



# UNITED STATES DEPARTMENT OF EDUCATION

## OFFICE OF MANAGEMENT

### Privacy, Information and Records Management Services

August 28, 2014

Khaliah Barnes  
Director, EPIC Student Privacy Project  
1718 Connecticut Avenue, NW  
Suite 200  
Washington, DC 20009

RE: FOIA Request No. 14-01135-F

Dear Ms. Barnes:

This is an interim response to your request dated April 15, 2014, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in the FOIA Service Center (FSC) on April 17, 2014, and was forwarded to the Family Policy Compliance Office (FPCO) to search for any responsive documents they may have.

You requested the following agency records in possession of the Department:

- All Family Educational Rights and Privacy Act (FERPA) complaints that the FPCO has received since January 8, 2009, the date the 2008 regulations went into effect;
- All records detailing the number of investigations the FPCO initiated in response to complaints since January 8, 2009, as well as investigations the FPCO has initiated on its own since January 8, 2009;
- All records related to completed investigations since January 8, 2009.

Enclosed with this letter are 103 pages of documents. However, certain information has been withheld according to the FOIA exemptions specified below:

- Records or portions of records relating to personal information is exempt pursuant to 5 U.S.C. § 552 (b)(6) of the FOIA. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy.
- Records or portions of records relating to personal information that was compiled for a law enforcement purpose is exempt pursuant 5 U.S.C. § 552 (b)(7)(C). Disclosure of this information would constitute an unwarranted invasion of personal privacy.

At this time, the Department is continuing to process your request and your FOIA request case file remains open. It will not close until the Department provides you with a response regarding outstanding responsive documents.

Additionally, our final release letter will contain information related to your appeal rights of the agency's decisions, and will include applicable invoices for the entire set of responsive documents.

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202-4500  
[www.ed.gov](http://www.ed.gov)

*Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.*

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FOIA Request No. 14-01135-F

If you have any questions, please contact the FSC at (202) 401-8365 or  
EDFOIAMANAGER@ed.gov.

Sincerely,

*Arthur Caliguiran*

Arthur Caliguiran  
FOIA Public Liaison  
FOIA Service Center

Enclosure

Mr. Erin Menzel

(b)(6)

DEC 28 2011

Dear Mr. Menzel:

This letter is in response to your November 19, 2011, correspondence you sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you state that your rights under the Family Educational Rights and Privacy Act (FERPA) were violated. FPCO administers FERPA, which affords eligible students certain rights with regard to education records.

FERPA applies to educational agencies and institutions that receive Federal funds from programs administered by the U.S. Department of Education (Department). Private and religious schools at the elementary and secondary level generally do not receive funds from the Department of Education and are, therefore, not subject to FERPA. Rather, the school itself must receive funds from a program administered by the Department to be subject to FERPA.

In the instance that you identify in your letter to FPCO, you have not provided information for this office to determine that the College Internship Program (CIP) receives funding from the Department. Accordingly, FERPA does not appear to apply to your circumstance and this office is unable to assist you with regard to your request to this office.

Enclosed for your reference is a fact sheet on FERPA. You may also find more information regarding FERPA on our website at: <http://www2.ed.gov/policy/gen/guid/fpcoc>.

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

Ms. Patricia Dilworth

DEC 22 2011

(b)(6)

Dear Ms. Dilworth:

We are writing to inform you that the Family Policy Compliance Office is not initiating an investigation with regard to a complaint you filed with us on August 31, 2011. In that complaint, you are alleging that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. Your daughter, (b)(6) attends (b)(6) (School) in the District.

This Office investigates certain complaints alleging violation of FERPA if it:

- (a) Is filed by the "parent" of a student at a public elementary or secondary school or an "eligible student" who is at least 18 years of age or who attends or attended a postsecondary institution with FERPA rights in the education records which are the subject of the complaint;
- (b) Is filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known about the violation; and
- (c) Contains specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred.

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>. Enclosed are our FERPA guidance document and complaint form.

This Office's enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation, and requesting a written response from the district concerning the allegation. If we then determine that a district is in violation of FERPA, the district and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the district in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a district take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the district has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it does not provide specific allegations of fact which give this office reasonable cause to believe that a FERPA violation occurred. As indicated above, in order for this office to initiate an investigation, a complaint must contain such specific allegations.

The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." Please note that a test protocol that does not include a student's name or the student's actual work is not generally an education record under FERPA to which a parent would have the right to inspect and review. In this case, the document which includes your daughter's name and her actual work, such as an answer sheet or booklet, would be your daughter's education record subject to the requirements of FERPA. A school is required by FERPA to respond to reasonable requests for explanations and interpretations of education records. 34 CFR § 99.10(c).

The provisions of 34 CFR Part 99, Subpart B detail the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request. 34 CFR § 99.10(b). Please note that a school is not required by FERPA to immediately produce education records upon demand by a parent.

A school is not generally required by FERPA to maintain particular education records or education records that contain specific information. Rather, a school is required to provide certain privacy protections for those education records that the school selects to maintain. Also, unless there is an outstanding request by a parent to inspect and review education records, the school may destroy such records without notice to the parent.

You state that you requested access to all of your daughter's education records on May 3, 2011, and the School scheduled an appointment for you to inspect and review the records on May 20, 2011. You state further that the School cancelled you May 20 appointment "just days prior to [the] appointment." By my calculation, even if the School cancelled the appointment for May 20, there were 28 days left in the 45-day required time period for you and the School to schedule another appointment. You did not provide us with a statement or any evidence that the School refused to schedule another appointment during the remaining 28 days of the 45 day period.

I'm assuming that May 20 is near the end of the school year for student attendance. Regardless of that, the District would still be required by FERPA to provide you access to the requested education records within the 45-day period. However, since you did not mention attempting to schedule another appointment to inspect and review the Student's education records within the

remaining 28 days or provide us any evidence that the School refused to schedule such an appointment, we are not initiating an investigation. Your demand for immediate access to your daughter's education records during the telephone call prior to May 20 would not qualify as attempting to reschedule another appointment.

In order to exercise your rights under FERPA, I suggest you send a dated letter to the appropriate official at the School requesting an opportunity to inspect and review all of your daughter's education records. Though it is not required, you may want to include a copy of this letter along with your request. If the school fails to provide you access to the requested education records or fails to contact you within 45 days, you may write to this Office again. At such time, please provide us with a dated copy of your letter to the School, any response from the School, and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

If you have questions regarding this matter, you may contact me. The name, address, and telephone number of the Office are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
(202) 260-3887

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures

DEC 21 2011

Mr. and Mrs. Craig Christian

(b)(6)

Dear Mr. and Mrs. Christian:

This is to respond to your September 28, 2011, letter to this office in which you allege that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it did not provide you with complete access to the education records of your son in response to your request. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. When a student reaches the age of 18 or attends an institution of postsecondary education, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the student. The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of a FERPA guidance document for parents.

Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is required to provide the parent with copies of education records or make other arrangements when a failure to do so would effectively prevent the parent or the student from obtaining access to the education records. A case in point would be a situation in which the parent does not live within commuting distance of the school. In circumstances when a parent lives within commuting distance to the school or school district, the school is required only to provide the parent with an opportunity to inspect and review their child's education records, although it is permitted to provide the parent with copies. It appears that you live within commuting distance and FERPA would require the District to provide you access, though it would be permitted to provide you with copies.

FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records. Additionally, FERPA does not require a school to keep education records in any particular file or location, and a school official would not be prohibited by FERPA from taking education records home, so long as the records are treated consistent with FERPA.

Ms. Mandy Wilson

(b)(6)

DEC 29 2011

Dear Ms. Wilson:

This is in response to your recent, letter to this Office in which you express concerns related to your child's special education needs. This Office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to inspect and review their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information are a guidance document and complaint form.

It does not appear that your concerns are addressed by FERPA. Rather, they may be addressed by Part B Individuals with Disabilities Education Act. Although Part B is a Federal law, it is administered by the States. For further information regarding Part B, you may contact:

Peggy McDonald  
New Jersey Department of Education  
Office of Special Education Programs  
P.O. Box 500  
Trenton, NJ 08625-0500  
(609)292-0147

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office



Ms. Michelle Arrowood

(b)(6)

DEC 21 2011

Dear Ms. Arrowood:

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint received in this Office on August 16, 2011. In that complaint, you are alleging that (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. Your biological son, (b)(6) (Student A) and your step-daughter, (b)(6) (Student B), attend the (b)(6) School in the District. Student A is not the biological son of your husband, (b)(6) Student B is your husband's biological daughter.

This Office investigates certain complaints alleging violation of FERPA if it:

- (a) Is filed by the "parent" of a student at a public elementary or secondary school or as "eligible student" who is at least 18 years of age or who attends or attended a postsecondary institution with FERPA rights in the education records which are the subject of the complaint;
- (b) Is filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known about the violation; and
- (c) Contains specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred.

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>. Enclosed for your information is a FERPA guidance document.

This Office's enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation, and requesting a written response from the district concerning the allegation. If we then determine that a district is in violation of FERPA, the district and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the district in order to

come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a district take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the district has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it does not provide specific allegations of fact which give this Office reasonable cause to believe that a FERPA violation occurred. In order for this Office to initiate an investigation, a complaint must contain such specific allegations.

The term "education records" means those 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 "Education records." The provisions of 34 CFR Part 99, Subpart D specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written consent for the disclosure. FERPA allows for limited disclosure of such records without consent under limited circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31.

#### Allegation A

It appears you are alleging that on February 2, 2011, you learned that information from Student A's education records had been disclosed to a third party without your prior written consent. During the time of the alleged February 2 disclosure, your husband and his ex-wife were involved in a custody battle regarding their children, including Student B, and a Guardian Ad Litem had been appointed by the Court to represent the interests of the children. You later learned that the Guardian Ad Litem had subpoenaed information from the education records of Student B in relation to the custody battle, and the District had provided the Guardian Ad Litem information from Student A's education records along with information from Student's B's education records. The information disclosed from Student A's education records included reports from the District to the Department of Family and Children Services regarding suspected child abuse by you of Student A. If you wish this Office to further consider this allegation, we need to receive from you verification that we have accurately stated it above or information clarifying the allegation.

