

November 4, 2005

*Sent Via Facsimile*

Douglass R. Shortridge  
P.O. Box 90317  
Indianapolis, IN 46290-0317

*Re: Formal Complaint 05-FC-202; Alleged Violation of the Access to Public Records Act by Purdue University*

Dear Mr. Shortridge :

This is in response to your formal complaint alleging that Purdue University (“Purdue”) violated the Access to Public Records Act by redacting from a record the names of student members of the Campus Appeals Board. I find that Purdue did not violate the Access to Public Records Act.

#### BACKGROUND

You represent the Purdue *Exponent*, the daily student newspaper of Purdue. On August 29, 2005, a representative of the *Exponent* wrote to Purdue University and requested in writing, “The names of people who have been nominated to serve on the Campus Appeals Board for the 2005 fall semester, as well as a list of names of people who have already served on the Board this semester.” On September 9, 2005, Purdue, through its Public Records Officer Lucia Anderson, responded: “Response: Granted in part. Please see enclosed information. All names of students have been redacted pursuant to Indiana Code 5-14-3-4(a). That statute provides that records which are ‘required to be kept confidential by federal law’ are excepted from disclosure. The specific federal law is the Family Educational Right to Privacy Act [‘FERPA’], 20 U.S.C.A. Sec. 1232g et seq.”

You filed your formal complaint on October 5, 2005. You contend that Purdue cannot refuse to release the names of students when academic records are not involved and when it routinely releases student names in other contexts. You suggest that only a student’s transcript

or other academic record is protected by FERPA. You also believe that Purdue selectively releases the names of students in other situations. Specifically, you cite Purdue's publishing a print and Internet directory of students, a "media guide" for all major sports teams, game programs for football and basketball, and press releases about students and student programs. You also state that Purdue publishes a list of student organizations and officers, and identifies students in graduation programs.

I sent a copy of your complaint to Ms. Anderson. She responded to your complaint by letter, a copy of which I have attached for your reference. Ms. Anderson responded that FERPA by its terms does not limit privacy protections to only those records involving a student's academic record. Rather, education records are much broader. Ms. Anderson responded to your "selectivity" contentions by pointing out that in each of your examples, Purdue provides the information in accordance with the FERPA and University policy on release of directory information. Hence, no violation of the Access to Public Records Act occurred when Purdue redacted the names of student members of the Campus Appeals Board.

Ms. Anderson provided additional information about the Campus Appeals Board. The Campus Appeals Board conducts appeals from disciplinary proceedings for alleged violations of the university regulations governing student conduct. *See University Regulations 2005-2006: A Reference Book for Students, Staff and Faculty*, p. 46-52 [hereinafter, "*University Regulations*"]. Student members are recommended to serve in a pool of 20 members by Purdue student government for the undergraduate members, and by Purdue Graduate Student Government for the graduate student members. *Id.* page 51.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). Purdue University, as a state university, is a public agency subject to the APRA. IC 5-14-3-2(l)(1). If a public agency receives a written request for records, the public agency may deny the record if the denial is in writing, and if the denial includes (1) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and (2) the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c). If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request, separate the material that may be disclosed and make it available for inspection and copying. IC 5-14-3-6(a).

Records that are required to be kept confidential by federal law may not be disclosed by a public agency. IC 5-14-3-4(a)(3). Under federal law, the federal government may withhold funding for a program "...for 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...) of students without the written consent of the ir parents to any individuals, agency, or organization..." 20 U.S.C. §1232g(b)(1).

Under a holding of the Indiana Court of Appeals, FERPA is a federal law that requires education records to be kept confidential under the APRA. *An Unincorporated Operating Division of Indiana Newspapers, Inc. v. The Trustees of Indiana University*, 787 N.E.2d 893, 904 (Ind. Ct. App. 2003).<sup>1</sup> Hence, if the names of students who have been nominated to serve, or who have served, on the Campus Appeals Board constitute an “education record” under FERPA, then Purdue did not violate the APRA by redacting the student names and disclosing the remainder of the record.

The definition of “education record” under FERPA is very broad. “Education record” is defined as “...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.” 20 U.S.C. §1232g(a)(4)(A). You present no argument that the two-prong definition of “education record” is not met with respect to the list of names of students who served or were nominated to serve on the Campus Appeals Board. In my opinion, the record sought by the Purdue *Exponent* fits the definition of an education record neatly. First, the regulations promulgated by the Department of Education state that among “personally identifiable information” is the student’s name, 34 C.F.R. 99.3; accordingly, the record containing the names of the student members of the Campus Appeals Board are “directly related to a student.” Second, the record is maintained by the Chair of the Campus Appeals Board and the administrative assistant to the Vice President for Student Services. Both these individuals are administrative personnel of the university.

Your contention that “education record” was not meant to include records other than student academic records such as transcripts, is without merit. In *United States v. Miami University*, 294 F.3d 797, 812 (6<sup>th</sup> Cir. 2002), the federal appeals court criticized the news organization’s contention that FERPA was never intended to protect records other than those records relating to “individual student academic performance, financial aid or scholastic probation.” The court in *Miami University* found that under the plain language interpretation of FERPA, student disciplinary records were education records simply because they directly relate to a student and are kept by the student’s university. *Id.* at 812. Accordingly, the record that you seek is an “education record” under FERPA.

Because the record containing names of student members of the Campus Appeals Board constitutes an education record and is a record that is confidential under federal law, Purdue is obligated by law *not* to disclose the student names. However, Purdue is required to separate the nondisclosable material from the disclosable material and make the disclosable part of the record available. See IC 5-14-3-6(a). That is precisely what Purdue did when it provided to the *Exponent* the redacted list of members of the Campus Appeals Board. Also, as Ms. Anderson points out, the other instances of disclosure that you cite are consistent with FERPA, because FERPA allows a university to disclose designated “directory information” without the student’s

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<sup>1</sup> To answer your characterization of the *Indiana Newspapers* case as “obiter dictum” and the court’s analysis as “unnecessary”, I quote directly from the decision: “We agree with [the reasoning of the cited authorities] and **hold that**, for purposes of IC 5-14-3-4(a)(3), FERPA is a federal law which requires education records to be kept confidential.” *Indiana Newspapers* at 921. Further, the court in its remand order instructed the trial court to redact any part of the disciplinary records that contained information that could identify any present or former students, citing FERPA.

consent, unless the student “opts out.” *See* 20 U.S.C. §1232g(a)(5)(B). Purdue has a policy that allows directory information to be disclosed unless the student follows the stated “opt out” procedures. The directory information in Purdue’s policy is consistent with the federal law definition. *See* 34 C.F.R. 99.3. Further, a student’s service on the Campus Appeals Board does not fall into the categories of information included in the definition of “directory information.”

Although “participation in officially recognized activities and sports” may at first blush be implicated by service on the Campus Appeals Board (an argument you do not make), I do not believe that service on the Campus Appeals Board constitutes participation in “officially recognized activities.” I found no case that has interpreted the “officially recognized activities” language in FERPA’s definition of “directory information.” In my estimation, only activities in those “recognized student organizations” covered by the university regulations are contemplated. *See University Regulations* at p. 62-69.

### CONCLUSION

For the foregoing reasons, Purdue University did not violate the Access to Public Records Act when it provided the Purdue *Exponent* with a list of members of the Campus Appeals Board with the names of student members redacted.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Lucia Anderson