

Dr. John R. Leitzel  
President  
University of New Hampshire  
Thompson Hall  
105 Main Street  
Durham, New Hampshire 03824

Complaint No. XXXX  
Family Educational Rights  
and Privacy Act

Dear Mr. Leitzel:

This is to inform you of the finding in the complaint filed with this Office against the University of New Hampshire (University) by [Student]. The Student alleged that the University violated her rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from her education records to third parties without her prior written consent. Specifically, the Student alleged that the University allowed Dr. Frank Rodgers, a professor of microbiology and the Student's former research/academic advisor, to obtain access to personally identifiable information in her education records, including her Graduate Records Examination (GRE) scores, without her prior written consent after Dr. Rodgers was no longer her counselor and, thus, did not have a legitimate educational interest in such records. The Student further alleges that Dr. Rodgers disclosed her GRE scores to his personal attorney, Mr. Paul Twomey, without the Student's prior written consent. The Student states:

. . . From September 1995 to August 1996 my research/academic advisor was

Dr. Frank Rodgers. . . .

On February 6, 1996, I was physically assaulted by my former advisor,

Dr. Rodgers.

On September 3, 1996, I switched advisors. Dr. Thomas Pistole, Professor of Microbiology, became my research/academic advisor. . . .

On January 27, 1997, I pressed criminal charges of simple assault with UNH Police Department against Dr. Rodgers, in accordance with the Criminal Law of the State of New Hampshire.

. . . On October 16, 1997, I was the first witness for the state and took the stand to testify in Durham District court. During cross-examination, Dr. Rodgers' defense attorney, Mr. Paul Twomey, disclosed my Graduate Records Examination (GRE) scores in the packed public court of Durham. My scores were read aloud to the public with the intention to provide to the court that I was a poor student academically as reflected in my GRE scores in his opinion. . . .

I was taken by complete surprise by the GRE revelation because I did not give permission to anyone at UNH or elsewhere to release my GRE scores kept in my confidential file at the institution. On September 5, 1997, the Registrar's Office at UNH released my official transcripts only (courses and grades) to the prosecuting attorney, Ms. Susan Morrell, with my signed permission. My academic file was not part of the records that were subpoenaed by the prosecution or defense. [Emphasis provided.]

By letter dated April 17, 1998, this Office informed you of the Student's allegation and asked that the University provide a written response. Mr. Ronald F. Rodgers, General Counsel for the University (General Counsel), responded by letter dated June 3, 1998. In his letter, the General Counsel states in relevant part:

. . . UNH responds as follows:

1. UNH admits that from September 1995 to August 1996, Professor Frank Rodgers was the Student's academic advisor.
2. UNH denies that Professor Rodgers physically assaulted the Student . . .
3. UNH admits that on September 3, 1996, Professor Thomas Pistole became the Student's advisor.
4. UNH admits that the Student filed a criminal complaint against Professor Rodgers.
5. UNH admits that the Student testified in the criminal trial against Professor Rodgers and that the defense counsel used her Graduate Records Examination ("GRE") scores on cross-examination. Over the prosecutor's objection, the court allowed the cross-examination on the basis that the GRE scores were relevant to the Student's abilities as a graduate student, a matter that was put into evidence by the complainant's own testimony during the prosecutor's direct examination.
6. UNH admits that the Student did not give UNH permission to release her GRE scores and, further, that those scores were not the subject of any subpoena issued in the criminal case.
7. By way of further answer, UNH states that the Student gave Professor Rodgers a copy of her GRE scores at the time she was considering applying for admission to UNH graduate program in microbiology. Professor Rodgers, without requesting or receiving permission from any UNH employee, or agent turned over to his criminal defense lawyer a copy of these scores. Professor Rodgers' defense counsel used those scores in the course of a criminal trial in a manner and for a purpose consistent with the constitutional rights of his client. . . .

Under FERPA, the term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. 20 U.S.C.

§ 1232g(a)(4); 34 CFR § 99.3 "Education records." A school may not generally disclose personally identifiable information from a student's education records to a third party unless the student has provided written consent. 34 CFR § 99.30.

There are, however, several exceptions to FERPA's prohibition on nonconsensual disclosure of education records. One such exception allows a school to disclose education records to "school officials," including teachers, administrators, counselors, and attorneys that are employed or contracted by the school, whom the school has determined to have a "legitimate educational interest." 34 CFR § 99.31(a)(1). Generally, if a school official is performing an official task for the school that requires access to information in education records, that official has a legitimate educational interest. Another exception permits a school to nonconsensually disclose education records in order to comply with a judicial order or a lawfully issued subpoena. 34 CFR

§ 99.31(a)(9). A school may generally disclose education records under this exception only if it makes a reasonable effort to notify the student of the order or subpoena in advance of compliance.

As the student's advisor, Professor Rodgers would generally meet the definition of a school official under FERPA. However, in his response, the General Counsel does not provide evidence that Professor Rodgers had a legitimate educational interest in having access to the Student's GRE scores at the time of the Student's allegation. That is, when Professor Rodgers accessed the Student's GRE scores in order to defend himself in light of the accusations made against him, he did not have a legitimate educational interest as defined by FERPA. With regard to the General Counsel's statement that the Student, herself, provided Professor Rodgers with her GRE scores, as indicated above, Professor Rodgers is a school official and, as such, an agent of the University. Regardless of how the Student's GRE scores came into Professor Rodgers' possession, i.e., the University's possession, they are the Student's education records and protected by FERPA against nonconsensual disclosure.

Furthermore, even if Professor Rodgers had a legitimate educational interest in the Student's GRE scores, FERPA would prohibit him from disclosing them to Mr. Twomey because the matter before the court related to Professor Rodgers personally and not to the University. Mr. Twomey was Professor Rodgers' personal attorney and not a University official or a party acting for the University. As such, Mr. Twomey is a third party, and FERPA would generally prohibit the University (i.e., Professor Rodgers) from disclosing the Student's education records to a third party absent the Student's written consent. If Professor Rodgers and Mr. Twomey believed that the Student's GRE scores were necessary for Professor Rodgers' defense in court, Mr. Twomey should have asked the Court to subpoena the records. The General Counsel states, however, that the University did not receive a subpoena for the Student's GRE scores.

This Office finds that the University violated FERPA, as alleged by the Student, when Professor Rodgers accessed the student's education records without having a legitimate education interest and when Professor Rodgers disclosed the Student's education records to his personal attorney without the Student's prior written consent. The Student will be informed of our finding by copy of this letter.

In order for this Office to close the investigation of this complaint, we need to receive assurance and evidence that the University has informed appropriate officials of FERPA's prior written consent requirement for disclosure of education records. Enclosed for your information are copies of the FERPA regulations, a recent amendment to the regulations, and a model annual notification of rights which may be useful in helping you to inform school officials about FERPA. Also, below is the address to our home page which includes additional information regarding FERPA.

[www.ed.gov/offices/OM/fpco/](http://www.ed.gov/offices/OM/fpco/)

Thank you for your continued cooperation with regard to the resolution of this complaint.

Sincerely,

LeRoy S. Rooker  
Director  
Family Policy Compliance Office

Enclosures

cc: Student