#### Allegation B

It appear you are alleging that (b)(6) a counselor at the School, disclosed information from Student A's education records to your husband's ex-wife in the form of a "timeline of events." You state that this timeline of events included Student A's name and your

name. If you wish us to further consider this allegation, we need to receive additional information from you. Please provide us with the date you learned of the alleged disclosure of the timeline of events and additional information regarding the events to which the timeline applies. We will review the information you submit and taken any appropriate action.

The provisions of 34 CFR Part 99, Subpart B detail the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request. A school is required to provide a parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from obtaining access to the records. 34 CFR § 99. A case in point would be a situation in which the parent does not live within commuting distance of the school. Based on the information in your letter, it appears that you live within commuting distance of the student's school. Therefore, the school is required by FERPA to provide you with an opportunity to inspect and review your child's education records. The school is not required to provide you with copies of the records, though it is permitted to do so.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides educational agencies and institutions with technical assistance to help assure they are in compliance with FERPA or to bring them into compliance with FERPA. We believe a letter of technical assistance is the best way to address your allegation regarding access to education records. Once we receive the information from you which we requested in regard to allegations A and B, we will also prepare our letter of technical assistance to the District regarding your allegation about access to education records.

You state that the District failed to comply with a request by you for access to the education records of your step-daughter, Student B, because the District does not believe that stepparents have rights under FERPA. The term "parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian. This Office has determined that the term "parent" as defined in the FERPA regulations, includes stepparents, when the stepparent is present on a day-to-day basis with the natural parent and the child, and the other natural parent is absence from the home. Accordingly, custodial stepparents generally have the same rights under FERPA as do natural parents. On the other hand, a noncustodial stepparent does not have rights under FERPA. Based on the information you have provided us, you are the custodial stepparent of Student B and, therefore, you have the same rights under FERPA with respect to Student B as does your husband.

You state that the District failed to comply with your requests for access to (b)(6) counseling records, claiming they were sole possession records. Under FERPA, the term "education records" does not include records that are kept in the sole possession of the maker of

the record, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. 34 CFR § 99.3. However, this exception to the definition of education records is strictly construed by this Office to mean "memory jogger" type information. For example, this exception includes information that a school official uses as a personal reference tool and, thus, is generally maintained by the school official unbeknownst to other individuals. This exception does not include records that are created in conjunction with a student. Any records maintained by (b)(6) which include information from any counseling session she may have had with Student A would be Student A's education records to which you would have the right to inspect and review.

Please provide us with the requested information regarding allegations A and B within three weeks of your receipt of this letter. If you have questions regarding this matter, you may contact me. The name, address, and telephone number of the Office are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
(202) 260-3887

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Mr. J. David John

DEC 15 2011

(b)(6)

Dear Mr. John:

This is in response to your November 12, 2011, letter, addressed to (b)(6) (b)(6) at the Department, in which you indicate that you believe your rights have been violated under the Family Educational Rights and Privacy Act (FERPA). Your letter was referred to this Office for response because we administer FERPA. Specifically, you appear to allege that (b)(6) violated your Rights when it provided information from your education records to Megan Bolinder, the mother of your child, and to (b)(6) (b)(6) her parents.

FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. FERPA affords eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records that are directly related to a student and maintained by an educational agency or institution or by a party acting on or behalf of the institution. Enclosed for your information are a fact sheet, guidance document and complaint form.

Under FERPA, a school may not generally disclose personally identifiable information from a student's records to a third party unless the student has provided written consent. There are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records. However, it appears none of these exceptions apply to your situation.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. A timely complaint is defined as one that is submitted to this office within 180 days of the date that the complainant knew or reasonable should have known of the alleged violation. Based on the information in your letter, it appears the alleged disclosure occurred sometime around November 10, 2010; however, you do not state the date that you actually learned about the alleged disclosure. If you learned about the alleged violation before May 2011, your allegation does not meet FERPA's general requirement for timeliness and there would be no basis for this office to further consider your complaint.

I trust that this adequately explains the scope and limitations of FERPA as it pertains to your allegation. With regard to any concerns that you have under laws administered by Office of Civil Rights (OCR), please note that you may contact OCR's regional office in your area. Below is the contact information for that office:

Chicago Office  
Office for Civil Rights  
U.S. Department of Education  
Citigroup Center  
500 W. Madison Street, Suite 1475  
Chicago, Illinois 60661  
Telephone: 312-730-1560  
Fax: 312-730-1576; TDD: 877-521-2172  
Email: [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures

Mr. and Mrs. Dean Duane

DEC 8 2011

(b)(6)

Dear Mr. and Mrs. Duane:

This is to respond to your September 19, 2011, letter to this office in which you appear to believe that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (District) when it did not provide you the opportunity to amend certain of your son's education records in response to your request. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their child's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of the FERPA guidance document for parents.

FERPA affords parents the opportunity to seek amendment of their child's education records which they believe contain information that is inaccurate or misleading. While a school is not required to amend a record in accordance with a parent's request, it is required to consider the request for amendment of an education record, to inform the parent of its decision, and if the request is denied, to advise the parent of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the parent has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

This right is not unlimited, however, and a school is not required by FERPA to afford a parent the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student. This fact is indicated in the legislative history of FERPA. The primary source of legislative history regarding FERPA is contained in the "Joint Statement in Explanation of Buckley/Pell Amendment," Volume 120 of the Congressional Record, pages 39862-39866. The Joint Statement states that FERPA was "not intended to overturn established standards and procedures for the challenge of substantive decisions made by an educational institution." (Emphasis added.) FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards

and procedures for making academic assessments, disciplinary rulings, or placement determinations. Thus, while FERPA affords parents the right to seek to amend education records which contain inaccurate information, this right cannot be used to challenge a grade, an individual's opinion, or a substantive decision. The test to which you refer appears to have been accurately recorded and is not subject to FERPA's amendment provision.

You also are seeking the removal of the results of your child's IQ test results that you state were administered without your authorization. FERPA does not generally restrict a school from creating records; it does however provide certain protections as discussed above to education records. You may wish to contact your State department of education for assistance in this matter.

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure





UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Mr. Anthony A. Bair

DEC 8 2011

(b)(6)

Dear Mr. Bair:

This correspondence responds to your letter to this office in which you raise issues which do not relate to the Family Educational Rights and Privacy Act (FERPA). For additional information regarding FERPA, a copy of a FERPA fact sheet has been enclosed. This office administers FERPA, which addresses issues pertaining to education records.

In your October 17, 2011, letter you state that your daughter's school discriminates against you based on gender which may relate to issues addressed by the Department's Office for Civil Rights (OCR). Should you choose to initiate contact with OCR's regional office for your State, the mailing address and telephone number are:

Cleveland Office  
Office for Civil Rights  
U.S. Department of Education  
600 Superior Avenue East, Suite 750  
Cleveland, OH 44114-2611  
Telephone: 216-522-4970

I trust this information is helpful in response to your inquiry.

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Ms. Nancy Frost

DEC 8 2011

(b)(6)

Dear Ms. Frost:

This is to respond to your September 19, 2011, correspondence and received by this office on September 19, 2011, sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. FPCO administers FERPA, which affords parents and eligible students certain rights pertaining to education records.

FERPA provides that an educational agency or institution that receives U.S. Department of Education funds may not have a policy or practice of denying parents or eligible students the right to:

- Inspect and review education records (34 CFR § 99.10);
- Seek to amend education records (34 CFR §§ 99.20, 99.21, and 99.22); or
- Consent to the disclosure of personally identifiable information from education records except as specified by law (34 CFR §§ 99.30 and 99.31).

The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a FERPA guidance document. You may also find more information regarding FERPA on our website at: <http://www2.ed.gov/policy/gen/guid/fpc/index.html>.

You assert that the above educational agency or institution did not comply with one of the following provisions of FERPA:

- FERPA's access provision.** The school did not provide you access to your child's or your education records within 45 days of your request.
- FERPA's disclosure provision.** The school improperly disclosed information from your child's or your education records.
- FERPA's amendment provision.** The school has refused to amend your child's or your education records per your request and not provided you with an opportunity for a hearing on the disputed education records

Based on the information you provided FPCO, we are unable to investigate your allegation(s) for the following reason(s):

- Based on the dates you provided, your complaint appears to be untimely. A complaint must be received by FPCO within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation. (See highlighted portion of the enclosed guidance.)
  
- While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist. (See highlighted portion of the enclosed guidance.)
  
- FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See highlighted portion of the enclosed guidance.)
  
- Requests to modify a grade, opinions in education records, and other substantive decisions are not subject to FERPA's amendment provision. (See highlighted portion of the enclosed guidance.)

You have not provided sufficient information for this office to determine that a violation of FERPA occurred. Specifically, while you state that you requested the District provide you with access to certain of your daughter's records, you have not provided this office with evidence of your request for access. In order for this office to investigate your allegation, please provide a dated copy of your request which includes the name and title of the official to whom your request was made and copy, if any, of the District's response. Also, please complete the enclosed complaint form. Once this office receives this needed information from you, we will review it and take any appropriate action.

For further information regarding issues which you believe may be addressed by the U. S. Department of Education, you may contact the Department via our toll-free telephone number at 1-800-USA-LEARN (800-872-5327).

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

AUG 22 2012

Ms. Renee Johnson

(b)(6)

Dear Ms. Johnson:

This is to respond to your February 8, 2012, letter to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (District) when it disclosed your son's education records to third parties without your prior written consent. Specifically, you state that (b)(6) (b)(6) principal; (b)(6) teacher; (b)(6) social worker; (b)(6) psychologist; who are school officials in the District, improperly disclosed your son's Individualized Education Program (IEP) and certain other education records to (b)(6) (b)(6) principal in the (b)(6) District. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their child's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of the FERPA guidance document for parents.

