

FERPA and the University Code of Student Conduct

The subject of this memorandum is an issue that involves both FERPA and the University Code of Student Conduct (UCSC). The issue, a resolution and justification is all described below. All cases should be handled consistent with this memorandum effective immediately.

ISSUE: There have been several instances recently where Campus Advisors working with Respondents under the UCSC have directly accessed information from university files, databases and other records that were not part of the official case file in an effort to support the Respondent's position. For example, someone with access to the SRDB might confirm the class schedule / grades of a witness. Judicial Officers and other Campus Advisors have raised some concerns about this practice as a potential violation of FERPA and/or as a practice that is inconsistent with the UCSC.

RESOLUTION: Respondents, Complainants and Campus Advisors who wish to review and/or present at hearing information from the education records of students that is not included with the case file as part of the Preliminary Review may not access such information independently (if indeed they are able to do). Rather, request to access any such information must be made to the Hearing Officer assigned to the case who will, in accordance with Part 35 (d) of the UCSC, determine whether and how such information shall be made available to the requesting party and/or the Hearing Board. There will be some instances where it will be difficult to apply this interpretation. Student Judicial Affairs (SJA) will work with Hearing Officers and all of you to provide more thorough guidance as experiences unfold. SJA would have to remove from the Campus Advisor listing anyone who knowingly fails to adhere to this interpretation. The office's collective purpose is to promote compliance with campus standards; accordingly, SJA cannot tolerate knowing violations of University standards.

JUSTIFICATION: First, there is a practical concern with fairness. Some Campus Advisors, by their jobs, have access to far more student information than do others. The extent to which Complainants and Respondents can access information in support of their cases should be consistent from matter to matter and not variable based upon who one has as a Campus Advisor. Directing to the Hearing Officers requests for access to information that lies outside the case file, outside the knowledge of witnesses to be called and outside the public domain will substantially increase consistency in this regard. Second, there is a potential FERPA problem here. At issue is the exception under FERPA that allows "other school officials" with a "legitimate educational interest" to access information from education records without a student's prior consent. The definition of "other school official"¹ is broad enough to encompass Hearing Boards and Campus Advisors. One has a legitimate educational interest in something if access to the information to carry out your assigned duties is needed. The UCSC accords the Hearing Officer with the responsibility to make all necessary rulings on evidence upon the completion of the Preliminary Review.² When a Hearing Officer decides that something is not admissible, in effect s/he is saying that it is not needed for purposes of the hearing. Conversely, when a Hearing Officer determines that something is admissible, then it is needed for the hearing. Only if the information is needed for the

¹ See official notice at <http://www.rci.rutgers.edu/~polcomp/ferpa2.shtml>.

² See UCSC Part 35 (d).

hearing can a Campus Advisor have a legitimate educational interest in the information. Accordingly, to avoid a FERPA problem, a ruling from the Hearing Officer is needed before a Campus Advisor should be permitted access to protected information.

The point of this interpretation is not to limit access to information that is necessary to a fair and proper adjudication of charges against a Respondent; rather, the purpose is two-fold: (a) to make sure that there is a fair and consistent way for determining what information is necessary for proper adjudication and (b) to discourage the accessing of protected student information that is not relevant and necessary to a fair adjudication of the charges.