

August 15, 2005

Julie Ann Evans, Esq.  
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Dear Ms. Evans:

This is in response to your July 12, 2005, letter to this Office in which you asked for guidance on the disclosure of information to the Federal Aviation Administration (FAA) under the Family Educational Rights and Privacy Act (FERPA). This Office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations codified at 34 CFR Part 99.

You ask whether the University “may provide information obtained from school records regarding violation of Federal Aviation Regulations (FAR) to the Federal Aviation Administration (FAA) without a student’s permission.” You also ask whether a student may be required or allowed to “sign a waiver allowing the University, without notice to the student, to report FAR violations to the FAA based on a student’s educational information.”

The University offers a flight training program that requires students to take several educational blocks, including both classroom and flight training. At the end of each block, a student’s flight records are reviewed by University records personnel. An FAA Chief Flight Instructor (CFI), currently an instructor at the University, must also review education records in order to certify the student’s performance at the end of each block. If a CFI finds that a student violated a provision in the FAR, the student may be required to retake lessons from the time of the violation in order to be certified for that training block, and the student cannot take the next block until certification of the previous block is received.

You state that the University wants to inform the FAA of student FAR violations at the time the violation is found instead of waiting until the CFI certification process at the end of each training block. The University believes that this expedited process would enhance the speed of remediation of the problem and benefit the student. The FAA favors this change, but there is no FAA regulation that requires the University to provide this earlier notice to the FAA.

FERPA protects the privacy interests of eligible students in their education records. Under FERPA, an eligible student is one who is 18 years of age or attends a postsecondary institution. An eligible student has the right to inspect and review their education records, to seek to have the

education records amended if they are inaccurate or misleading, and to consent to the disclosure of information from the education records, except as provided by law. Specific requirements for written consent are set forth in 34 CFR § 99.30, and exceptions to the consent requirement are contained in § 99.31.

“Education records” are defined broadly in FERPA as those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 (“Education records”). Information concerning student FAR violations, course accomplishments, and assignment grades clearly fall within the definition of “education records” that are protected under FERPA.

One of the exceptions to the prior written consent requirement in FERPA allows an educational agency or institution to disclose education records to “other school officials, including teachers, *within the agency or institution* whom the agency or institution has determined to have legitimate educational interests.” 34 CFR § 99.31(a)(1) (emphasis added). Under this exception, a university may disclose education records, without student consent, to its officials who meet its published definition of legitimate educational interest. Generally, if a school official is performing an official task for the University that requires access to information in education records, that official has a legitimate educational interest.

In his capacity as an instructor at the University, the CFI may have access to education records in order to fulfill his official duties as an instructor at the University. This exception does not extend to his duties as a CFI, and the information he has obtained in his position as an instructor may not be redisclosed without consent to a third party such as the FAA. Currently, the student provides a voluntary consent that permits the redisclosure of information to the FAA as part of the FAA’s certification process at the end of each training block. The University may request, but not require, a student to provide a voluntary consent permitting the redisclosure of information to the FAA at the time a FAR violation is discovered.

In summary, FERPA does not permit the University to disclose education records to the FAA without the prior written consent of the student. However, a student may provide his or her consent in accordance with 34 CFR §99.30 that will permit the University to disclose the FAR violation to the FAA upon discovery. The University may request, but not require, that a student provide such consent in order to participate in the program.

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

Sincerely,

/s/

LeRoy S. Rooker

Director

Family Policy Compliance Office