FERPA generally requires prior written consent for the disclosure of education records, except in certain limited circumstances specified by statute. One of the exceptions to the prior written consent provision permits a school to disclose education records to officials of another school where the student seeks or intends to enroll. A school that discloses education records under this provision must make a reasonable attempt to notify the parent or eligible student of the disclosure, unless the disclosure is initiated by the parent or eligible student, or the school's annual notification of rights under FERPA includes a notice that it forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll. Please note that the District includes in its annual notice of FERPA that it forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll.

Therefore, a school may release a portion or all of a student's education records, under the "seeks or intends" to enroll exception in FERPA, at its discretion. However, the parent does not, under FERPA, have the right to prevent a school which a student previously attended from transferring the student's education records or from communicating information about a student to the student's new school.

Page 2 -- Ms. Renee Johnson

This office interprets FERPA to permit nonconsensual disclosure of education records, or personally identifiable information from education records, in connection with educational placements under the Individuals with Disabilities Education Act (Part B). That is, an educational agency or institution that is subject to FERPA may disclose a student's education records to a school in its efforts to seek an appropriate educational placement for a student under Part B. Based on the information you provided, the District is permitted to share your son's education records without your consent to officials in the <sup>(b)(6)</sup> District as discussed above. Accordingly, no basis exists for this office to investigate your allegation that the District improperly disclosed certain of your son's education records without your consent.

I trust this information is helpful to explain the scope and limitations of FERPA as it relates to your concern.

Sincerely,

Dale King  
Director  
Family Policy Compliance Office

Enclosure

(b)(6)

AUG 30 2011

Dear

(b)(6)

This is to respond to your May 10, 2011, emailed correspondence and telephone calls to this office in which you appear to allege that (b)(6) (University) has violated certain of your rights. This office administers the Family Educational Rights and Privacy Act (FERPA) which addresses issues pertaining to education records. Please note this office is unable to address local issues you raise relating to contractual issues, student conduct, and disciplinary matters, which are issues best addressed by the University.

FERPA is a Federal law that gives eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. When a student reaches the age of 18 or attends an institution of postsecondary education, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the student. The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of a FERPA fact sheet.

Under FERPA, a school must provide a student with an opportunity to inspect and review his or her education records within 45 days of the receipt of a request. A school is required to provide the student with copies of education records or make other arrangements when a failure to do so would effectively prevent the student from obtaining access to the education records. A case in point would be a situation in which the student does not live within commuting distance of the school. It appears that you live outside of commuting distance to the school. Accordingly, the school may provide you with copies of your education records or make other arrangements for you to inspect and review your education records in order to comply with FERPA.

This office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has failed to comply with FERPA. A timely complaint is defined as one that is submitted to this office within 180 days of the date that the complainant knew or reasonably should have known of the alleged failure to comply with FERPA. This office does not have the staff resources to review voluminous documents to determine whether specific allegations of a school's failure to comply with FERPA are included. Rather, it is the responsibility of the complainant to clearly and succinctly state his or her allegation and to only provide relevant supporting evidence. Please note that this office only investigates complaints that contain specific allegations of fact giving reasonable cause to believe that a violation of

FERPA has occurred. Additionally, we have requested that you return the FERPA complaint form that we have previously forwarded to you in order that you may clarify your allegation and submit needed information. You have not provided such facts and, therefore, the Department is unable to be of assistance to you.

This office attempted to reach you at all three of the telephone numbers you provided in your recent telephone and email messages to the Department. Despite our repeated efforts to reach you via telephone, we are unable to reach you at any of the telephone numbers you provided. Accordingly, this office is unable to respond to your telephone requests.

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

(b)(6)

AUG 30 2011

Dear (b)(6)

This is to respond to your December 21, 2010, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6) College violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. FPCO administers FERPA, which affords parents and eligible students certain rights pertaining to education records.

FERPA provides that an educational agency or institution that receives U.S. Department of Education funds may not have a policy or practice of denying parents or eligible students the right to:

- Inspect and review education records (34 CFR § 99.10);
- Seek to amend education records (34 CFR §§ 99.20, 99.21, and 99.22); or
- Consent to the disclosure of personally identifiable information from education records except as specified by law (34 CFR §§ 99.30 and 99.31).

The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a FERPA guidance document. You may also find more information regarding FERPA on our website at:  
<http://www2.ed.gov/policy/gen/guid/fpco/index.html>.

You assert that the above educational agency or institution did not comply with one of the following provisions of FERPA:

- FERPA's access provision.** The school did not provide you access to your child's or your education records within 45 days of your request.
- FERPA's disclosure provision.** The school improperly disclosed information from your child's or your education records.
- FERPA's amendment provision.** The school has refused to amend your child's or your education records per your request and not provided you with an opportunity for a hearing on the disputed education records



Based on the information you provided FPCO, we are unable to investigate your allegation(s) for the following reason(s):

- Your complaint is untimely. A complaint must be received by FPCO within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation. (See highlighted portion of the enclosed guidance.)
- While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist. (See highlighted portion of the enclosed guidance.)
- FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See highlighted portion of the enclosed guidance.)
- Requests to modify a grade, opinions in education records, and other substantive decisions are not subject to FERPA's amendment provision. (See highlighted portion of the enclosed guidance.)

For further information regarding issues which you believe may be addressed by the U. S. Department of Education, you may contact the Department via our toll-free telephone number at 1-800-USA-LEARN (800-872-5327).

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

(b)(6)

AUG 30 2011

Dear

(b)(6)

This is to respond to your December 23, 2010, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that (b)(6) School violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. FPCO administers FERPA, which affords parents and eligible students certain rights pertaining to education records.

FERPA provides that an educational agency or institution that receives U.S. Department of Education funds may not have a policy or practice of denying parents or eligible students the right to:

- Inspect and review education records (34 CFR § 99.10);
- Seek to amend education records (34 CFR §§ 99.20, 99.21, and 99.22); or
- Consent to the disclosure of personally identifiable information from education records except as specified by law (34 CFR §§ 99.30 and 99.31).

The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a FERPA guidance document. You may also find more information regarding FERPA on our website at:  
<http://www2.ed.gov/policy/gen/guid/fpc/index.html>.

You assert that the above educational agency or institution did not comply with one of the following provisions of FERPA:

- FERPA's access provision.** The school did not provide you access to your child's or your education records within 45 days of your request.
- FERPA's disclosure provision.** The school improperly disclosed information from your child's or your education records.
- FERPA's amendment provision.** The school has refused to amend your child's or your education records per your request and not provided you with an opportunity for a hearing on the disputed education records

Based on the information you provided FPCO, we are unable to investigate your allegation(s) for the following reason(s):

- Your complaint is untimely. A complaint must be received by FPCO within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation. (See highlighted portion of the enclosed guidance.)
- While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist. (See highlighted portion of the enclosed guidance.)
- FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See highlighted portion of the enclosed guidance.)
- Requests to modify a grade, opinions in education records, and other substantive decisions are not subject to FERPA's amendment provision. (See highlighted portion of the enclosed guidance.)

For further information regarding issues which you believe may be addressed by the U. S. Department of Education, you may contact the Department via our toll-free telephone number at 1-800-USA-LEARN (800-872-5327).

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

AUG 09 2011

(b)(6)

(b)(6)

Dear

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to the undated complaint you filed with us. In that complaint, you are alleging that the (b)(6) (College) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

This Office investigates certain complaints alleging violation of FERPA if it:

- (a) Is filed by the “parent” of a minor student at a public elementary or secondary school or an “eligible student” who is at least 18 years of age or who attends or attended a postsecondary institution with FERPA rights in the education records which are the subject of the complaint;
- (b) Is filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known about the violation; and
- (c) Contains specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred.

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>. Enclosed for your information is a FERPA guidance document.

This Office’s enforcement process is intended to work cooperatively with colleges and other postsecondary institutions to achieve their voluntary compliance with FERPA’s requirements. Following a review of the allegations and evidence submitted by a complainant, this Office may initiate an administrative investigation by sending the college and the complainant a notification letter about the allegation, and requesting a written response from the college concerning the allegation. If this Office then determines that a college is in violation of FERPA, the college and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the college in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a college

(b)(6)

take punitive or disciplinary action against an individual as the result of a FERPA violation. This Office closes its investigation when the college has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it does not provide specific allegations of fact which give this Office reasonable cause to believe that a FERPA violation occurred. In order for this Office to initiate an investigation, a complaint must contain such specific allegations.

The term "education records" means those 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 "Education records." The provisions of 34 CFR Part 99, Subpart D specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written signed consent for the disclosure. FERPA allows for limited disclosure of such records without consent under limited circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31.

Please note that FERPA does not protect the confidentiality of information in general and, therefore, does not apply to disclosure of information derived from a source other than education records, even if education records exist which contain that information. Rather, FERPA protects information derived from education records from improper disclosure. As a general rule, information obtained through personal knowledge or observation, and not from an education record, is not protected from disclosure under FERPA.

It appears you are alleging that on March 29, 2011, your professor for an English course stated aloud in front of other students in the course that you had plagiarized your research paper, and she stated this again in front of students and others in the office of the Dean of Communications.

Specifically, you state:

. . . [The Professor] told me several times over, that I plagiarized [my research paper] and she would like to see the Dean referencing the plagiarism. This would have been fine had there not been other students in the room with us. The other students were waiting in line behind me to see the [professor]. If there was any doubt the other students had heard her . . . it was most definitely swept away by the looks on the faces of my classmates behind me. . . . The last occurrence was in the Dean of Communications office . . . . We

(b)(6)

were standing in front of a desk after we had made an appointment; she wanted to once again “go over the criteria for plagiarism.” She once again exclaimed in a way for people to hear that I plagiarized my paper. . . .

