

FERPA does not apply to student newspapers (p. 2)



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HUMAN RESOURCES AND ADMINISTRATION

SEP 20 1993

Family Educational Rights
and Privacy Act (FERPA)

This is in response to your _____ letters, received in
this Office on _____ and _____ and to your
letter _____ regarding allegations that your
rights under the Family Educational Rights and Privacy Act
(FERPA) had been violated. This Office administers FERPA and is
authorized to investigate complaints containing specific
allegations of fact giving reasonable cause to believe that a
violation of FERPA has occurred.

FERPA is a Federal law which affords students the right to have
access to their 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. FERPA generally
protects a student's privacy interest in "education records,"
which are broadly defined as those records, files, documents, and
other materials which contain information directly related to a
student and which are maintained by an educational agency or
institution, or by a person acting for such agency or
institution. FERPA provides that education records, or
personally identifiable information from such records, may be
disclosed by institutions of postsecondary education to third
parties only after obtaining prior written consent of the
student. However, there are certain exceptions to the prior
consent requirement.

FERPA was amended in July 1992 to exclude from the definition of
"education records" records created and maintained by a campus
law enforcement unit for a law enforcement purpose. The
amendment neither requires nor prohibits the release of law
enforcement unit records, but allows schools to follow their own
policies or applicable State law. Accordingly, FERPA no longer

prevents a campus law enforcement unit from disclosing to outside parties -- such as the media -- law enforcement unit records, including campus security incident reports, that were created by the campus law enforcement unit for a law enforcement purpose. The Department is in the process of issuing regulations to implement this recent change to the law.

This Office has written Dr. Richard Peck, President, University of New Mexico (University) to advise him of your allegation that the University violated §99.30 of the FERPA regulations when it allowed the unauthorized release of personally identifiable information from your education records. Specifically, we are investigating your allegation that Mr. Brian Polding, Dean of Students, or someone in his office, disclosed information from your education records to the campus newspaper, the Daily Lobo, and that the Chief of the University Police Department disclosed information from your education records to the Daily Lobo and to the Albuquerque Journal. This Office is also investigating your allegation that Mr. Polding disclosed a letter you wrote to him, as part of your therapy, to the Administrator of the Student Standards and Grievance Committee, who then shared that letter with the committee. However, as explained more fully below, we are not investigating the following allegations:

Allegation

In the letter received by this Office which clarifies certain aspects of your complaint, you allege that your rights under FERPA were violated when the University Police Department disclosed "police report no. _____" to Mr. Polding, who then put the report into your student records.

Discussion

As explained above, FERPA was amended in July 1992 to exclude from the definition of "education records" records created and maintained by a campus law enforcement unit for a law enforcement purpose. Accordingly, FERPA does not apply to the University Police Department record of your concern and, thus, does not prevent the University Police Department from disclosing law enforcement unit records to anyone, including other school officials.

Additionally, FERPA does not require that a school maintain or not maintain particular information in a student's education records. Such decisions are made at the discretion of the school. Therefore, it would not be a violation of FERPA for the Dean of Students to maintain the information of your concern in your student file. Therefore, we are not investigating this allegation.

Allegation

You allege that the editor of the Daily Lobo violated FERPA by disclosing information regarding the police report to your

Discussion

FERPA was not intended to apply to campus newspapers or records maintained by campus newspapers. Rather, FERPA applies to "education records" maintained by an educational agency or institution, or by a person acting for such agency or institution. Accordingly, there is no basis for us to investigate this allegation.

Allegation

You allege that on October 20, 1992, you were handed a letter of suspension and debarment from the University by Mr. Polding in the presence of _____ You state that

Discussion

It is not clear from your allegation whether Mr. Polding disclosed the information contained in the letter by discussing that information _____ FERPA would not preclude Mr. Polding from handing you a record in the presence of another student. In this regard, you have not presented specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. Therefore, there is no basis for us to investigate this allegation.

Allegation

You state that the University Police report should be removed from your education records because it contains charges that were dismissed by court order.

