January 6, 2006

Ms. Millie Alexiou
Registrar
St. Thomas Aquinas College
125 Route 340
Sparkill, New York 10976-1050

Dear Ms. Alexiou:

This responds to your July 28, 2005, email regarding the disclosure of student papers by professors of St. Thomas Aquinas College (College) in connection with a plagiarism prevention service offered by Turnitin. This Office administers the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and provides technical assistance to ensure compliance with the statute and regulations, which are codified at 34 CFR Part 99.

According to your email, some faculty members have asked for assistance in addressing the problem of plagiarism among students and asked whether they could use Turnitin's web-based service. You indicated that the College's provost asked whether this service violates FERPA or copyright law because it requires scanning student papers (with the student's name) into Turnitin's database, where they become the property of Turnitin.

Under FERPA, a parent or 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 of § 99.30 of the FERPA regulations before education records, or personally identifiable information from education records is disclosed. Exceptions to this requirement are set forth in § 99.31. There is no exception to the written consent requirement in FERPA that allows an educational agency or institution to disclose education records, or personally identifiable information from a student's education records to a third party, such as Turnitin, to check for plagiarism. Turnitin has made no claim to be an agent acting as a "school official" under the direct control of each educational institution that participates in its service. Rather, as explained below, Turnitin has asserted incorrectly that student papers are not considered "education records" under FERPA at the time an instructor discloses them to the plagiarism prevention system.

The term "education records" is 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. A test, paper, or other assignment completed by a student constitutes that's student's "education record" under this definition once it has been collected and

maintained by a teacher or other school official. In <u>Owasso Independent School District v. Falvo</u>, 534 U.S. 426 (2002), the Supreme Court limited its decision to the narrow holding that peer grading does not violate FERPA because "the grades on students' papers would not be covered under FERPA at least until the teacher has collected them and recorded them in his or her grade book." Contrary to Turnitin's suggestion in the "Legal Document" on FERPA available at its website, this does not mean that student work has to be graded or maintained by the school's official registrar in order to be considered an "education record" under FERPA. Rather, student tests, papers, and other assignments are considered "education records" even if they are never graded, so long as they are maintained by the institution, or by a party acting for the institution.

However, an educational agency or institution may release education records from which all personally identifiable information has been removed, without prior written consent, because that is not considered a "disclosure" under FERPA. See 34 CFR § 99.3 ("Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.") "Personally identifiable information" includes the student's or family member's name; address; personal identifier, such as the student's social security number or student number; and a list of personal characteristics or other information that would make the student's identity easily traceable. 34 CFR § 99.3 ("Personally identifiable information").

According to the company's website at www.turnitin.com, the plagiarism prevention service works by allowing students or teachers to submit a student's paper to Turnitin's internet database, which contains over 4.5 billion pages, including 10 million student papers already submitted to Turnitin. The system "conducts an originality evaluation" by using a proprietary formula to make a "fingerprint" of a student's paper that is then used to compare that work with the existing database of student papers and other information. The system produces an "originality report" that documents any actual text matches found in the database (along with a corresponding percentage of unmatched text in the paper). It is our understanding that an institution has an option to prevent a student's paper from being used for subsequent matching against new student papers submitted to the plagiarism prevention system, but the paper remains archived in the Turnitin database.

As noted above, an instructor or other school official may disclose student papers (graded or ungraded) to Turnitin for "conducting an originality evaluation," without written consent, if all personally identifiable information has been removed because it would not be considered a "disclosure" under FERPA. Turnitin may assign a "code" to the student paper to ensure that the instructor is able to assign the resulting "originality report" to the correct student, but only if the code is known only to the instructor who submits the record to the Turnitin system (or the student whose record is disclosed, if applicable). In order not to be considered "personally identifiable information," the "code" may not be a student's social security number, student ID number, or any other identifier that can be linked to the student by any party, including Turnitin, other than the instructor or school official who submits the paper for the plagiarism check. This is consistent with previous guidance issued by this Office on how instructors may post students' grades without disclosing personally identifiable information."

We understand that when matching material has been identified, Turnitin provides the instructor who submitted the student paper with the name and email address of the instructor of the student whose work resulted in the match, along with the "paper ID#" or code assigned to the matching material, so that the two instructors may discuss how to address the potential plagiarism problem that has been identified. Note that there is no exception to the written consent requirement in FERPA that allows one instructor to disclose a student's name or other personally identifiable information to an instructor in another institution when a student is suspected or accused of plagiarism.

In summary, if a student's name or other personally identifiable information is attached to the student's paper, an instructor or other school official may not release the paper to the Turnitin plagiarism service without the student's prior written consent. A paper that has been released to Turnitin by an instructor or other school official without any personally identifiable information, as discussed above, may be archived and used in the plagiarism prevention service, without prior written consent, so long as there is no personally identifiable information attached to the information. Finally, nothing in FERPA prevents a student from disclosing his or her own written work to a plagiarism prevent service on a voluntary basis. However, an educational institution may not require students to waive their FERPA rights and agree to wholesale disclosures of their education records, in personally identifiable form, to a plagiarism protection service as a condition of taking classes or otherwise receiving educational instruction from the institution.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concern.   Please note that Turnitin also provides "Peer Review" and "GradeMark" services for educational agencies and institutions that have not been evaluated in this letter. This Office also is unable to comment on whether Turnitin services comply with Federal copyright law.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office