If you wish this Office to further consider your allegation, we need to receive additional information from you. Please provide us with the name and address of the president of the College, and the names of the English professor and the dean. Also please provide us with any evidence that you may have that the alleged disclosures occurred. For example you could provide us with a signed statement from one of the students or others who heard the English professor make the accusation about plagiarism. Also, as stated above, FERPA applies to tangible education records. Do you have any evidence that the English professor recorded her assessment that your paper had been plagiarized prior to her statements in the classroom and the dean’s office? We will review the information you submit and take any appropriate action.

If you have questions regarding this matter, you may contact me. The name, address, and telephone number of the Office are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
(202) 260-3887

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosure

(b)(6)

AUG 26 2011

(b)(6)

Dear

This is in response to your May 11, 2011 letter, to this office in which you express concerns related to your child's special education needs. This office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to inspect and review their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information are a guidance document and complaint form.

It does not appear that your concerns are addressed by FERPA. Rather, they may be addressed by Part B Individuals with Disabilities Education Act. Although Part B is a Federal law, it is administered by the States. For further information regarding Part B, you may contact:

Mr. Fred Balcom  
Special Education Division  
California Department of Education  
1430 N Street  
Sacramento, CA 95814

However, should you read the enclosed guidance document and still believe your concerns are addressed by FERPA, you may follow the directions on page 6 and 7 of the guidance document for filing a complaint. We will review the information you submit and take any appropriate action.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures

AUG 19 2011

(b)(6)

Dear

(b)(6)

This is to respond to your March 28, 2011, letter to this Office in which you allege that (b)(6) State University (University) violated the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232; 34 CFR § 99.

You allege that the above educational agency or institution did not comply with one of the following provisions of FERPA:

- FERPA's access provision.
- FERPA's disclosure provision.
- FERPA's amendment provision.

FERPA provides that an educational agency or institution that receives U.S. Department of Education funds may not have a policy or practice of denying parents or eligible students the right to:

- Inspect and review education records (34 CFR § 99.10).
- Seek to amend education records (34 CFR §§ 99.20, 99.21, and 99.22).
- Consent to the disclosure of personally identifiable information from education records except as specified by law (34 CFR §§ 99.30 and 99.31).

The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a FERPA Guidance Document.

Based on the information you provided this Office, we are unable to investigate your allegation(s) for the following reason(s):

- Your complaint is untimely. A complaint must be received by this Office within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation. (See highlighted portion of the enclosed guidance.)
- While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only



(b)(6)

require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist. (See highlighted portion of the enclosed guidance.)

\_\_\_\_\_ FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See highlighted portion of the enclosed guidance.)

  X   You have not provided sufficient information for this Office to determine that a violation of FERPA may have occurred. (See enclosed guidance.)

\_\_\_\_\_ Requests to modify a grade, opinions included in education records, and other substantive decisions are not subject to FERPA's amendment provision. (See highlighted portion of the enclosed guidance.)

Under FERPA, when a student turns 18 years of age or attends a postsecondary institution, he or she becomes an "eligible student," and all rights under FERPA transfer from the parent to the eligible student. Since your wife is an eligible student, all rights under FERPA belong to her with respect to her education records.

A school is permitted to disclose personally identifiable information from an eligible student's education records to a third party if the student provides written consent for such disclosure. However, a school is not required by FERPA to provide information from education records to any third party (including a spouse) even if the student has provided written consent for the disclosure. Rather, a school is permitted to disclose education records to a third party based on written consent. You wife, an eligible student, is the only person to whom the University is required by FERPA to provide access to her education records. Thus, there is no basis for this Office to further consider your allegation.

I trust this information adequately explains the scope and limitations of FERPA as it pertains to your client's concerns.

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosure

AUG 18 2011

(b)(6)

Dear (b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on April 6, 2011, on behalf of your client, (b)(6) (Student). In that complaint, you are alleging that (b)(6) (College) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

This Office investigates certain complaints alleging violation of FERPA if it:

- (a) Is filed by the “parent” of a minor student at a public elementary or secondary school or an “eligible student” who is at least 18 years of age or who attends or attended a postsecondary institution with FERPA rights in the education records which are the subject of the complaint;
- (b) Is filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known about the violation; and
- (c) Contains specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred.

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>. Enclosed is a FERPA guidance document for the Student.

This Office’s enforcement process is intended to work cooperatively with colleges and other postsecondary institutions to achieve their voluntary compliance with FERPA’s requirements. Following a review of the allegations and evidence submitted by a complainant, this Office may initiate an administrative investigation by sending the college and the complainant a notification letter about the allegation, and requesting a written response from the college concerning the allegation. If this Office then determines that a college is in violation of FERPA, the college and the complainant are so advised by a letter of finding which contains corrective actions to be

taken by the college in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a college take punitive or disciplinary action against an individual as the result of a FERPA violation. This Office closes its investigation when the college has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it does not provide specific allegations of fact which give this Office reasonable cause to believe that a FERPA violation occurred. In order for this Office to initiate an investigation, a complaint must contain such specific allegations.

The term "education records" means those 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 "Education records." The provisions of 34 CFR Part 99, Subpart B detail the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request.

In your letter to us, you state that by letter dated December 20, 2010, the College offered the Student the opportunity to inspect and review his education records. Granted, the December 20 date is beyond the 45 days permitted by FERPA for the College to comply with the Student's request for access to his records. However, you also state that as of the date of your April 6, 2011, letter to this Office, the Student still has not been provided an opportunity to inspect and review the requested education records. It is not clear whether the Student did not follow-up on the College's December 20 offer to provide him the opportunity to inspect and review his education records, or whether the Student followed-up but the College did not provide him access to all of the education records requested.

If you wish this Office to further consider the allegation, we need to receive additional information from you. Please provide us with the name and address of the President of the College. Also, please provide us with a copy of the Student's November 1, 2010, request and any of the Student's other requests for access to his education records. Finally, please clarify the issue above regarding the College's December 20 letter offering him the opportunity to inspect and review his education records. If you are alleging that the College provided the Student with the opportunity to inspect and review some, but not all, of his education records, please provide us with a list of the records which you believe the College maintained at the time of the Student's request and to which it still has not provided him access. We will review the information you submit and take any appropriate action.

(b)(6)

If you have questions regarding this matter, you may contact me. The name, address, and telephone number of the Office are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
(202) 260-3887

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

(b)(6)

AUG 18 2011

(b)(6)

Dear

This is in response to your recent letter, addressed to this Office, about your student loans. Please note that we administer the Family Educational Rights and Privacy Act (FERPA). It seems that your concerns would be addressed by the Department's Student Aid Ombudsman, not FERPA. For your information, enclosed is a fact sheet on FERPA.

The Federal Student Aid Ombudsman helps resolve disputes and solve other problems with federal student loans. You may contact the Office of Ombudsman at this address and telephone number:

U.S. Department of Education  
FSA Ombudsman  
830 First Street, NE  
Fourth Floor  
Washington, DC 20202-5144  
1-877-557-2575

You may also go to their website for information: <http://www.ombudsman.ed.gov/>

I trust this information is helpful to you.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

(b)(6)

AUG 18 2011

Dear

(b)(6)

This is to respond to your July 14, 2011, letter to this Office in which you allege that the (b)(6) County Schools (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99.

You allege that the above educational agency or institution did not comply with one of the following provisions of FERPA:

- FERPA's access provision.
- FERPA's disclosure provision.
- FERPA's amendment provision.

FERPA provides that an educational agency or institution that receives U.S. Department of Education funds may not have a policy or practice of denying parents or eligible students the right to:

- Inspect and review education records (34 CFR § 99.10).
- Seek to amend education records (34 CFR §§ 99.20, 99.21, and 99.22).
- Consent to the disclosure of personally identifiable information from education records except as specified by law (34 CFR §§ 99.30 and 99.31).

The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a FERPA Guidance Document.

Based on the information you provided this Office, we are unable to investigate your allegation(s) for the following reason(s):

- Your complaint is untimely. A complaint must be received by this Office within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation. (See highlighted portion of the enclosed guidance.)

(b)(6)

\_\_\_\_\_ While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist. (See highlighted portion of the enclosed guidance.)

\_\_\_\_\_ FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See highlighted portion of the enclosed guidance.)

  X   You have not provided sufficient information for this Office to determine that a violation of FERPA may have occurred. (See enclosed guidance.)

\_\_\_\_\_ Requests to modify a grade, opinions included in education records, and other substantive decisions are not subject to FERPA's amendment provision. (See highlighted portion of the enclosed guidance.)

Please note that a school is not required by FERPA to create education records or to provide information that is not maintained in response to a parent's request. Also, a school is not required to respond to a standing request by a parent for access to education records. Rather, the school is required to comply with each individual request by a parent for access to tangible education records that are maintained by the school at the time of the request.

It appears in your November 8, 2010, letter to (b)(6) a school official, you sought access to your son's second semester grades. In (b)(6) December 29, 2010, response, she informed you that the second semester grades were not available until after January 14, 2011, when the second semester ended. Thus, the District did not maintain a tangible education record containing your son's second semester grades at the time of your request.

In (b)(6) response, she stated that she would provide you with the second semester grades after January 14 when they became available. While nothing in FERPA would prohibit the District from complying at a future date with a request for information that the District does not maintain in a tangible education record at the time of the request, it is not a requirement of FERPA that the District do so. As such, there is no basis for this Office to further consider your allegation. In order to exercise your rights under FERPA, I suggest you make a new written request for access to your son's second semester grades.

Page 3 - (b)(6)

I trust this information adequately explains the scope and limitations of FERPA as it pertains to your client's concerns.

