

Federal Student Records Law in the Courts

This summer important decisions have been issued by federal courts involving the scope of privacy protection under the Family Educational Rights and Privacy Act (FERPA) and the mechanisms that are available for enforcing the obligations created by FERPA.

A federal court of appeals has addressed the question of whether or not student disciplinary files are to be considered part of the “education record” that is protected from disclosure under FERPA. The Ohio Supreme Court gave a negative answer in a 1997 case involving a student newspaper’s attempt to gain access under the state’s open records law to disciplinary records (including the names of the students involved) at Miami University. When *The Chronicle of Higher Education* sought to obtain certain records from that institution and Ohio University based on that decision, the U.S. Department of Education sued both universities, seeking an injunction forbidding disclosure of the information sought. The Sixth Circuit Court of Appeals upheld a ruling from the lower court that FERPA, which defines “education record” broadly and then recognizes certain exceptions, does not include an exception for disciplinary records. *United States v. Miami*, No. 00-3518 (6th Cir. June 27, 2002). The latter must therefore, the Circuit Court concluded, be within the category of documents and files that are generally protected from disclosure.

The United States Supreme Court recently settled another important issue under this law, namely, whether a student has the right to sue a university under FERPA. The case involved a Gonzaga elementary education student, Paster, who learned that a university teacher education specialist had informed the state licensing agency about allegations of sexual misconduct against him. The allegations involved serious sexual assault against a student, though the student-victim would not file a formal complaint. The college dean refused Paster’s request for him to sign an affidavit of good moral character, required for all teacher education graduates, because of the allegations.

Paster sued Gonzaga on several legal theories, including violation of his right under FERPA to prevent disclosure of information from his education record to third parties without his consent. His FERPA claim was brought under 42 U.S.C. § 1983, a statute enacted after the Civil War that is frequently used to enforce federally recognized rights. After a jury trial, he was awarded \$500,000 for defamation, \$100,000 for invasion of privacy, \$55,000 for breach of contract, \$50,000 for negligence, and \$450,000 in compensatory and punitive damages under FERPA. The verdict was upheld by the Washington Supreme Court. Circuit Courts of Appeals from the Second, Fourth, Fifth, and Tenth Circuits had also held that FERPA creates a private right of action.

Gonzaga appealed to the U.S. Supreme Court, arguing that FERPA did not create the kind of right that could become the basis for a student’s suit under § 1983 against an offending university. The Supreme Court, in a 7-2 decision, agreed. *Gonzaga University v. Doe*, No. 01-679 (June 20, 2002). According to the Court, the critical inquiry was whether Congress intended, in enacting FERPA, to create individually enforceable rights. The Court did not find the necessary unambiguous intent in this statute. FERPA does provide an administrative enforcement mechanism through a review board established by the Secretary of Education (the

Family Policy Compliance Office), which is to investigate and adjudicate violations and, in appropriate cases, initiate proceedings to terminate federal funds to the institution. According to the Court, this is the only means of enforcement that Congress has clearly authorized for FERPA.

Though this decision removes the threat of private litigation for FERPA violations, universities are still subject to having students file complaints with the Family Policy Compliance Office. That agency has been active in investigating and enforcing student FERPA complaints.

The FERPA policy at this institution is summarized in the *UAH Undergraduate Catalog* and the *UAH Student Handbook*. A copy of the complete policy document may be accessed on the Office of Counsel webpage at http://www.uah.edu/legal/uah_pol.htm.