Ms. Meg Kieran
Attorney
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JUN 14 2011

Dear Ms. Kieran:

This responds to your April 5, 2011, letter as legal representative for Lane Community College (College) asking for advice regarding the Family Educational Rights and Privacy Act (FERPA), as well as your June 6, 2011, telephone conversation with Ms. Kathleen Wolan of this Office. Specifically, you ask for answers to three questions "regarding the application of FERPA to the [Classified] Union's [(Union)] requests for student worker information." You have also requested that we advise whether the actions in the proposed Settlement Agreement (Agreement) would permit the College to fulfill the Union's information requests.

As you described in your telephone discussion with my staff, the Union has filed a complaint with Oregon's Employment Relations Board (Board) that asks the Board to compel the College to provide the Union with student name and employment information of student workers paid with work-study funds. The Union has requested it be supplied with student name, duties, supervisor, pay rate, hours worked, and number of terms enrolled for all student workers who are provided these positions as part of a financial aid package. These workers must be students of the College, and all are paid by college or federal work-study funds. The College has attempted to respond to the Union's request by providing the information using an "alpha-identifier" for each student in place of the student's name.

The proposed Agreement states that the College will provide the Union with the requested information without the consent of the student workers. The Agreement limits the persons within the Union that may have access to the names of the students. It also requires the documents containing this information be kept in a locked cabinet and destroyed two years after receipt.

We respond to your questions below. As you are aware, this Office administers FERPA and is responsible for providing technical assistance to educational agencies and institutions regarding issues related to education records.

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 are "education records" under FERPA. 34 CFR § 99.3 ("Education records.") The FERPA regulations specifically state that *those records relating to an individual in attendance at the agency or institution who is*

employed as a result of his or her status as a student are education records. Therefore, under FERPA, records of student employees whose employment at the University is contingent on their status as students, are "education records," and, as such, are subject to the FERPA provisions authorizing their disclosure or nondisclosure.

With regard to the disclosure of education records, FERPA generally provides that an educational agency or institution may only disclose a student's education record to a third party if the eligible student has given appropriate written consent. 34 CFR § 99.30. FERPA does provide that written consent is not needed if the disclosure concerns information the educational agency or institution has designated as "directory information," under the conditions described in 34 CFR § 99.37. See 34 CFR § 99.31(a)(11). Directory information could include information such as the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; 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. Generally, directory information cannot be disclosed linked to other, non-directory information about a student. This is the case when a student is receiving need-based financial aid such as work-study funding.

Question 1: May the College provide student worker's names to the Union without the student's consent in response to the Union's requests for student worker information without violating FERPA?

In the circumstances you present, each worker is employed because he or she is a student. Thus, records about the student's employment are education records, and all information in those records is protected by FERPA and may only be disclosed in accordance with FERPA. No exception to consent under FERPA applies in the described circumstances. The exception to consent that permits disclosure of directory information does not apply in the described circumstances. There is no provision in FERPA that permits the requested disclosures to be made based on the conditions in the Agreement that the Union will provide restricted access to the information. It appears that the College must have the student's prior written consent before it may disclose any personally identifiable information from the student worker's education records to the Union.

Question 2: Is the answer to question number 1 the same if the student worker is working at the College pursuant to a federal financial aid work-study grant?

The circumstances are unchanged, and our answer remains the same. The College must have the student's prior written consent before it may disclose any information from the student worker's education records to the Union. No exception to the need for consent appears to apply in the described circumstances.