

September 27, 1999

Ms. Doris Dixon
Director of Federal Relations
National Collegiate Athletic Association
One Dupont Circle, NW, Suite 400
Washington, D.C. 20036

Dear Ms. Dixon:

This is in response to your August 25, 1999, letter written in follow-up to the March 12, 1999, letter of advice we gave the National Collegiate Athletic Association (NCAA) on the Family Educational Rights and Privacy Act (FERPA) as it relates to written consent that student-athletes must provide before the NCAA can disclose information from their education records. You provided this Office with three separate consent proposals that the NCAA is considering for use in its application and eligibility forms for student-athletes. You ask that we review the proposed language and submit to you any suggestions or recommendations. You explain that you plan on presenting the proposed language to the NCAA governance bodies at an executive meeting scheduled for this October.

As you know, FERPA generally protects privacy rights with respect to "education records." "Education records" are records that contain information directly related to a student and that are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." The rights afforded under FERPA rest with a student's parents until the student reaches the age of 18 or attends an institution of postsecondary education. 34 CFR §§ 99.3 "Eligible student" and 99.5(a). Generally, in order to disclose information from student education records, a parent or eligible student must provide his or her prior written consent. FERPA's consent provisions require a **specification** of 1) the records that may be disclosed; 2) the purpose of the disclosure; and 3) the identity of the party or class of parties to whom the records may be disclosed. 34 CFR § 99.30. In our recommendations on the NCAA's proposed language, we have addressed each consent separately for the purpose of clarity.

1. Proposed Language for Initial Eligibility Waiver Application (both self-filed and institutional)

Additionally, I give my consent to the NCAA to disclose personally identifiable information from my educational records to a third party, including but not limited to the media, for the purpose of correcting inaccuracies or reporting about this waiver, without such disclosure constituting a violation of my rights under the Family Educational Rights and Privacy Act.

- At the term, "personally identifiable information," we believe that the consent form should point out "*the necessary* personally identifiable information." This gives a more specific indication of the records that will be disclosed.
- Remove the term "reporting" which is confusing and change "correcting inaccuracies about this waiver" to "correcting any inaccuracies related to this waiver."
- Correct the term "educational records" to "education records."

With our above suggested changes, the consent form would read:

Additionally, I give my consent to the NCAA to disclose the **necessary** personally identifiable information from my **education records** to a third party, including but not

limited to the media, for the purpose of **correcting any inaccuracies related to** this waiver, without such disclosure constituting a violation of my rights under the Family Educational Rights and Privacy Act.

2. Proposed Language for the Student-Athlete Statement

Further, you agree to authorize the NCAA to disclose personally identifiable information from your education records, including any NCAA violations that you engage in while you are a student-athlete, to a third party, including but not limited to the media, for the purpose of correcting inaccurate statements related to the processing of a student-athlete reinstatement case, infractions case or waiver request. You also agree that case information may be published or distributed to third parties but that you will not be identified by name in any such published or distributed data.

- At the term, "personally identifiable information" we believe that the consent form should point out "*the necessary* personally identifiable information." This gives a more specific indication of the records that will be disclosed.
- In the last sentence, specify what records are comprised in "case information," include the term "necessary" before case information, and state the purpose of this type of release, for example, specify the NCAA bylaw(s) that requires such publication or distribution.
- Correct the term "no" to "not"

With our above suggested changes, the consent form would read:

Further, you agree to authorize the NCAA to disclose **the necessary** personally identifiable information from your education records, including any NCAA violations that you engage in while you are a student-athlete, to a third party, including but not limited to the media, for

the purpose of correcting inaccurate statements related to the processing of a student-athlete reinstatement case, infractions case or waiver request. You also agree that **necessary** case information, **that is, information from your student-athlete reinstatement case, infractions case or waiver request to be published or distributed to third parties as required by NCAA bylaws.** You will not be identified by name in any such published or distributed data.