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosure



Dr. Thomas R. Frieden  
Director, Centers for Disease Control and Prevention  
Administrator, Agency for Toxic Substances  
and Disease Registry  
1600 Clifton Road  
Atlanta, Georgia 30333

**AUG 02 2011**

Dear Dr. Frieden:

Thank you for your memorandum, dated July 22, 2011, addressed to Secretary Duncan regarding your concerns about the Department's Notice of Proposed Rulemaking (NPRM) on the Family Educational Rights and Privacy Act of 1974 (FERPA). Your memo was forwarded to this office for response because we administer FERPA. We appreciate the input that you provided. Because the FERPA exception that we proposed to amend permits personally identifiable information (PII) from education records to be disclosed without written parental consent only to audit or evaluate Federal or State supported education program and to enforce Federal legal requirements related to such programs, it is not possible for us to interpret this exception to achieve the laudable objectives that you listed in your letter, such as permitting the use of PII from education records for purposes related to the enforcement of State legal requirements related to school-entry vaccinations (note: the law says only Federal legal requirements), for "outbreak investigation and control," to enter information into an immunization registry, or to plan school located vaccination clinics. However, if you would like to do so, we would be happy to explain the "health or safety emergency exception" at 34 CFR §§ 99.31(a)(10) and 99.36, and the circumstances under which this exception would permit PII from education records to be shared with public health officials.

As you know, the FERPA NPRM was published in the *Federal Register* on April 8<sup>th</sup> and the public comment period for the NPRM closed on May 23<sup>rd</sup>. The Department received over 270 comments on the proposed rule. The comments represented a broad spectrum of interested parties, including students, parents, privacy advocates, researchers, numerous associations, and representatives from schools, districts, and State educational agencies. We expect to issue final regulations early next year, which will address the major comments that we received from the public, and we will post it on our website at the following address:  
<http://www2.ed.gov/policy/gen/guid/fpco/index.html>.

Page 2 – Dr. Thomas R. Frieden

Thank you for sharing your concerns with us.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

(b)(6)

AUG 03 2011

(b)(6)

Dear

This is in response to your March 29, 2010, letter to this office in which you allege that the (b)(6) (District) disclosed your email address which was included in a February 7, 2010, email from (b)(6) superintendent of the District, to school officials who do not have a legitimate educational interest, as defined by the Family Educational Rights and Privacy Act (FERPA). This office administers FERPA, which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" means those 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.

Under FERPA, a parent or eligible student must provide a signed and dated written consent before a school discloses personally identifiable information from the student's education records. Exceptions to the consent requirement are set forth in § 99.31(a) of the regulations. "Disclosure" means "to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means."

FERPA specifically exempts from the prior written consent requirement those disclosures of education records that are made to other school officials within the educational agency or institution whom the agency or institution has determined to have a legitimate educational interest. A school official is a person employed by the school or institution such as an administrator, supervisor, teacher, support staff, departmental supervisor, legal counsel, or school board member. A school official generally has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Another of FERPA's exceptions permits schools to nonconsensually disclose "directory information" that has been appropriately designated by the educational agency or institution. FERPA defines directory information as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as the student's name; address; telephone

listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

A school may disclose directory information to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the parent's right to restrict the disclosure of such information, and the period of time within which a parent has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." The means of notification could include publication in various sources, including in a newsletter, in a local newspaper, or in the student handbook. A school is not required to individually notify parents regarding directory information.

This office's enforcement process is intended to work cooperatively with schools to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, this office may initiate an administrative investigation by sending the school and the complainant a notification letter about the allegation, and requesting a written response from the school concerning the allegation. If this office then determines that a school is in violation of FERPA, the school and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the school in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a school take punitive or disciplinary action against an individual as the result of a FERPA violation. This office closes its investigation when the school has completed the required corrective actions.

In addition to conducting investigations of alleged violations of FERPA, this office also provides schools with technical assistance to ensure they are in compliance with or ensure they come into compliance with FERPA. Enclosed for your information is a copy of a letter providing technical assistance to the District regarding the FERPA requirement for disclosure of education records to school officials.

I trust that the above information and enclosed letters are responsive to your concerns as they relate to FERPA and that this matter has been satisfactorily resolved.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure

AUG 03 2011

Dr. Stephen Benson  
Superintendent  
Phillipsburg-Osceola School District  
200 Short Street  
Phillipsburg, Pennsylvania 16866

Dear Dr. Benson:

This is in regard to concerns addressed to this office (b)(6) (Parents). The Parents allege that Phillipsburg-Osceola School District (District) disclosed (b)(6) email address which was included in a February 7, 2010, email from you to school officials who do not have a legitimate educational interest, as defined by the Family Educational Rights and Privacy Act (FERPA). This Office administers FERPA, which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to have access to their minor children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. Enclosed for your information is a copy of the FERPA regulations. 34 CFR Part 99. The term "education records" is broadly defined as those 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 "Education records."

In addition to conducting investigations of alleged violations of FERPA, this Office also provides schools with technical assistance to ensure they are in compliance with or come into compliance with FERPA. This letter is meant to provide the District with technical assistance regarding disclosure of education records to school officials who have a "legitimate educational interest."

Under FERPA, a parent or eligible student must provide a signed and dated written consent before a school discloses personally identifiable information from the student's education records. 34 CFR §§99.5(a); 99.30. Exceptions to the consent requirement are set forth in § 99.31(a) of the regulations. "Disclosure" means "to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means." 34 CFR § 99.3.

FERPA specifically exempts from the prior written consent requirement those disclosures of education records that are made to other school officials within the educational agency or institution whom the agency or institution has determined to have a legitimate educational

interest. A school official is a person employed by the school or institution such as an administrator, supervisor, teacher, support staff, departmental supervisor, legal counsel, or school board member. A school official generally has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Another of FERPA's exceptions permits schools to nonconsensually disclose "directory information" that has been appropriately designated by the educational agency or institution. FERPA defines directory information as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

A school may disclose directory information to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the parent's right to restrict the disclosure of such information, and the period of time within which a parent has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." The means of notification could include publication in various sources, including in a newsletter, in a local newspaper, or in the student handbook. A school is not required to individually notify parents regarding directory information.

If you have any questions regarding this letter, the definition of education records, disclosure of education records, or FERPA in general, you may contact Mr. Bernard Cieplak at 202-260-3887, and you may visit our Website as follows: [www.ed.gov/policy/gen/guid/fpco/index.html](http://www.ed.gov/policy/gen/guid/fpco/index.html).

Thank you for your cooperation with regard to this matter.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure  
cc: Parents

AUG 03 2011

Mr. Chris Reeve  
Legislative Representative  
Legislative Affairs and Fiscal Policy Division  
California Department of Education  
1430 N Street, Suite 5602  
Sacramento, California 95814

Dear Mr. Reeve:

This responds to your July 8, 2011, email and in follow-up to our telephone conversation on June 29<sup>th</sup> concerning the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; 34 CFR Part 99. Specifically, you asked that we review language that you highlighted contained in the proposed Assembly Bill No. 733. You ask that we note whether or not the language sufficiently resolves the areas of non-compliance with FERPA as raised by the Department's Office of Special Education Programs (OSEP).

Enclosed is the draft legislation with our comments on the portions that you highlighted, as well as other provisions. I trust our technical assistance is clear as it addresses the applicability of FERPA to these provisions. If not, please feel free to contact me at (202) 260-3887.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

cc: Larry Ringer  
OSEP

Enclosure

SEP 29 2011

(b)(6)

Dear (b)(6)

This is to respond to your May 16, 2011, letter to this office in which you appear to allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (College) when it did not provide you with access to your education records in response to your written request. Specifically, you state that you wrote a letter on March 17, 2011, to (b)(6) registrar at the College, to request access to certain of your education records. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. When a student reaches the age of 18 or attends an institution of postsecondary education, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the student. The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of a FERPA fact sheet.

Under FERPA, a school must provide a student with an opportunity to inspect and review his or her education records within 45 days of the receipt of a request. A school is required to provide the student with copies of education records or make other arrangements when a failure to do so would effectively prevent the student from obtaining access to the education records. A case in point would be a situation in which the student does not live within commuting distance of the school. It appears that you live outside of commuting distance to the school. Accordingly, the school may provide you with copies of your education records or make other arrangements for you to inspect and review your education records in order to comply with FERPA. Also note that FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records.

This office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has failed to comply with FERPA. A timely complaint is defined as one that is submitted to this office within 180 days of the date that the complainant knew or reasonably should have known of the alleged failure to comply with FERPA.



(b)(6)

In order to be of assistance in this matter, I contacted (b)(6) at the College to determine whether the College complied with your March 17, 2011, request. According to (b)(6) the College responded to your inquiry by mailing your education records to you. Additionally, he stated that some of the records to which you requested access are not maintained by the College. As discussed above, FERPA does not require a school to create or re-create records that are no longer maintained. Because some of the records to which to requested access are not maintained by the College, no basis exists for this office to investigate your allegation that the College denied you access to your education records.

I trust this addresses the scope and limitations of FERPA as it relates to your inquiry to this office.

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosed

SEP 28 2011

(b)(6)

Dear

(b)(6)

This is to respond to your April 15, 2011, correspondence to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (University), when it disclosed information from your education records to third parties without your prior written consent. Specifically, you stated that in February 2011 an unnamed professor from the University's Masters Counseling program in which you were enrolled disclosed to other students the fact that you were no longer enrolled in the program. You state that no such information should have been disclosed from your records because you requested your directory information be withheld by the University (i.e. you opted out from directory information). This office administers FERPA, which addresses issues pertaining to your education records.

FERPA is a Federal law that gives students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a FERPA fact sheet.

FERPA generally prohibits the nonconsensual disclosure of information derived from education records absent a student's prior written consent. One exception to FERPA's general prohibition of disclosure permits the nonconsensual disclosure of "directory information" that has been appropriately designated as "directory information" by the educational agency or institution. FERPA defines directory information as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include, but is not limited to, information such as the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; and enrollment status (e.g., undergraduate or graduate, full-time or part-time). In this instance, you state that your professor disclosed information about your enrollment status.

