

NOTE: This letter was reformatted to make it more accessible on the Student Privacy Policy Office's (SPPO's) website. Please note that SPPO administers FERPA and the office's prior name was the Family Policy Compliance Office (FPCO). Some citations in this letter may not be current due to amendments of the law and regulations. SPPO has not revised the content of the original letter. Any questions about the applicability and citations of the FERPA regulations included in this letter may be directed to FERPA@ed.gov.

August 28, 2008

Ms. Lourdes Barro
Associate Ex.Dir/CFO
Phi Kappa Phi
7576 Goodwood Boulevard
Baton Rouge, Louisiana 70806

Dear Ms. Barro:

This responds to your letter dated March 19, 2008, regarding the requirements of the Family Educational Rights and Privacy Act (FERPA) as they relate to the disclosure of education records, specifically directory information from such records, by colleges and universities to your organization, the Honor Society of Phi Kappa Phi. As you are aware, this Office administers FERPA which addresses issues that pertain to education records.

You explain that Phi Kappa Phi is a multidiscipline collegiate honor society with over 300 chapters in colleges and universities throughout the United States, the Philippines and Puerto Rico and that Phi Kappa Phi inducts the top 10% of seniors and graduate students and the top 7.5% of juniors. You ask for an opinion from this Office stating that college and university registrars may disclose the names and email addresses of these individuals to your organization in compliance with FERPA. As will be outlined below, FERPA permits the disclosure of student names and addresses absent consent under the directory information exception provided certain conditions are met.

FERPA provides that educational agencies or institutions may disclose a student's education records, or personally identifiable information from such records, only after an eligible student (a student who has reached the age of 18 or is attending an institution of postsecondary education) has provided prior written consent. 34 CFR § 99.30. "Education records" are defined as 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 "Education records."

As noted above, FERPA generally prohibits the nonconsensual disclosure of information derived from education records, except in certain specified circumstances. 34 CFR §§ 99.30 and 99.31. One of these exceptions permits the nonconsensual disclosure of information derived from education records that has been appropriately designated as "directory information" by the educational agency or institution. 34 CFR §99.31(a)(11). 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. 34 CFR § 99.3 "Directory

information." 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.

Generally, a student's directory information that is linked to other, non-directory information, such as the student's grades, cannot be disclosed absent consent. However, disclosure of the names of students who are in the top percentile of the class is generally permissible under FERPA because it is consistent with the part of FERPA's directory information definition that covers awards received and, as such, is considered an honorary recognition.

FERPA provides that schools may disclose directory information if they have given public notice of the types of information which they have designated as "directory information," the students' right to restrict the disclosure of such information, and the period of time within which students have to notify the school in writing that they do not want any or all of those types of information designated as "directory information." 34 CFR § 99.37(a).

Thus, in order for a college or university to disclose the top 10% of seniors and graduate students and the top 7.5% of juniors to Phi Kappa Phi, the school must have names and e-mail addresses and honors or awards received designated as a directory information items and those students must not have opted out of the disclosure of directory information. If all three items are not designated by a school as directory information items, or if a student has opted out of the disclosure of his or her directory information, Phi Kappa Phi could work with that school to ensure that the student is informed of the opportunity to be inducted into Phi Kappa Phi by forwarding appropriate information to the student, and by informing the student that in order for the school to disclose the requested information to Phi Kappa Phi the student would have to provide his or her prior written consent.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it applies to your concern.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office