



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

Mr. Craig Parker
General Counsel
The Catholic University of America
Leahy Hall 280
620 Michigan Avenue, N.E.
Washington, D.C. 20064

NOV 13 2007

Dear Mr. Parker:

This responds to your September 21, 2007, inquiry about guidance this Office issued on the application of the Family Educational Rights and Privacy Act (FERPA) to the plagiarism prevention service offered by Turnitin. This Office investigates, processes, and reviews complaints and violations under FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations, which are codified at 20 U.S.C. § 1232g and 34 CFR Part 99.

Your inquiry concerns technical assistance we issued on January 6, 2006, to St. Thomas Aquinas College explaining that an instructor or other school official may disclose student papers to Turnitin to conduct an “originality evaluation,” without written consent, if all personally identifiable information has been removed because it would not be considered a “disclosure” under FERPA. Our letter was based on Turnitin’s incorrect assertion that student papers are not considered “education records” under FERPA at the time an instructor discloses them to the plagiarism prevention service because they are not graded or maintained by the institution’s registrar. (We did not address whether instructors could disclose personally identifiable education records to Turnitin without consent as a “school official” providing institutional services.) In light of that guidance, you asked whether an institution would violate FERPA if instructors require students to submit their papers to Turnitin’s plagiarism prevention service and obtain an originality report before they turn in their papers to the instructor.

As explained in our letter to St. Thomas Aquinas College, the term “education records” is defined as records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3. A test, paper, or other assignment completed by a student constitutes that student’s “education record” under FERPA once it has been collected and maintained by a teacher or other school official. See Owasso Independent School District v. Falvo, 534 U.S. 426 (2002), where the Supreme Court held that peer grading does not violate FERPA because “the grades on students’ papers would not be covered under FERPA at least until the teacher has collected them and recorded them in his or her grade book.”

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Conversely, a student's paper is not an "education record" under FERPA before the student has submitted it to his or her instructor or other school official because the paper is not maintained by the institution or a party acting for the institution. An educational agency or institution may require students to submit their papers to a plagiarism prevention service before submitting them to their instructors, just as under Falvo teachers may require students to exchange and grade each other's papers before the teacher collects and records the grade, because at that point the papers are not "education records" under FERPA. Note that an educational agency or institution may not require students to waive their rights under FERPA and consent to the disclosure of their papers in personally identifiable form to a plagiarism prevention service once the instructor or other school official has collected the paper. Note also that we are not addressing at this time whether instructors and other school officials can disclose personally identifiable student papers to a plagiarism prevention service without consent as a "school official" providing institutional services.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concern.

Sincerely,



LeRoy S. Rooker
Director
Family Policy Compliance Office

cc: John Barrie, Ph.D., Chief Executive Officer
iParadigms, LLC