A school may disclose directory information to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the student's right to restrict the disclosure of such information, and the period of time within which a student has to notify the school in writing (i.e. opt out) that he or she does not want any or all

(b)(6)

of those types of information designated as "directory information." The means of notification could include publication in various sources, including in a newsletter, calendar, or in the student handbook. A school is not required to individually notify students regarding directory information.

In today's telephone conversation with me, you clarified that while you submitted your form to opt out your directory information, the form which you submitted to the University was not received by it until after the date of the alleged disclosure. In this instance, the University was permitted to disclose directory information about you until the date it received your request to opt out of directory information. Accordingly, no basis exists for this office to investigate your allegation.

I trust this explains the scope and limitations of FERPA as it relates to your concern.

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

(b)(6)

SEP 28 2011

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on January 4, 2011. In that complaint, you are alleging that (b)(6) (School) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. Your daughter attended the School.

This Office investigates certain complaints alleging violation of FERPA if it:

- (a) Is filed by the "parent" of a minor student at a public elementary or secondary school or an "eligible student" who is at least 18 years of age or who attends or attended a postsecondary institution with FERPA rights in the education records which are the subject of the complaint;
- (b) Is filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known about the violation; and
- (c) Contains specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred.

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>. Enclosed for your information is a FERPA guidance document and complaint form.

This Office's enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation, and requesting a written response from the district concerning the allegation. If we then determine that a district is in violation of FERPA, the district and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the district in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a district take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the district has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it does not provide specific allegations of fact which give this Office reasonable cause to believe that a FERPA violation occurred. In order for this Office to initiate an investigation, a complaint must contain such specific allegations.

The term "education records" means those records that are directly related to a student that are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." The provisions of 34 CFR Part 99, Subpart C, detail the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request.

FERPA does not address the location where education records are maintained by a school. Rather, if a school selects to maintain education records those records are subject to the privacy protections of FERPA. A school is not generally required by FERPA to maintain particular education records or education records that contain specific information. Also, nothing in FERPA would prohibit a school from maintaining duplicate education records or duplicates of education records, such as one set of education records in a student's cumulative file and duplicates of records from the cumulative file in a separate file maintained by the principal, a separate file maintained for disciplinary matters, and/or in a separate file maintained by the student's teacher or teachers. Further, a school may destroy education records without notifying the parent unless there is an outstanding request by the parent to inspect and review such education records.

If you wish this Office to further consider your allegation, we need to receive additional information from you. It appears you may be alleging that you believe the School maintained education records regarding your daughter to which it did not provide you access in response to your request or requests. In order for this Office to pursue such an allegation, we would need evidence that you requested access to certain of your daughter's education records which the School maintained at the time of your request and to which it did not provide you access. If that is the case, the School would also be prohibited by FERPA from destroying such education records because of your outstanding request for the records. We will review any information you submit and take appropriate action.

If you have questions regarding this matter, you may contact me. The name, address, and telephone number of the Office are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW

Page 3

(b)(6)

Washington, DC 20202-8520  
(202) 260-3887

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosure

(b)(6)

SEP 28 2011

(b)(6)

Dear

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on April 23, 2011. In that complaint, you are alleging that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

You state that your daughter, Nanette (Student), attends “a [n]on-public school (NPS)” in the District. As we previously informed you, it is not clear from the information you provided whether Pacific School is a private school or charter school. We also informed you that private schools at the elementary and secondary level are not generally subject to FERPA while charter schools generally are subject to FERPA.

This Office investigates certain complaints alleging violation of FERPA if it:

- (a) Is filed by the “parent” of a minor student at a public elementary or secondary school or an “eligible student” who is at least 18 years of age or who attends or attended a postsecondary institution with FERPA rights in the education records which are the subject of the complaint;
- (b) Is filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known about the violation; and
- (c) Contains specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred.

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>. Enclosed for your information is a copy of our FERPA guidance document.

This Office’s enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA’s requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation,

and requesting a written response from the district concerning the allegation. If we then determine that a district is in violation of FERPA, the district and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the district in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a district take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the district has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it does not provide specific allegations of fact which give the Office reasonable cause to believe that a FERPA violation occurred. In order for the Office to initiate an investigation, a complaint must contain such specific allegations.

The provisions of 34 CFR Part 99, Subpart C describe the process for requesting amendment of education records. Generally, parents or eligible students have the right to request that a school correct education records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a hearing. After the hearing, if the school decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.

The FERPA amendment procedure may be used to challenge facts that are inaccurately recorded. However, it may not be used to challenge a grade, an opinion, a placement determination, or a substantive decision made by a school about a student. FERPA requires only that schools conform to fair recordkeeping practices. It does not provide a means to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations.

Specifically, in your letter, you state:

. . . the [District] release[d] misleading and offensive statements made against me by the [District]. According to the information contained in the [Student's] psycho-educational report, it was indicated that [my] and [the Student's] response[s] should be looked at with caution. . . .

Based on the information in your letter, it appears that a school official drafted the education record at issue, and the comment which you object to is that official's "opinion." As stated above, a parent may not use the FERPA's amendment procedure to seek to amend an individual's opinion. As such, there is no basis for this Office to further consider your concern.



Page 3

(b)(6)

If you have questions regarding this matter, you may contact me. The name, address, and telephone number of the Office are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
(202) 260-3887

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosure

(b)(6)

SEP 20 2011

Dear

(b)(6)

This is in response to your April 14, 2011, letter to this Office regarding alleged violations of the Family Educational Rights and Privacy Act (FERPA) by the (b)(6) (b)(6) (District). Specifically, you allege that the District improperly disclosed information from your education records. This Office administers FERPA which addresses issues that pertain to education records.

As we informed you previously, this Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. A timely complaint is defined as one that is submitted to this Office within 180 days of the date that the complainant knew or reasonably should have known of the alleged violation.

Based on our records, this Office received and responded to two other complaints from you and your mother regarding the same specific alleged improper disclosures of your education records. These complaints are dated February 1, 2009, and May 29, 2010. These complaints regard alleged disclosures that you learned about in April of 2006. Therefore, your complaints do not meet FERPA's threshold requirement for timeliness and, as such, there is no basis for this Office to assist you with regard to your allegations.

We regret the harm you state was done to you and your mother which you believe is related to the alleged improper disclosures of your education records. However, this Office is responsible for responding to a multitude of inquiries, complaints, and requests for technical assistance regarding FERPA. As stated above, we have responded to these specific allegations from you on two other occasions. We do not have the staff resources to respond to this specific allegation again because to do so would impact our goal of serving all our customers as promptly and fairly as possible.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

(b)(6)

SEP 20 2011

Dear (b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on behalf of your client, the parent of (b)(6) (Student) on January 3, 2011. In that complaint, you are alleging that (b)(6) (District), where the Students attended (b)(6) School, violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. As an initial matter, you would have to file two separate complaints if you wish this Office to consider allegations from unrelated parents.

This Office investigates certain complaints alleging violation of FERPA if it:

- (a) Is filed by the “parent” of a student at a public elementary or secondary school or an “eligible student” who is at least 18 years of age or who attends or attended a postsecondary institution with FERPA rights in the education records which are the subject of the complaint;
- (b) Is filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known about the violation; and
- (c) Contains specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred.

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>.

This Office’s enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA’s requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation, and requesting a written response from the district concerning the allegation. If we then determine that a district is in violation of FERPA, the district and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the district in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint.

(b)(6)

There is no basis under FERPA to require that a district take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the district has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it does not present specific allegations of fact which give this Office reasonable cause to believe that a FERPA violation occurred. In order for this Office to initiate an investigation, a complaint must contain such specific allegations.

The term "education records" means those 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 "Education records." The provisions of 34 CFR Part 99, specifically 99.3, specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written consent for the disclosure. "Personally identifiable information" includes, but is not limited to, the student's name; the name of the student's parent or other family member; the address of the student or student's family; a personal identifier, such as the student's social security number, student number or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. 34 CFR § 99.3 "Personally identifiable information." Also, FERPA allows for limited disclosure of information from education records without consent under limited circumstances to specific persons and under specific conditions as detailed in 34 CFR § 99.31.

Allegation #1

You allege that (b)(6) superintendent of the District, violated FERPA when he made statements to (b)(6) a reporter for (b)(6) a local newspaper. Specifically, in a December 17, 2010, article, (b)(6) is quoted as stating:

(b)(6) Superintendent (b)(6) on Friday acknowledged the district was looking into an "incident involving players at a tournament," but he would not say how many players were involved or what disciplinary action, if any, would be taken.

"We're in the process of interviewing the participants in the program," (b)(6) said. "The outcome will be specifically based on our district policy and CIF policy. The long and short of it is, we're looking out for the best interest of kids, and their understanding of the rules and why they are there."

(b)(6)

Berg added that “We’ll have a determination of how many kids may have been involved and what the outcome is for them” by the end of the winter holiday.

Based on the information in your letter, “several players,” including the Student, were removed from the basketball team and their names removed from the team roster subsequent to the team forfeiting the last game of the season. You believe that the information disclosed by (b)(6) to (b)(6) is linkable to your client’s child by a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, because the Student no longer participates on the basketball team and his names no longer appear on the team roster.

This Office does not believe that (b)(6) statements rise to the level of a FERPA violation. It appears (b)(6) is stating District policy – if an incident occurs regarding a student or students, the appropriate school officials will conduct an investigation, and if any students are found to have violated District policy or guidelines, the students will be disciplined according to District policies and guidelines. It appears that (b)(6) is merely informing the reporter, and thus the school community, that the District is following District policy and guidelines.

#### Allegation #2

You allege that (b)(6) coach of the basketball team, violated FERPA when he made statements to Andy Boogard, a reporter for (b)(6), in a telephone call during the Santa Monica High School basketball tournament. Specifically, you state:

I have learned that Lauren LeBeau and Fresno Bee reporter (b)(6) spoke via cellular phone during the (b)(6) basketball tournament and that coach (b)(6) initially gave (b)(6) the private student information relating to disciplining the basketball team members. Though the December 18 article held a byline by another (b)(6) reporter, it was (b)(6) that tipped off the (b)(6) reporter Andy Boogard, who admitted to contributing to the story.

