



June 10, 2009

Senator Sherrod Brown
713 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Brown,

I was pleased to read your recent comments in the *Columbus Dispatch*, in which you neatly captured the frustration that many in the media and First Amendment realms have felt for years over the inconsistent and at times illogical application of the Family Educational Rights and Privacy Act (FERPA), a/k/a the Buckley Amendment.

There is a reason that Ohio and all 49 other states have enacted broad statutes that declare all government records, including those kept by schools, open for public inspection with limited exceptions: because there is a compelling public interest in honest and efficient government, which can be served only if the public can independently verify how agencies are performing. While there is undoubtedly a legitimate privacy interest in grades and attendance records, I hope you will agree that the balance has swung too far in the direction of secrecy for secrecy's sake when schools are being told – as they were in December by the Department of Education – that unnamed statistics about the punishment of gun-toting students should be considered confidential “education records” and withheld from public disclosure.

Although there is ample blame to go around for the excesses of FERPA, the root cause has always been Congress' vague definition of confidential education records as those which “contain information directly related to a student” (20 U.S.C. Sec. 1232g(a)(4)(A)(i)). Congress has itself made clear that the definition was never meant to be so expansive as it appears, such as by amending the statute in 1992 to clarify that records created by law enforcement personnel for law enforcement purposes – even if they do contain “information directly related to a student” – are exempt from FERPA. We hope that you will convey the message that the statutory definition of “education records” has proven to be unworkably vague and is badly in need of refining.

With the established news media suffering under difficult economic conditions, it is more important than ever that schools and colleges make their records easily accessible to every requester, even those without the benefit of corporate legal departments.

The Student Press Law Center is a 501(c)(3) advocacy organization that represents the interests of the student media. We do not lobby or engage in political activity, but we can serve as a source of information to you and to Congress as you attempt to formulate sensible reforms that will restore the balance between privacy and openness that has been lost. Should you elect to convene a hearing about excessive government secrecy in the name of student privacy, we can provide you with testimony about dangerous abuses of FERPA in addition to those documented by the *Dispatch* – such as the recent case of a

college newspaper in California that was told it could not have the names of campus bus drivers to investigate a story about drivers' safety records, because the drivers – even though they are paid by the taxpayers as state workers – are students.

We look forward to serving as a resource to you and to Congress as you work to remedy the shortcomings in FERPA that the *Dispatch's* excellent reporting has made so plainly apparent.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frank LoMonte". The signature is fluid and cursive, with a large initial "F" and "L".

Frank D. LoMonte, Esq.
Executive Director
Student Press Law Center