IN THE EIGHTH JUDICIAL CIRCUIT COURT
IN AND FOR ALACHUA COUNTY, FLORIDA

FRANK C. BRACCO,
Plaintiff,

CASE NO.: 01-2009-CA-4444
DIVISION: K

vs.

J. BERNARD MACHEN, in his official capacity as the President of the University of Florida and agent of THE UNIVERSITY OF FLORIDA BOARD OF TRUSTEES, a state agency,
Defendant.

_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This **ACTION** came before the Court for review of cross motions for summary judgment filed by the Plaintiff and Defendant. This Court is presented with a pure issue of law, in that the parties have stipulated to all relevant factual matters, and this matter is ripe for disposition by summary judgment.

In November of 2008, Plaintiff submitted two public records requests to the University of Florida Student Senate ("Senate") which sought audio and video recordings, respectively, of public meetings of the Senate. In June of 2009, Plaintiff submitted an additional request for audio recordings from May of 2009, and also submitted a renewed request for the items previously requested. Plaintiff received a response indicating that he was welcome to listen to the recordings in the office of the Senate at his convenience. Plaintiff reiterated that he had a right to copies of the recordings, but the Senate continued to deny him the right to obtain copies. In August of 2009, Plaintiff filed a complaint seeking declaratory and injunctive relief on grounds that

Defendant had failed to comply with Chapter 119, which is Florida's public records act. Specifically, Plaintiff sought an order compelling the Defendant to comply with his public records request for certain audio and video recordings of University of Florida Student Senate meetings.

Defendant argues that the University of Florida is prohibited from providing Plaintiff with the requested copies because they constitute "educational records," pursuant to federal and Florida law. *See* Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g); 24 C.F.R. Part 99; § 1006.52, Fla. Stat. (adopting the FERPA's definition of educational records for the purposes of the Florida public records act.)

In June 2010, Plaintiff filed the motion currently before the Court. Plaintiff argues that videos of regularly held Senate meetings do no constitute "student education records" pursuant to FERPA.

With the consent of both parties, the Court reviewed *in camera* the DVD of the University of Florida Student Senate meetings which were the subject of this lawsuit. Additionally, both parties made inquiry of the U.S. Department of Education indicating that the Court in this case requested guidance from that department with respect to the disclosure of such records. No such response was forthcoming. Consequently, this Court is required to make the decision regarding this issue.

From its *in camera* inspection of the UF Student Senate proceedings and based upon an examination of the court file and all affidavits attached to the respective motions for summary judgment filed by both parties, the Court FINDS as follows:

A. The University of Florida Student Senate meetings which are the subject of this litigation were open to the public;

B. Two videos of University of Florida Student Senate meetings, precisely the same kind of records Plaintiff seeks in this case, were posted on a University of Florida public website for public viewing;

C. The agendas and minutes of the University of Florida Student Senate, made available on the University of Florida website, routinely identify individual University of Florida students. Likewise, the same University of Florida website identifies which student senators serve on committees and how each individual student senator voted on particular matters before the student senate. The same website provides the text of the legislation considered by the student senate and identifies the students who authored the text. Additionally, the website contains images of individually identified students who participated in various aspects of student government and sometimes it provides individual electronic mail addresses for those individual students.

D. Another University of Florida website makes available the individual names of each officer of each official student organization and the electronic mail address for those students.

E. The focus of the University of Florida Student Senate meetings which are the subject of this litigation was not on any individual student and the information contained in the DVD of those meetings did not directly relate to any individual student as such.

LEGAL ANALYSIS

Florida Statute section 1006.52(1) exempts from disclosure under the Florida Public Records Act "education records" as defined in the Family Educational Rights and Privacy Act ("FERPA"). § 1006.52(1), Fla. Stat. An education record is defined in FERPA as "those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. 1232(g)(a)(4)(A).

The narrow and dispositive question before the Court is whether the videotapes of University of Florida Student Senate meetings are records "directly related to a student," and therefore education records exempt from the open records mandate of Chapter 119, Florida Statutes.

As a preliminary matter, there is a strong public policy in Florida in favor of open government and access to public records. Art. 1, sec. 24(c), Fla. Const.; § 119.01, Fla. Stat. Generally, application of the law in a particular case should be resolved in favor of disclosure. *See National Collegiate Athletic Assoc. v. Associated Press*, 18 So. 3rd 1201, 1206 (Fla. 1st DCA 2009).

Not all records that identify students or include student statements are considered education records. For example, a record which includes student statements provided in relation to an investigation or discipline of another party, such as a professor or staff of a University department, does not contain information "directly related to a student," and therefore does not qualify as an education record. *See NCAA v. AP*, 18 So.3rd at 1210-11 (and cases cited therein) (affirming *Associated Press v. Florida State University Board of*

Trustees, WL 276352 (Fla. 2nd Circuit, August 28, 2009)(finding that the records are not education records "because those documents do not contain information directly relating to a student. Instead those documents focus primarily on the actions of FSU with respect to alleged academic fraud and the alleged failure of FSU to monitor its employees.")) The Second Circuit went on to explain in that case that a record does not qualify as an education record under FERPA simply because it mentions, identifies, or refers to a student in a tangential way. *Id.*

The facts here are analogous to those in *NCAA*. The Senate meetings were open meetings which any member of the public could attend in person. While the videos depict students discussing student and University business, the record does not reflect that the proceedings relate directly to an identified student. Rather, the proceedings relate generally to topics of importance to students and may identify specific students, but not as a focus of the record. Moreover, because the meeting itself was open, it is hardly logical that a memorialization of it would be confidential.

It is inconsistent for the Defendant to release certain student government records and records of student organizations, including identifying individual student names, student statements, and images of students related to the University of Florida Student Senate meetings, while holding that video recordings of the same student senate meetings are exempt from disclosure under FERPA because such recordings contain "images of students" or "student names" or "statements made by and or about any student."

Accordingly, it is

ADJUDGED that the record in question is not an educational record pursuant to FERPA, and not exempt from public record disclosure.

Plaintiff's motion for summary judgment is **GRANTED**.

ORDERED in Alachua County, Florida on this 10th January, 2011.

VICTOR L. HULSLANDER
ACTING CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 10 day of January, 2011, to the following:

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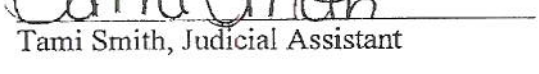

Tami Smith, Judicial Assistant

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