

1980 WL 121232 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 19, 1980

*1 Mr. Paul Jerald Ward
University Legal Counsel
University of South Carolina
Columbia, South Carolina 29208

Dear Mr. Ward:

You have requested an opinion of this office as to the applicability of the Family Educational Rights and Privacy Act (the Act, [20 USCA § 1232G](#)) to certain records requested of the University of South Carolina at Spartanburg. For the purposes of a dissertation, a doctoral candidate working under the direction of a college professor has requested Spartanburg to disclose National Teacher Examinations (NTE) and Scholastic Aptitude Test (SAT) scores of its students by race and sex. The Act bars disclosure of student records to persons other than the student and parents concerned without their written consent, and Spartanburg is concerned that it may apply to the test scores.

The Act indicates that its restrictions do not apply to information which is identifiable with particular students. Relevant portions of §1232G are set out as follows:

(a)(4)(A) For the purposes of this section, the term 'education records' means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(b) (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than [under several specified exceptions].

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless [there is written consent from a student's parents or from a student who is eighteen years of age or older or unless the information is subject to judicial order or subpoena].

These provisions restrict the release of 'educational records of students' and 'personally identifiable information contained therein.' Because only personally identifiable excerpts are restricted, the statute clearly indicates that information from a records may be released if it is not personally identifiable. That such information may be made available supports a conclusion that

records which do not contain any personally identifiable information may be released in their entirety. Thus, in the Act's definition of educational records, the phrase ' . . . containing information directly related to a student . . . ' must refer only to records which are identifiable with individual students.

*2 The regulations adopted pursuant to the Act are consistent with the position that records or portions of records may be released if they are not identifiable with particular students. See 45 CFR Part 99. Their restrictions only cover personally identifiable information from records. 45 CFR §§ 99.5, 99.30, and 99.31.

The limited case law on this subject is also supportive. In [Mattie T. v. Johnson](#), 74 FRD 498 (DC Miss. 1976), the court found the Act inapplicable to subpoenaed documents containing 'personally identifiable' information when that information would be deleted or 'cover[ed] up'.

The information requested of Spartanburg may be released without the consent of affected students or parents if it is not 'personally identifiable'. This term is defined as follows:

'Personally identifiable' means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable. 45 CFR §§ 99.3.

Here, the only information that will be released concerning the unnamed students taking the NTE will be their race, sex, and test scores. Barring an unusual distribution of these characteristics, the information sought to be released should not make the students 'easily traceable' and, thus, should not come within the restrictions of the Act.

In conclusion, records and portions of records may be released without the consent of a student or his parents so long as they do not contain information which would be personally identifiable with the student. The information sought here would not appear to be easily traceable to individual students and, given that circumstance, it may be disclosed without the students' or their parents' consent.

If I can be of further assistance, please let me know.

Yours very truly,

J. Emory Smith, Jr.
State Attorney

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