3. Proposed Language for the NCAA Initial-Eligibility Clearinghouse Student Release Form

I understand and agree to abide by the procedures in the NCAA Guide for the College-Bound Student-Athlete. I authorize the high schools listed to release to the NCAA Initial-Eligibility Clearinghouse my transcripts, including ACT and SAT scores, proof of graduation, and any other academic information or records, as requested by the Clearinghouse for determining my athletic eligibility. I further authorize the release of information or records obtained by the Clearinghouse, including this release form and resulting certification decisions, to the NCAA, to any testing service whose test scores are included in my records (e.g. ACT or ETS), to my current high school, and to all NCAA member institutions requesting my eligibility information. I authorize the NCAA to disclose personally identifiable information from my education records (without such disclosure constituting a violation of my rights under the Family Educational Rights and Privacy Act) to a third party, including but not limited to the media, for the purpose of correcting inaccuracies or reporting about my preliminary or final certification decision. I understand and agree that the information provided to the Clearinghouse also may be used for research concerning athletic eligibility, the academic preparation and performance of student-athletes, and

related issues. I also understand and agree that the research may be published or distributed to third parties but that I will not be identified in any such published or distributed data.

- For clarity, change "for determining" to "for the purpose of determining"
- Regarding the second sentence, in consideration of the breadth of the education records that will be disclosed and parties that will receive it, the NCAA should specify the purpose of the disclosure. For instance, the Clearinghouse will be able to release any education records it obtains to the NCAA, testing services whose scores are in the student's records, the student's current high school, and all NCAA member institutions. The NCAA should clarify the limitations of this provision by specifying the purpose of these disclosures.
- We believe the sentence "the release of information or records" should state "the release of *necessary* personally identifiable information from education records" and the sentence that begins "I authorize the NCAA to disclose personally identifiable information from my education records" should also include the term, *necessary*.
- Remove the term "reporting" which is confusing and change "correcting inaccuracies about this waiver" to "correcting any inaccuracies related to my preliminary or final certification decision."
- In the fourth sentence, after the word Clearinghouse, the NCAA should add "for the purpose of determining my athletic eligibility."
- In the last sentence, it appears that the NCAA is informing students that the information from their education records (that is disclosed by schools to the Clearinghouse) will be subsequently published in nonpersonally identifiable form for the purpose of studying academic preparation and student performance statistics. If that is the case, then the NCAA does not need to amend this sentence. However, if the NCAA believes that a student can be identified when certain information is published in this manner, then the last sentence should be reworked to meet FERPA's prior written consent requirement. That is, state the specific records that will be disclosed, the purpose of the disclosure and to whom the disclosure will be made.

With our above suggested changes, the consent form would read:

I understand and agree to abide by the procedures in the NCAA Guide for the College-Bound Student-Athlete. I authorize the high schools listed to release to the NCAA Initial-Eligibility Clearinghouse my transcripts, including ACT and SAT scores, proof of graduation, and any other academic information or records, as requested by the Clearinghouse for **the purpose of** determining my athletic eligibility. **For the purpose of . . . , I further authorize the release of necessary personally identifiable information from my education records** obtained by the Clearinghouse, including this release form and resulting certification decisions, to the NCAA, to any testing service whose test scores are included in my records (e.g. ACT or ETS), to my current high school, and to all NCAA member institutions requesting my eligibility information. I authorize the NCAA to disclose **the necessary** personally identifiable information from my education records (without such disclosure constituting a violation of my rights under the Family Educational Rights and Privacy Act) to a third party, including but not limited to the media, **for the purpose of correcting any inaccuracies related to my preliminary or final certification decision**. I understand and agree that the information provided to the Clearinghouse **for the purpose of determining my athletic eligibility** also may be used for research concerning athletic eligibility, the academic preparation and performance of student-athletes, and related issues. I also understand and agree that the research may be published or distributed to third parties but that I will not be identified in any such published or distributed data.

A final note, if the prospective student-athlete is not an eligible student under FERPA, that is, he or she is under 18 years of age or is not yet in attendance at the postsecondary institution, then it is the student's parents who must sign the consent forms.

I trust that the above information is helpful. If you have further questions, please do not hesitate to contact this Office again.

Sincerely,

LeRoy S. Rooker
Director
Family Policy Compliance Office