

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

KNIGHT NEWS, INC.,

Appellant,

v.

Case No. 5D14-2951

UNIVERSITY OF CENTRAL
FLORIDA, ETC., ET AL.,

Appellees.

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Opinion filed February 5, 2016

Appeal from the Circuit Court
for Orange County,
Patricia A. Doherty, Judge.

Justin S. Hemlepp, of J.S. Hemlepp, P.A.,
Tampa, and Robert Rivas, of Sachs Sax
Caplan, P.L., Tallahassee, for Appellant.

Charles T. Wells and Richard E. Mitchell,
of GrayRobinson, P.A., Orlando, and
Jeffrey T. Kuntz, of GrayRobinson, P.A.,
Fort Lauderdale, for Appellees University
of Central Florida Board of Trustees and
Dr. John C. Hitt.

Carol Jean LoCicero and Mark R.
Caramanica, of Thomas & Locicero PL,
Tampa, Amicus Curiae, for the Student
Press Law Center, First Amendment
Foundation, Florida Press Association,
Reporters Committee for Freedom of the
Press, and WKMG-TV in support of
Appellant.

EVANDER, J.

Knight News, Inc. (“KNI”) appeals from adverse orders entered on sixteen counts of its seventeen-count complaint filed against the University of Central Florida Board of Trustees and the university’s president, Dr. John C. Hitt (collectively referred to hereinafter as “UCF”).¹

In its complaint, KNI sought declaratory, injunctive, and mandamus relief to remedy UCF’s purported failure to comply with KNI’s public records requests and UCF’s refusal to open certain student conduct board hearings to the public. We affirm the trial court’s orders and write only to address why we believe UCF properly refused to produce information that would identify students who were the subject of allegations of misconduct related to student government and/or hazing.

Section 1006.52(1), Florida Statutes (2012), creates an exemption to Florida’s Public Records Law, found in Chapter 119, Florida Statutes (2012), for students’ “education records”:

A student’s education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations issued pursuant thereto, . . . are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

FERPA defines “education records” 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). FERPA applies to all schools that receive

¹ UCF did not file a cross-appeal with regard to the single count in which the trial court ruled in KNI’s favor.

federal funds and is intended, inter alia, to limit the dissemination of a student's education records without the student's consent. By its terms, FERPA does not prohibit the disclosure of any education records. It does, however, act to deprive an educational institution of its eligibility for federal funding if its policies or practices "run afoul of the rights of access and privacy protected by the law." *NCAA v. Associated Press*, 18 So. 3d 1201, 1210 (Fla. 1st DCA 2009).

In addition to protecting "education records," FERPA also works to protect any personally identifiable information contained in an "education record" from improper disclosure. *Rhea v. Dist. Bd. of Trustees of Santa Fe Coll.*, 109 So. 3d 851, 856 (Fla. 1st DCA 2013); see also 20 U.S.C. § 1232g(b)(1) ("No funds shall be made available under any applicable program to 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, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to [enumerated exceptions]").

We agree with the Sixth Circuit Court of Appeals' conclusion in *United States v. Miami University*, 294 F.3d 797, 812 (6th Cir. 2002), that student disciplinary records are "education records" subject to the protections afforded under FERPA. As observed in *Miami University*, FERPA does permit the release of certain student disciplinary records and information where the alleged misconduct constitutes a crime of violence or a non-forcible sex offense. *Id.* In the case before us, there is no suggestion that the non-disclosed information fell within one of these exceptions.

Although KNI has set forth valid public policy arguments as to why the type of records and information requested in this case should be subject to public disclosure, we believe that those arguments are more properly addressed to the appropriate legislative bodies.

AFFIRMED.

LAWSON, C.J. and EDWARDS, J., concur.