



**UNITED STATES DEPARTMENT OF EDUCATION
FEDERAL STUDENT AID
APPLICATION, SCHOOL ELIGIBILITY
AND DELIVERY SERVICES
SCHOOL ELIGIBILITY CHANNEL
WASHINGTON, DC 20202**

JUL 16 2004

John J. DeGioia, Ph.D.
President
Georgetown University
204 Healy Hall, Box 571789
37th & O Streets, NW
Washington, DC 20057

**Certified Mail
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OPE ID: 00144500

Dear Dr. DeGioia:

As you know, a complaint was filed against Georgetown University on March 3, 2003 by Security on Campus, Inc., a non-profit national advocacy group, and Ms. Kate Dieringer, a former Georgetown University student. The joint complaint alleged violations of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). Specifically, the complaint alleged violations of § 668.46 (b)(11)(vi)(B). For informational purposes, we note that § 668.46 (b)(11) is sometimes referred to unofficially as the Campus Sexual Assault Victim's Bill of Rights.

Specifically, the complainants alleged that the University placed certain conditions on Ms. Dieringer's right to gain access to records generated and maintained by the University's Office of Student Conduct pursuant to the adjudication of a Fall 2001 sexual assault. In that proceeding, the accused was found in violation and was expelled initially but permitted to re-enter after serving a suspension. According to the complaint, University officials advised Ms. Dieringer that she would be denied access to the findings reached and sanctions imposed through the judicial process unless she signed a nondisclosure agreement. Ms. Dieringer also stated that she signed the agreement, "because I needed to know the outcome not only for my peace of mind but also to make decisions about where I would feel safest attending school" and filed the complaint to determine whether her actions and the actions of the University were permitted under Federal law.

Over several months, this office, in conjunction with the U.S. Department of Education's Office of Postsecondary Education, Office of General Counsel, and Family Policy Compliance Office, have carefully reviewed the complaint and the University's response. Based on our review, we have determined the following:

- 1) Ms. Dieringer did not violate any provision of the Federal Education Rights and Privacy Act (FERPA) or the Clery Act.
- 2) The University cannot require an alleged sexual assault victim to execute a non-disclosure agreement as a pre-condition to accessing judicial proceeding outcomes and sanction information under the Clery Act. The University's "Disclosure of Adjudication Outcome Form" is an example of an impermissible non-disclosure agreement for Clery Act purposes.
- 3) The FERPA exemptions referenced in the University's response do not apply in the instant case. Specifically, § 99.31 (a)(13) and (a)(14) permit but do not require certain re-disclosure of judicial proceeding outcomes and sanctions to alleged victims of a crime of violence or non-forcible sex offenses. As a matter of policy, the University does not make any public disclosures.
- 4) The Clery Act does require access to outcomes and sanctions information without condition. Specifically, Federal regulations at 34 CFR § 668.46 (b)(11)(vi)(B) specifically cited by the complainants states in part,

"Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (20 USC 1232g)." We note the use of mandatory language and the absence of any words of condition or limitation. Under the University's policy, a student who refused to execute an agreement would be barred from receiving judicial outcomes and sanctions information. As a result, a key aim of the Clery Act -- providing access to information to be used by affected persons in their recovery process -- is defeated.

- 5) It does appear that the University could continue to require the execution of non-disclosure agreements in cases governed exclusively by FERPA to the extent that University policy may permit.

Based on the guidance contained herein, the University must discontinue its use of non-disclosure agreements with regard to the dissemination of judicial proceeding outcomes and sanctions to accusers and the accused in cases of alleged sex offenses. Additionally, the University's policies must be modified to reflect this change. A copy of the modified policies must be submitted to the Philadelphia Case Management Team within 30 days.

Although this determination finds that the University is in violation of the Clery Act, the Department also acknowledges that the complaint and the University's response raised open issues of genuine confusion in the higher education community. For these reasons, the Department will not impose any fines or other sanctions at this time. The Department will issue additional guidance to the community in the near future.

We thank you for your prompt attention to this matter. If you have additional questions, please call the Philadelphia Case Management Team on (215) 656-6442.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Geneva Coombs". The signature is fluid and cursive, with a large loop at the end.

M. Geneva Coombs
Director
Case Management Teams – Northeast

cc: Ms. Jane Genster, Esq., Vice President and General Counsel