



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

April 28, 2014

Ms. Leslie Chambers-Strohm
Vice Chancellor and General Counsel
University of North Carolina at Chapel Hill
Office of the University Counsel
CB #9105, 110 Bynum Hall
222 East Cameron Avenue
Chapel Hill, North Carolina 27599-9105

Dear Ms. Chambers-Strohm:

This is to respond to your March 17, 2014, letter to this office in which you request technical assistance on the applicability of the Family Educational Rights and Privacy Act (FERPA) to a request from a newspaper for access to a certain document maintained by the University of North Carolina at Chapel Hill (University). The newspaper request was made under North Carolina's Public Records Act. Specifically, you request this office's guidance on whether disclosing the information from a spreadsheet which contains certain information (items 1-12 below) from student athletes' education records, absent each student's prior written consent, violates FERPA. This office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute (20 U.S.C. § 1232g) and the regulations, which are codified at 34 CFR Part 99.

Specifically, you state that pursuant to a January 23, 2014, lawsuit against the University of North Carolina at Chapel Hill (University), a regional newspaper is seeking a copy of a spreadsheet which is maintained by the University which includes the following data set from the education records of student athletes:

1. University Personal Identification number ("PID")
2. Name of Student
3. Sport
4. Course Title
5. Semester when the course was taken
6. Degree Date
7. Student's Major Field of Study 1
8. Student's Major Field of Study 2
9. Hours earned toward degree
10. Cumulative Grade Point Average
11. Number of Type 1 Courses Taken
12. Folder [notes or comments made by the official creating the document.]

You describe the spreadsheet as an internal document relating to certain student athletes who participated in particular courses offered by the University’s Department of African and Afro-American Studies, which you have classified as “Type 1 Course[s].” In this regard, you state the following:

- a. The data set of personally identifiable student information requested by the newspaper, coupled with each student’s coursework, if disclosed, would permit a reasonable person to discern the identity of students, especially if the student athlete participated in a Type 1 course in more than one academic year.
- b. University media guides and local and national media profiles routinely provide biographical information about student-athletes whose status receives a high profile. With the availability of additional information of these already high profile students through a plethora of various social media and other electronic mediums, such disclosure could be highly personal.
- c. The requesting newspaper has previously filed over 60 public records requests with the University. Last year the University released the results of an independent review of the Type 1 classes per semester, the total enrollment in the courses. Media coverage was extensive, creating more than 2,000 media stories of potential violations of NCAA bylaws and related investigations have been written.

Based on the information in your letter, the University believes that the requested spreadsheet is either already “linked or linkable to specific students” with reasonable certainty or a “targeted request.” Therefore, the University asserts that if the spreadsheet were made public, the information it contains, in combination with other information publicly available, would allow members of the University community to identify with reasonable certainty individual student athletes who took a Type 1 course. You believe that this would constitute an improper disclosure of those students’ education records under FERPA.

Postsecondary institutions subject to FERPA may not have a policy or practice of permitting the disclosure of “education records, or personally identifiable information contained therein” without the written consent of eligible students. 20 U.S.C. § 1232g(b)(1) and (b)(2); 34 CFR § 99.30(a). An “eligible student” is one who is at least 18 years of age or attends a postsecondary institution. *See* 34 CFR § 99.3. Under FERPA, “education records” means those records that are:

- (a) Directly related to a student; and
- (b) Maintained by an educational agency or institution or by a party acting for the agency or institution.

See 34 CFR § 99.3 “Education records.”

The term “personally identifiable information” is defined in the regulations as including, but not limited to:

- (a) The student’s name;
- (b) The name of the student’s parent or other family members;
- (c) The address of the student or student’s family;
- (d) A personal identifier, such as the student’s social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

See 34 CFR § 99.3 “Personally Identifiable Information.”

“Disclosure” means “to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.” *See* 34 CFR § 99.3.

One of the exceptions to FERPA’s general consent requirement permits the disclosure of certain information that has been appropriately designated as “directory information” by the educational agency or institution, in accordance with § 99.37 of the regulations. FERPA defines directory information as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as name, address, telephone listing, electronic mail address, date and place of birth, major field of study, dates of attendance, grade level, enrollment status, participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended. *See* 34 CFR § 99.31(a)(11).

An educational agency or institution may disclose directory information to third parties without consent if it has given public notice to students in attendance of the types of information which it has designated as “directory information,” of the parent or eligible student’s right to restrict the disclosure of such information, and of the period of time within which a parent or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as “directory information.” The means of notification could include publication in various sources, including in a newsletter, in a local newspaper, or in the student handbook. A school is not required to individually notify students regarding directory information. However, the discussion below will explain that even the disclosure of some directory information as requested by the newspaper on these student athletes will not be permissible under FERPA absent prior written consent.

FERPA would not permit the University to disclose PII from students' education records to a third party, without consent from eligible students, unless the disclosure meets one of the exceptions to consent listed in § 99.31 of the FERPA regulations, such as appropriately designated directory information. Based on the information you have provided, there appears to be no exception to FERPA's general consent requirement that would permit the University to disclose all of the items to the newspaper that it is requesting.

Information that is properly designated by an educational agency or institution, as "directory information" may be disclosed to any third party, assuming the school has not implemented a limited directory information policy (§ 99.37(d)). We note that the University designates certain items as directory information as part of its annual notification to students of their rights under FERPA, which it publishes on its University website.

As stated above, directory information is a permissible disclosure under FERPA. In this instance, information requested by the newspaper includes: 3. Sport; 4. Course Title; and 5. Semester When Course Taken. We note that items 4 and 5 are not considered directory information under FERPA, and they cannot be disclosed absent consent of the students to which the information from the education records relates. Further, even if the University removed the students' names and other direct identifiers from the spreadsheet and disclosed the other requested information, it appears based on the information you've provided that disclosing this information would be identifiable to some students. The University is in the best position to make that determination. A student's identity may be personally identifiable, even after removal or redaction of nominally identifying information from student-level records. This may be the case, for example, with a highly publicized disciplinary action, or one that involved a well-known student, where the student could be easily identified in the school community even after the record has been scrubbed of identifying data. In these circumstances, FERPA does not allow disclosure of the record in any form without consent because the irreducible presence of personal characteristics or other information makes the student's identity personally identifiable.

I trust this information is responsive to your inquiry. Please do not hesitate to contact this office if you require further assistance with regard to this matter.

Sincerely,

/s/

Dale King
Director
Family Policy Compliance Office