

February 12, 2002

Mr. L. Lee Tyner, Jr.  
Associate University Attorney  
The University of Mississippi  
209 Lyceum  
P.O. Box 1848  
University, Mississippi 38677-1848

Dear Mr. Tyner:

This is in response to your January 25, 2002, letter to this Office in which you request our opinion concerning an application of the Family Educational Rights and Privacy Act (FERPA). Specifically, you "request an opinion . . . regarding whether certain documents are" education records under FERPA. You enclosed a copy of a letter from the University of Mississippi (University) to the Southeastern Conference (SEC) and a redacted self-report to the National Collegiate Athletic Association (NCAA) as examples of the documents you wish us to review. In your letter, you explain that you previously released similar documents after removing "the names of current or former students and any other personally identifiable information" in response to a request for the documents from The Clarion-Ledger, a daily newspaper in Mississippi. You state you are requesting guidance on whether you may, under FERPA, disclose the example and similar documents in personally identifiable form in response to a request from The Clarion-Ledger for an unredacted version of the documents. This Office administers FERPA, which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. When a student reaches 18 years of age or attends a postsecondary institution, he or she becomes an "eligible student" and all rights under FERPA transfer from the parent to the student. 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)(i) and (ii). In using the term "education records," the Department refers to materials that are preserved or retained by an educational agency or institution, or someone acting for such agency or institution, as an institutional or official record of the student. In other words, the term does not include student work that is created, used, or kept in the classroom and does not become part of the student's institutional record.<sup>1</sup>

FERPA generally prohibits the disclosure of personally identifiable information derived from education records without the prior written consent of the eligible student, except in certain specified circumstances. Based on the information you have provided this Office, none of the exceptions to the prior written consent provision in § 99.31 applies to The Clarion-Ledger's request for unredacted documents. 34 CFR § 99.30 and 99.31.

Please note that section 99.3 of the regulations defines "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 the 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;
- or
- (f) other information that would make the student's identity easily traceable.

(Emphasis added.)

Based on our review of the letter and sample report you submitted, this Office has determined that the documents at issue are education records. We have determined that the documents, in unredacted form, are education records because they are directly related to the student -- they contain specific information such as the name of the student and his high school - and because the documents are maintained by the University, and are institutional in nature (they relate to the school's responsibility to self-report violations to the NCAA)<sup>2</sup>.

FERPA does not specifically define "easily traceable," and situations regarding disclosures of information that could be considered easily traceable must be analyzed on an individual basis. For example, a university is in the best position to determine whether a redacted version of an education record would be easily traceable if disclosed by the institution. In making this determination, an institution should take into consideration a number of factors. First, the school should consider whether the party seeking access to the records has prior knowledge of the students listed in the education record. In examining the prior knowledge of a potential recipient, the standard the school official should apply is whether the individual can trace the identity of the student without significant amounts of additional searching for information. Thus, our focus has been on whether the school official reasonably could have concluded, at the time of the disclosure, that the disclosure would not make the student's identity easy to trace. If an institution determines that an education record remains easily traceable to a student even after it has been redacted, the institution would be prohibited from disclosing the record without the prior written consent of the student.

I trust that the above is responsive to your inquiry.

Sincerely,

LeRoy S. Rooker  
Director  
Family Policy Compliance Office

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1 This interpretation of "education records" is the position of the United States as set out in more detail in an amicus curiae brief supporting petitioners in *Owasso Independent School District No. I-011 v. Falvo* No. 00-1073 (S. Ct.). The Supreme Court may rule on the scope of the term "education records" in the above-captioned matter. The Department will review the Court's ruling in this case, and may issue additional guidance or regulations to further clarify the scope of the term "education records."

2 In an unreported decision, the Chancery Court of the 1st Judicial district of Hinds County rules on this issue in 1996. *Gannett River States Publishing Corporation v. Mississippi State University*, Case G95-1795 (July 5, 1996). The court held that the records at issue in that case - correspondence from the NCAA to the university - were subject to disclosure under the judicial order exception in FERPA. In order to apply the exception, the court had to have concluded that the records were "education records" under FERPA. To the extent the holding contradicts the notion that correspondence to or from the NCAA is an education record, the Department disagrees with the ruling.