Discussion

Under FERPA, students generally have the right to request the amendment of information contained in education records which the student believes to be inaccurate, misleading, or in violation of his or her privacy. It is the responsibility of the student to clearly request amendment of the contested portion of the record. However, a school is not required to amend an education record in accordance with a student's request. The school is required to consider the request and to inform the student of its decision. If the school decides not to amend the record as requested by the student, it must inform the student of its decision and of the

student's right to a hearing. If, as a result of the hearing, the school again decides not to amend the record, the student has a right to submit a statement to the record setting forth his or her views regarding the contested record. That statement must remain with the record for as long as the record is maintained.

However, the opportunity to challenge the contents of the education records of a student is not unlimited. FERPA was intended to require only that educational agencies and institutions conform to fair record-keeping practices and not to override the accepted standards and procedures for making academic assessments or decisions of a substantive nature. Accordingly, the FERPA amendment provisions may be used to challenge facts that are inaccurately recorded but may not be used to challenge grades, evaluations of a student's behavior or performance, or decisions regarding disciplinary actions or proceedings.

Additionally, as explained above, FERPA does not apply to records created and maintained by a campus law enforcement unit for a law enforcement purpose. Accordingly, any records created and maintained by the University Police Department regarding you would not be subject to FERPA and you could not seek to amend those records.

In your _____ addressed to Mr. Polding, a copy of which you provided this Office, you stated that you wished to challenge the information contained in certain police reports. You reference a State law entitled the Arrest Record Information Act, stating in relevant part:

Police Report _____ (charge unlawful carrying of a D.W.)
this charge has been dismissed and under the Arrest
Information Act must be removed from my records . . . Police
Report _____ (charge Public Trespass) this charge has been
dismissed and under the Arrest Information Act must be
removed from my records.

Mr. Robert E. Bienstock, Associate University Counsel, responded to your request by letter _____ in which he addressed the specifics of the State law you cited. Because your _____ was specific to the Arrest Record Information Act, I suggest that you make another request to the University, under FERPA, requesting that the record of your concern be amended. If the University does not respond or refuses to comply with your request and does not provide you with an opportunity for a hearing to challenge the record, you may contact this Office again, enclosing a copy of your letter of request and a copy of the University's reply.

As explained above, records created and maintained by a campus law enforcement unit are not subject to FERPA. Accordingly, a student cannot seek to amend information contained in law enforcement-unit records. Any challenges in this regard under a State law would have to be addressed by a State entity, not the U.S. Department of Education.

Allegation

You allege that the University's Chief of Police gave an interview to a reporter for the Albuquerque Journal in which he disclosed information from "your education record along with confidential hospital records, and false statements."

Discussion

This Office is investigating your allegation that the University's Chief of Police disclosed to the newspaper information from your education records provided to the Police Department by the University. However, as explained above, the University Police Department would not be prohibited by FERPA from disclosing information from law enforcement unit records, that is, information created and maintained by the campus police for law enforcement purposes. Additionally, we are not investigating your allegation that information from your hospital records was disclosed to the newspaper. FERPA does not apply to records created and maintained by hospitals.

Allegation

You allege that your "forced stay" at the University of New Mexico Mental Health Center and Mr. Polding's "further requirement [that you] seek psychiatric care, treatment and testing" is in violation of your rights under FERPA.

Discussion

As explained above, FERPA provides students the right to have access to their 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. FERPA does not address an educational institution's decision to require a student to seek medical attention. Therefore, no basis exists for this Office to investigate this allegation.

A copy of our letter to Dr. Peck is enclosed. When this Office has had an opportunity to review Dr. Peck's reply to our letter, you will be advised of the next step in the investigation. Please refer to control number _____ in any correspondence regarding the complaint.

I trust that the above adequately explains the scope and limitations of FERPA as it pertains to your concerns that this Office is not investigating. Enclosed for your information is a fact sheet on FERPA.

Sincerely,



LeRoy S. Rooker
Director
Family Policy Compliance Office

Enclosure

cc: ✓ Mr. Robert E. Bienstock
Associate University Counsel