Assistants whose employment at the University is contingent of their status as students, are "education records," and, as such, are subject to the FERPA provisions authorizing their disclosure or nondisclosure.

With regard to the disclosure of education records, FERPA generally provides that an educational agency or institution may only disclose a student's education record to a third party if the eligible student has given appropriate written consent. 20 U.S.C. § 1232g(b)(1) and (b)(2)(A); 34 CFR § 99.30. FERPA does provide that written consent is not needed if the disclosure concerns information the educational agency or institution has designated as "directory information," under the conditions described in 34 CFR § 99.37. See 34 CFR § 99.31(a)(11). The definition lists items that would not generally be considered harmful or an invasion of privacy if disclosed which includes, but is not limited to: a student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; enrollment status (e.g. undergraduate or graduate; full-time or part-time); participation in officially recognized activities and sports; weight and height of members of athletic teams; dates of attendance; degrees and awards received; and the most previous educational agency or institution attended. 34 CFR § 99.3 ("Directory information").

We have advised in the past that a graduate fellow's/assistant's status as a graduate fellow/assistant and his/her teaching assignment may be designated as directory information, should an educational agency or institution so choose. This information is similar to those types of information that are specified by the statute under the definition of directory information and are of a nature of being common knowledge to those who are in the individual's class or who pass by the class. In this regard, if a school publishes and/or posts the names of teaching fellows/assistants with course selection or other registration information, it should be designating these two items as directory information.

You noted that the University has designated Teaching Associates as directory information. Accordingly, the names of those students who are Teaching Associates may be disclosed as directory information. However, as explained above, the records of a Teaching Associate are education records as defined under FERPA. Thus, as with all student education records, FERPA would prevent the University from disclosing information such as the student ID number, social security number, number of hours contracted for, stipend, length of contract, employment category and, entrance date to the Union absent another provision that allows for the disclosure. Other information requested by the Union, like home address and phone number may fit the definition of directory information under FERPA and could, if appropriately designated, be disclosed. As for the fact that a Teaching Associate may have been identified for a lay-off, that information would be protected from disclosure if such information is documented in a record at the University.

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,

LeRoy S. Rooker
Director
Family Policy Compliance Office