



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN  
ATTORNEY GENERAL

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October 1, 2007

The Honorable Stephen L. Nass  
State Assembly  
12 West, State Capitol  
Madison, WI 53702

Dear State Representative Nass:

You have asked the Department of Justice ("Department") to investigate whether the University of Wisconsin System ("University") is following federal and state student privacy laws. Your inquiry was prompted by recent media accounts in which University students express concern that the Wisconsin Higher Education Grant program would not be available at the beginning of the school year because the Wisconsin biennial budget had not yet been enacted. Because the students are identified by name and identified as students who had applied for financial aid, you are concerned that the University may have violated the students' federal or state right to privacy.

The Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, is the federal law that protects the privacy of student education records. Complaints alleging violations of FERPA are investigated by the Family Policy Compliance Office of the United States Department of Education. 20 U.S.C. § 1232g(g). The Secretary of Education can withhold federal funds from an institution if the secretary determines that there has been a failure to comply with FERPA and determines that compliance with the law cannot be secured by voluntary means. 20 U.S.C. § 1232g(f). There is no FERPA violation unless the institution has a policy or practice of permitting the release of educational records. 20 U.S.C. § 1232g(b)(1). The United States Department of Education is the sole enforcement mechanism for FERPA violations. Indeed, the United States Supreme Court has held that the students or the students' parents do not have a private cause of action if they believe their rights under FERPA have been violated. *Gonzaga University v. Doe*, 536 U.S. 273 (2002). There is no authorization, under either federal or Wisconsin law, for the Attorney General to investigate or prosecute alleged breaches of FERPA.

In addition, there is no Wisconsin counterpart to FERPA for college or university students. Wisconsin Stat. § 118.125, provides a right of privacy to elementary and high school students only. The Wisconsin Right of Privacy Act, Wis. Stat. § 995.50, provides for private enforcement only. Wisconsin Stat. § 36.32, a statute on student privacy, only prohibits the University from using social security numbers as student identification numbers.

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If you or any of the students wish to file a complaint with the Secretary of Education, the complaint should be addressed to Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Ave. S.W., Washington, DC 20202-4605.

I regret that the Department cannot be of assistance, but neither federal nor state law give the Department the authority to pursue your complaint.

Sincerely,



J. B. Van Hollen  
Attorney General

JBVH:AL:rk:lkw

c: The Honorable Michael Huebsch  
Speaker of the Assembly

✓ Connie Hutchison  
Higher Education Arts Board

Kevin P. Reilly  
UW System President

Patricia A. Brady  
UW System Legal Counsel