



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

John C. Dowling, Esq.  
Senior University Legal Counsel  
Office of Administrative Legal Services, 316 Bascom Hall  
The University of Wisconsin – Madison  
500 Lincoln Drive  
Madison, Wisconsin 53706-1380

JUL - 5 2005

Dear Mr. Dowling:

This responds to your November 8, 2005, letter, which you wrote to “inform [us] of a violation of the Family Educational Rights and Privacy Act (FERPA) by a former employee of the University of Wisconsin-Madison” (the University). This Office investigates complaints and violations of FERPA and provides technical assistance to ensure compliance with the statute and regulations, 20 U.S.C. § 1232g and 34 CFR Part 99.

Your letter states that David Reidinger, a former teaching assistant in the University’s Department of Political Science, has publicly disseminated personally identifiable education records, including partial grades from an independent study course from 1997. You provided a copy of an email message dated November 2, 2005, from Mr. Reidinger to various parties, including yourself, that shows grades for various student-athletes whose names have been redacted from the copy provided to this Office. Your letter explains that “[t]here is a long history to this matter.” In particular,

In spring 2002, the University became aware that Mr. Reidinger had, without authority, taken student education records with him upon termination of his employment. On April 12, 2002, I wrote to Reidinger via e-mail, informing him that he did not have authority to possess the education records and that he must immediately cease and desist from disseminating same, copy enclosed.

The University did not have direct evidence of any violation of FERPA by Mr. Reidinger until this most recent e-mail communication. Upon receiving this e-mail, I again immediately notified Mr. Reidinger that he must cease and desist from any further dissemination of the education records, copy enclosed.

Your November 4, 2005, email message to Mr. Reidinger states that he has violated FERPA by disseminating education records relating to University students, and that you had warned him about this in an e-mail dated April 12, 2002. Your 2005 message informed Mr. Reidinger that he

was “in illegal possession of confidential student education records that are the property of the [University],” that Mr. Reidinger violated University policy by taking this information when he left his employment at the University, and that he violated FERPA when he disclosed the information. You asked Mr. Reidinger to “immediately cease and desist from any further dissemination of the information,” that you would inform the U.S. Department of Education, and that you were also exploring “other legal options.” Mr. Reidinger’s April 7, 2002, email message to you threatened to disclose the information he had on the grades of certain student athletes unless the University took action on allegations of grade fraud by Professor Dennis Dresang. At that time you notified Mr. Reidinger that his possession of the University’s confidential student records was both illegal and a violation of University policy, and that his dissemination of the information in personally identifiable form is a violation of FERPA. You also directed Mr. Reidinger to cease and desist from his threatened course of action and notified him that you were exploring options to institute appropriate legal action against him. We understand from your letter that the University has not taken any legal action against Mr. Reidinger and asked whether there is anything else the University should do under the circumstances

FERPA provides that no funds administered by the Secretary of Education shall be made available to an educational agency or institution that has a “policy or practice of permitting the release of education records” or “providing access to” any personally identifiable information in education records, without the prior written consent of a parent or eligible student (as defined in § 99.3 of the regulations) except as authorized by law. See 20 U.S.C. § 1232g(b)(1) and (b)(2). Under § 99.30 of the regulations, a parent or eligible student must provide a signed and dated written consent before education records are disclosed, except as provided in § 99.31. The term “education records” is defined 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.


Grades of student athletes maintained by the University are “education records” under FERPA. Under § 99.31(a)(1) of the FERPA regulations, teachers and other school officials may have access to education records, without the consent required under § 99.30, if they have been determined by the agency or institution to have “legitimate educational interests.” We assume for purposes of this discussion that Mr. Reidinger obtained access lawfully to the student grades in question under § 99.31(a)(1). The regulations provide further that an agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not redisclose it to any other party. 34 CFR § 99.33(a). This provision applies to school officials who obtain access to education records without consent under § 99.31(a)(1).

An educational agency or institution is responsible for FERPA violations committed by its employees or former employees to whom it disclosed education records. Once the University determined that Mr. Reidinger would disclose or had disclosed education records in violation of FERPA and University policy, it was required to take steps to ensure that he ceased doing so. Failure on the part of the University to take steps to prevent Mr. Reidinger from further disclosing the student grades could be a policy or practice of permitting access to education records in violation of FERPA requirements. Please provide this Office within four weeks of

your receipt of this letter with a description of any legal options the University considered to address the problem including its reasons, if any, for not initiating legal action against Mr. Reidinger upon learning of the unauthorized disclosures. Please direct your response to Frances Moran of my staff at:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-5901  
(202) 260-3887

Sincerely,

  
for LeRoy S. Rooker  
Director  
Family Policy Compliance Office