Mr. Michael Steinberg
Associate Professor
Massachusetts College of Pharmacy
19 Foster Street
Worcester, Massachusetts 01608

AUG 24 2009

Dear Mr. Steinberg:

This responds to your letter in which you asked for guidance about the conduct of research with education records of students at (b)(6) (College) under the Family Educational Rights and Privacy Act (FERPA). This Office investigates, processes, and reviews complaints and violations under FERPA and provides technical assistance to ensure compliance with the statute and regulations. See 20 U.S.C. § 1232g and 34 CFR part 99.

You state that a small group of faculty, admission office personnel, and you are interested conducting a study to determine the degree of correlation that might exist between preadmission characteristics of students that matriculate to your program with the level of academic achievement students attain once they matriculate to your school. The measure you would like to use to gauge academic achievement is each student's grade point average at the end of each academic year as well as the awarding of the degree at the expected year of graduation. Whether students dropped out of the program due to academic reasons or took longer to earn his or her degree would be noted. Pre-admission factors you will note include types of college or school attended (i.e. community college, four-year school, or foreign student), grade point average earned, degree type earned, and any pharmacy employment experience. You state that all the information the College needs to complete its study now exists and is held in electronic or written records on the College's campus. The College's plan is to use all the information it has on all students who matriculated to the College's program between 2000 and 2006. You also state that the goal of the College's study is to better identify which pre-admission factors best predict the academic success of its students, and to create a pool of accumulated data on which statistical analysis can applied. You also note that it is possible that once the study is completed, the statistical result may be published in a national academic journal or presented at a conference to allow the College to share its findings with other academic centers.

An eligible student (i.e., a student who is 18 years of age or attends a postsecondary institution) must provide a signed and dated written consent in accordance with the requirements in § 99.30 of the FERPA regulations before an educational agency or institution discloses personally identifiable information from the student's education records. 34 CFR § 99.30(a). Exceptions to this requirement are set forth in § 99.31(a) of the regulations.

Section 99.31(a)(1)(A) of the regulations permits an educational agency or institution to disclose personally identifiable information from education records, without consent, to:

> other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

An agency or institution that has a policy of disclosing education records under this exception must include in its annual FERPA notification (required under § 99.7) a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. 34 CFR § 99.7(a)(3)(iii).

This Office has advised previously that a school official has a legitimate educational interest in education records if the individual needs to review the records in order to fulfill his or her professional responsibilities. It is our understanding that the professional responsibilities of teachers and other school officials may include conducting research into the effectiveness of the educational programs they provide. As such, we believe that an educational agency or institution may determine that teachers and other school officials within the agency or institution have a "legitimate educational interest" in using the education records of their own students for internal research into the effectiveness of its program of study.

Note that if the College wishes to allow its instructors to use personally identifiable education records in this manner, it should include in its annual FERPA notification a statement that teachers and other school officials have legitimate educational interests in students' education records in order to conduct educational research. Further, in accordance with § 99.33(a) of the regulations, instructors and other school officials who obtain access to education records under this (or any other) FERPA exception to the consent requirement may use the information only for the purposes for which it was disclosed and may not redisclose the information in personally identifiable form to any other party without the prior written consent of the student. The College is not required to record disclosures made to instructors and other school officials with legitimate educational interests. 34 CFR § 99.32(d)(2).

Please note also that § 99.31(a)(1) applies only to teachers and other school officials *within the agency or institution* (which includes, under § 99.31(a)(1)(B), a contractor, consultant, or volunteer under the direct control of the agency or institution). An educational agency or institution may disclose information from education records to *outside* education researchers only under the specific requirements of § 99.31(a)(6) (to organizations conducting studies for or on behalf of the agency or institution for specified purposes); § 99.31(a)(3) (to authorized representatives of the Secretary or a State or local educational authority); or § 99.31(b) (in de-identified form).

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concern. Enclosed for your information is a copy of the FERPA regulations,

which were amended on December 9, 2008, at 73 FR 74806. Please do not hesitate to contact this Office again if we may be of further assistance.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure