Mr. Joel T. Gomez
Attorney
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MAR 15 2011

Dear Mr. Gomez:

This is in response to your December 8, 2010, letter in which you ask about the applicability of the Family Educational Rights and Privacy Act (FERPA) to the disclosure of information from the education records of approximately 300 students that you represent. The students attended several different for-profit schools in the State of Texas. This Office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations, which are codified at 20 U.S.C. § 1232g and 34 CFR Part 99 respectively.

You state the students have retained you to investigate and possibly pursue claims against the for-profit schools for misrepresentations regarding the outcome of their courses of study at the schools. You further relate that one of the complaints raised against the schools by your clients relates to representations made to them by admissions representatives concerning job placement outcomes of student graduates. In order to investigate these matters, you seek to review certain forms submitted by the schools to the Texas Work Force Commission (TWC) and other agencies. The forms identify specific graduates of the schools and the employers that allegedly hired student graduates after they completed their programs of study. Accordingly, you ask whether the "identity and job placement outcomes of former students disclosed on TWC form PS072 constitute 'alumni information,' as defined by [§ 99.3 of the FERPA regulations] and, thus, are not protected from disclosure by FERPA." As explained more fully below, the personally identifiable information on students contained in the forms you enclosed is information that is considered "education records" under FERPA and does not fall into the "alumni" exception that you reference.

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.

34 CFR § 99.3 "Education records."

Excluded from the definition of "education records" and, thus, from the protection of FERPA are:

> (b)(5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.

This provision was added in 2008 and we discussed this clarification in the preamble to the final FERPA regulations published on December 9, 2008 (73 FR 74806, 74811). Specifically, we noted the following:

> It has long been the Department's interpretation that records created or received by an educational agency or institution on a former student that are directly related to the individual's attendance as a students are not excluded from the definition of "education records" under FERPA, and that records created or received on a former student that are not directly related to the individual's attendance as a student are excluded from the definition and, therefore, are not "education records." The proposed regulations in paragraph (b) (5) were intended to clarify the use of this exclusion, not to change or expand its scope.

This type of information, which we informally refer to as "alumni records," means the type of personally identifiable information related solely to a student's activities as an alumnus of an educational institution. The exclusion to "education records" is intended to cover records that concern an individual or events that occur after the individual is no longer a student in attendance, such as alumni activities. The exclusion is not intended to cover records that are created and matters that occur after an individual is no longer in attendance but that are directly related to his or her previous attendance as a student, such as a settlement agreement that concerns matters that arose while the individual was in attendance as a student.

We do not believe that the type of information that you are seeking falls into the "alumni records" exclusion in FERPA. Form PS-072A ("Completer Follow-Up Survey") that you provided contains the type of personally identifiable information on a student that is not excluded from "education records," such as the student's name, graduation date, program name, and social security number. In this case, the student provides consent for the information to be provided to the TWC. Forms PS-072B and PS-072C do not appear to contain personally identifiable information on students. Form PS-072D does include personally identifiable

information on students, including social security number and wage information. Historically, even before the change to the FERPA regulations in 2008, the Department has viewed "alumni records" as the type of information that an alumni association of a school might maintain, such as the fact that the student is serving in the military, is the new vice-president of a company, or is head of the alumni fundraising organization. The information that you are seeking appears to be too closely aligned with the student's attendance at the institution, especially attendance at a for-profit institution that has as part of its mission placing students in jobs. Further, we do not believe that information contained in a record that can only be disclosed to a third party with consent of the student would be considered an "alumni record."

While some of the information contained in these forms could be designated as "directory information" under FERPA (34 CFR § 99.31(a)(11)), social security number may not be so designated. Further, the institution could only disclose properly designated directory information on a student who has not opted out of the disclosure of directory information. *See* 34 CFR § 99.37.

One exception to the general consent requirement in FERPA that might apply to your situation would be the provision that permits an educational agency or institution to disclose personally identifiable information from students' education records in compliance with a judicial order or lawfully issued subpoena. In general, a postsecondary institution must make a reasonable effort to notify the student of the subpoena or judicial order before complying with it in order to allow the student to seek protective action, unless certain exceptions apply. 34 CFR § 99.31(a)(9).

I trust this explains the scope and limitations of FERPA as it relates to your inquiry.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office