Please note that FERPA does not protect the confidentiality of information in general and, therefore, does not apply to disclosure of information derived from a source other than education records, even if education records exist which contain that information. Rather, FERPA protects information derived from education records from improper disclosure. As a general rule, information obtained through personal knowledge, personal observation, or hearsay -- and not from an education record -- is not protected from disclosure under FERPA.

If you wish this Office to further consider this allegation, we need to receive additional information from you. You need to provide us with the specific information from the Student’s education records that you believe (b)(6) disclosed to (b)(6) and any evidence you

(b)(6)

may have that such disclosure occurred. Evidence could include a signed statement from Mr. Boogard or other individual with specific knowledge of the disclosure. We will review the information you submit and take any appropriate action.

If you have questions regarding this matter, you may contact Mr. Ricky Norment of my staff. The name, address, and telephone number of the Office are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
(202) 260-3887

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

(b)(6)

SEP 20 2011

Dear N (b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on February 18, 2011. In that complaint, you are alleging that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA). Your son, whom you identify as (b)(6) attends or attended (b)(6) in the District and received special education services there.

This Office investigates certain complaints alleging violation of FERPA if it:

- (a) Is filed by the “parent” of a student at a public elementary or secondary school or an “eligible student” who is at least 18 years of age or who attends or attended a postsecondary institution with FERPA rights in the education records which are the subject of the complaint;
- (b) Is filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known about the violation; and
- (c) Contains specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred.

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>.

This Office’s enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA’s requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation, and requesting a written response from the district concerning the allegation. If we then determine that a district is in violation of FERPA, the district and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the district in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a district take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the district has completed the required corrective actions.

(b)(6)

In this case, we will not open an investigation into your complaint because it does not present specific allegations of fact which give this Office reasonable cause to believe that a FERPA violation occurred. In order for this Office to initiate an investigation, a complaint must contain such specific allegations.

Specifically, it appears you are alleging that the District violated FERPA when it disclosed certain information from the Student's education records to the U.S. Department of Education Office for Civil Rights (OCR). In your April 22 letter to this Office, you state:

... In April of 2011, I received a disk from the US [D]epartment of [E]ducation which contained some case file records regarding OCR case number 08-10-1048 / 08-10-1049, which I filed against [the District] on behalf of my son in 2009 / 2010 for multiple FERPA violations.

In the documents [the District] released to the US [D]epartment of Education was some case records from 2005 through 2010 and references to records prior to 2005. The information the school released to OCR a third party non-educational institution contained IEP special education records, including physiological diagnosis information and information regarding confidential due process hearings including medication agreements which occurred in 2005-2006 at a different school. . . .

The term "education records" is defined as those records 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 "Education records." The provisions of 34 CFR Part 99, Subpart C specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written signed consent for the disclosure.

FERPA allows for limited disclosure of such records without consent under limited circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31. One such exception permits a school to nonconsensually disclose information from student education records to authorized representatives of the Secretary of the U.S. Department of Education. 34 CFR § 99.31(a)(3)(iii). A school may disclose information from education records to authorized representatives of the Secretary in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with legal requirements that relate to those programs. 34 CFR § 99.35.

The above exception permits a school to nonconsensually disclose information from education records to OCR in response to an investigation initiated by OCR regarding alleged violations of civil rights laws by a school. Based on the information in your letter, the District disclosed



(b)(6)

information from the Student's education records to OCR in response to an investigation initiated by OCR on your behalf regarding alleged violation of a civil rights law or laws by the District. Thus, there is no basis for this Office to further consider your allegation.

You express concern about the District disclosing certain information from the Student's education records to OCR or another third party which it appears you believe was in violation of the "Rules for Special Education Mediation." Specifically, you state:

. . . As well as violation of a standing signed mediation agreement which contained confidential information and a confidentiality clause that the information would not be used against another party or in any subsequent [d]ue process hearings or civil hearings the inappropriate release of these records is a direct violation of [FERPA] . . .

This concern, as you have expressed it, is outside the scope of FERPA. You may want to contact the organization responsible for administering Part B of the Individuals with Disabilities Education Act (Part B) in your State to see if Part B addresses your concern. See the enclosed document for contact information.

If you have questions regarding this matter, you may contact Mr. Ricky Norment of my staff. The name, address, and telephone number of the Office are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
(202) 260-3887

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

A school is not required by FERPA to afford a parent the right to seek to change substantive decisions made by school officials, such as grades or evaluations. FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments.

Based upon the information the Parent provided, it appears that the Parent's concern is subject to FERPA's amendment process. In order to initiate the process, the Parent should contact an appropriate school official in writing stating the exact nature of the information she believes is inaccurate, why she believes it is inaccurate, how she would like the information corrected, and a copy of the documentation she has as evidence that the records are inaccurate. If the school fails to respond to the Parent's request, or to her request and fails to offer her a hearing on the matter, she should contact this Office providing copies of all relevant correspondence exchanged with the school over the matter. A FERPA complaint form and a guidance document that you may wish to provide the Parent to assist her in this process are enclosed.

I trust that this is responsive to your inquiry. If you or the Parent have any questions regarding this matter, you may contact this Office directly. The name, address, and telephone number are as follows:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
Telephone: (202) 260-3887

Sincerely,



Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures

(b)(6)

SEP - 8 2011

(b)(6)

Dear

This is to respond to your May 13, 2011, fax correspondence to this office in which you allege that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). Specifically, you state that (b)(6) your son's reading teacher in the District, assigned students the responsibility of sharing their report card with her. You believe this required assignment violates your rights under FERPA. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their child's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of the FERPA fact sheet.

FERPA is intended, in part, to afford parents the right to have some control over disclosure of information from their children's education records. In this regard, it provides that information from a student's education records cannot, with certain exceptions, be disclosed without parental written consent. FERPA is not, on the other hand, intended to interfere with a school's or classroom teacher's ability to carry out what are generally considered to be normal and legitimate educational activities and functions. The fact that a teacher assigns a student the responsibility to provide her access to his or her report card does not violate FERPA. If you disapprove of this local practice, you should contact appropriate officials at your child's school. Because FERPA does not regulate school policies regarding classroom assignments, this office is unable to take any further action in this matter.

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

(b)(6)

SEP - 7 2011

Dear (b)(6)

This is to respond to your April 30, 2011, inquiry regarding allegations that the Buckley Community School violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). Specifically, it appears that you are alleging that the (b)(6) School District (District) disclosed information about your son without your prior written consent. You provided this office with a copy of a (b)(6) news article in the (b)(6) City Record (b)(6) to support your allegation. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their child's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of the FERPA guidance document for parents.

This office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. A complaint is timely if it is submitted to this office within 180 days of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation. As such, any allegations that your rights under FERPA were violated under circumstances about which you were aware over 180 days prior to the date you contacted this office do not meet the threshold requirement on timeliness. Accordingly, no basis exists for this office to investigate your allegation.

I regret that we are able to assist you further regarding this matter.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure

(b)(6)

SEP - 7 2011

Dear

(b)(6)

This is to respond to your April 25, 2011, letter to this office in which you state that your rights under the Family Educational Rights and Privacy Act (FERPA) were violated when (b)(6) (University) did not provide you the right to inspect and review your "Un-Official Transcript" or a copy of it. Enclosed is a guidance document on FERPA.

FERPA is a Federal law that gives parents or eligible students the right to have access to a student's education records. The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." FERPA does not require schools to create or maintain education records or to re-create lost or destroyed education records. The only exception to this is that an educational agency or institution shall not destroy any education records if there is an outstanding request under FERPA to inspect and review the records. 34 CFR § 99.10(c).

Under FERPA, a school must provide a student with an opportunity to inspect and review his education records within 45 days of the receipt of a request. A school is not, however, required to provide a student with copies of education records unless a failure to do so would effectively prevent the student from obtaining access to the records. A case in point would be a situation in which the student does not live within commuting distance of the school. In these circumstances, a school would be required to provide the student a copy of the records, or make other arrangements for the student to inspect and review the requested records. 34 CFR § 99.10(c).

Although a school would be required to conduct a reasonable search for education records, it is the responsibility of the student to clearly specify the records to which he or she is seeking access. If a student makes a "blanket" request for a large portion of his education records and the student believes that he or she was not provided certain records which were encompassed by that request, the student should submit a follow-up request clarifying the additional records he or she believes exist.

This office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. A complaint is timely if it is submitted to this office within 180 days of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation. As such, any allegations that your rights under FERPA were violated under circumstances about which you were aware over 180 days prior to the date you contacted this office would not meet the threshold requirement on timeliness. 34 CFR § 99.64.

With regard to your complaint, you have not provided sufficient information for this office to consider it. Specifically, for each instance in which you believe you have not been provided access to your education records you need to provide:

1. The date(s) on which you requested access to your “Un-Official Transcript” or a copy of it;
2. The name of the official(s) to whom you made the request(s);
3. A brief, concise summary of any responses you received; and
4. The date of each response, if any, you received.

This office will review your responses to this letter and take any appropriate action under FERPA.

If you have any questions concerning the Act, the Department of Education’s role in its administration, or the complaint procedure, you may contact Mr. Dann Brittenham of my staff.

The address and telephone number of this office are as follows:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
202-260-3887

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure

(b)(6)

SEP - 1 2011

Dear (b)(6)

This is to respond to your January 8, 2009, complaint form to this office in which you allege that your rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (District) when it failed to provide you access to the education records of your son (b)(6) (Student) in response to your written request, and when it disclosed certain of his education records to third parties without your prior written consent. Specifically, you allege that on December 21, 2008, you requested that (b)(6), the principal at your son's school in the District, provide you with access to your son's education records. You allege that the school has not provided you access in response to that request. Since the date this office received your original complaint, you also provided this office with copies of your email requests to various District officials to whom you requested certain information in accordance to Wisconsin's open records act. You also allege that on June 5, 2008, (b)(6) disclosed a "29 page" document from your son's education records to unidentified third parties. This office administers FERPA which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their child's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Under FERPA, whenever a student becomes eighteen years of age or enters a postsecondary institution, all rights once afforded to the parents transfer to the student.

Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is required to provide the parent with copies of education records or make other arrangements when a failure to do so would effectively prevent the student from obtaining access to the education records. A case in point would be a situation in which the parent does not live within commuting distance of the school. It appears that you live within commuting distance to the school and the school would be required to provide you with an opportunity to inspect and review your child's education records, although it is permitted to provide you with copies.

Under FERPA, a school may not generally disclose personally identifiable information from the education records of a student to a third party unless the parent has provided written consent. FERPA specifically exempts from the prior written consent requirement those disclosures of education records that are made to other school officials within the educational agency or institution whom the agency or institution has determined to have a legitimate educational interest. A school

official is a person employed by the school or institution such as an administrator, supervisor, teacher, support staff, departmental supervisor, legal counsel, or school board member. A school official generally has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Also, FERPA applies to the disclosure of tangible records and of information derived from tangible records. FERPA does not protect the confidentiality of information in general, and, therefore, does not apply to the disclosure of information derived from a source other than education records, even if education records exist which contain that information. As a general rule, information that is obtained through personal knowledge or observation, and not from an education record, is not protected from disclosure under FERPA. Based on the information you provided to this office, it is not clear what specific information you allege was disclosed by (b)(6) was derived from your children's education records.

This office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. A complaint is timely if it is submitted to this office within 180 days of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation. As such, any allegations that your rights under FERPA were violated under circumstances about which you were aware over 180 days prior to the date you contacted this office do not meet the threshold requirement on timeliness. Based on the June 5, 2008, date when you state that you became aware of the violation and the January 8, 2009, date when you wrote to this office and alleged that certain of your child's information was disclosed by (b)(6) to third parties, your complaint is untimely. Accordingly, no basis exists for this office to investigate this portion of your complaint.

Also, you requested access to certain records under your State's open records act. This office does not administer your State open records act. To determine whether the District complied with your State's open records act, you should contact the appropriate State official which administers that statute.

You also allege that you requested access to your child's records based on a December 21, 2008, request to the District. We are unable to determine whether you made such a request based on the information you provided to us. In order to exercise your rights under FERPA to obtain access to your children's education records, you should follow the advice we provided you in this office's March 15, 2010, response.

I trust this addresses your concerns as they relate to the scope and limitations of FERPA.

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure



NOV 25 2011

Ms. Heather Simons

(b)(6)

Dear Ms. Simons:

This is to respond to your August 23, 2011, letter to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (District) when it disclosed certain information about your son to a third party. Specifically, you state that on April 19, 2011, (b)(6) assistant principal at the (b)(6) School in the District where your son is a student, disclosed certain information to (b)(6) a third party, without your prior written consent. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their child's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of the FERPA guidance document for parents.

Under FERPA, a school may not generally disclose personally identifiable information from the education records of a student to a third party unless the parent has provided written consent. However, there are several exceptions to the general prohibition on nonconsensual disclosures. One of these exceptions permits the nonconsensual disclosure of personally identifiable information from education records in connection with a health or safety emergency, such as in certain instances where school officials believe that the safety of the student or other individuals may be at risk based on the behavior or statements of a particular student.

In this instance, you acknowledge that you identified (b)(6) as the individual who the District may contact in case of an emergency involving your son. It appears that the District believed that a health or safety emergency existed which necessitated District officials to "set up an emergency meeting" with you. You state that when (b)(6) was unable to immediately contact you, she contacted (b)(6) the emergency contact whom you designated. Because the District disclosed certain information from the Student's education records to a party whom you designated as an emergency contact in the course of a perceived health or safety emergency, it appears that FERPA permitted the District to disclose your son's education records to (b)(6) in this instance.

Page 2-- Ms. Heather Simons

I trust this addresses the scope and limitations of FERPA as it relates to your allegation.

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

Honorable Pat Toomey  
United States Senator  
1150 S. Cedar Crest Blvd., Suite 101  
Allentown, Pennsylvania 18103

**NOV 16 2011**

Dear Senator Toomey:

This is in response to your August 18, 2011, letter to Assistant Secretary Gabriella Gomez on behalf of your constituent [(b)(6)] (Parent) regarding allegations that she made against the [(b)(6)] (District) under the Family Educational Rights and Privacy Act (FERPA). Your letter was forwarded only recently to this office because, as you know, we administer FERPA. 20 U.S.C. § 1232g; 34 CFR Part 99.

In your letter you state the following:

[The Parent] has grave concerns about the conduct of the District and is not satisfied that the District has met its obligations to her child. The counseling records are spotty, incomplete and information has been modified. Additionally, [our April 4, 2011] letter [of finding] specifies that counseling records must be provided to a parent within 45 days of request. It took 2 years and a U.S. Senator's office to make this happen in this case. [The Parent] firmly believes that the school should be cited for legal violations of the [FERPA].

This office's enforcement process is intended to work cooperatively with schools to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the school and the complainant a notification letter about the allegation, and requesting a written response from the school concerning the allegation. If we then determine that a school is in violation of FERPA, the school and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the school in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a school take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the school has completed the required corrective actions.

As you know, we opened an investigation under FERPA, complaint number (b)(6) alleging that the District denied the Parent access to her son's counseling records. We issued our letter of finding on March 30, 2011, stating that the District violated FERPA as alleged by the Parent. We subsequently closed the complaint on May 31, 2011, when the District demonstrated its compliance with FERPA by providing the appropriate written assurance that the District provided the Parent full access to her child's counseling records and stated that it understands and complies with the requirements of FERPA as it relates to providing parents access to their children's education records. It is, therefore, unclear why the Parent asks that we cite the school for legal violations of FERPA.

If the Parent believes that the District continues to deny her some or all access to her son's education records, she should contact this office directly setting forth her FERPA allegation. In this regard, FERPA requires that schools comply with a parent's request for access to his or her children's education records within 45 days of receipt of the request. While a district would be required to conduct a reasonable search for education records, it is the responsibility of the parent to clearly specify the records to which he or she is seeking access. If a parent makes a "blanket" request for a large portion of her child's education records and the parent believes that she has not been provided certain records which were encompassed by that request, she should submit a follow-up request clarifying the additional records she believes exist. A school is not required by FERPA to provide copies of education records to a parent unless a failure to do so would effectively prevent the parent from exercising the right to inspect and review the records. For example, a school could be required to provide copies, or make other arrangements, if the parent does not live within commuting distance of the school.

FERPA does not require a school to maintain particular education records or require schools to maintain specific types of information. FERPA does not require a school to create education records in response to a parent's request or to re-create lost or destroyed education records. We are enclosing a complaint form that the Parent may submit to this office along with her follow-up request to the District that outlines the specific records to which she believes she is being denied access along with evidence that such records are maintained by the District. We will review the information she provides and take any appropriate action.

If the Parent is also alleging that her son's education records maintained by the District are inaccurate, then she should contact the District directly, outlining the specific education records that she believes are inaccurate. FERPA affords parents the opportunity to seek amendment of their children's education records which they believe contain information that is inaccurate or misleading. While a school is not required to amend a record in accordance with a parent's request, it is required to consider the request for amendment of an education record, to inform the parent of its decision, and if the request is denied, to advise the parent of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the parent has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

This right is not unlimited, however, and a school is not required by FERPA to afford a parent the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student. This fact is indicated in the legislative history of FERPA. The primary source of legislative history regarding FERPA is contained in the "Joint Statement in Explanation of Buckley/Pell Amendment," Volume 120 of the Congressional Record, pages 39862-39866. The Joint Statement states that FERPA was "not intended to overturn established standards and procedures for the challenge of substantive decisions made by an educational institution." (Emphasis added.) FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. Thus, while FERPA affords parents the right to seek to amend education records which contain inaccurate information, this right cannot be used to challenge a grade or an individual's opinion, unless the grade or the opinion has been inaccurately recorded.

If the District denies the Parent's request to amend her child's education records, or if the District refuses to offer the Parent an amendment hearing, she may contact this office again. At such time, the Parent should provide a copy of her letter to the District outlining the specific information that she believes is inaccurate and how she wishes the inaccurate information to be amended. Also, the Parent should provide this office any response to that request that she receives from the District. We will review the information she provides and take any appropriate action.

Should you or your staff have any additional questions in regard to this matter or questions about the administration of FERPA, you may contact us directly at:

Family Policy Compliance Office  
U. S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
Telephone: (202) 260-3887

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure

Mr. James E. Fagan III  
Division Counsel  
Prince William County Public Schools  
P.O. Box 389  
Manassas, Virginia 20108

NOV - 1 2011

Dear Mr. Fagan:

This office is responsible for administration of the Family Educational Rights and Privacy Act (FERPA), which protects the privacy interests of parents and eligible students in students' education records. Sec 20 U.S.C. §1232g and 34 CFR part 99. Under that authority we investigate, process, and review complaints and violations and provide technical assistance to ensure compliance with all FERPA requirements. We are responding to your letters dated July 28 and August 2, 2011, wherein you notified this office that an external hard drive containing student education records was missing but subsequently recovered. While the matter is resolved, we are sending this letter which includes the guidance we provide schools who report to this office that a potential FERPA breach may have occurred.

Under FERPA, a parent or eligible student must provide a signed and dated written consent before a postsecondary institution discloses personally identifiable information from the student's education records. 34 CFR §§99.5(a); 99.30. Exceptions to the consent requirement are set forth in § 99.31(a) of the regulations. "Disclosure" means "to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means." 34 CFR § 99.3.

The preamble to the December 8, 2009, FERPA regulations explains the necessity for educational agencies and institutions to ensure that adequate controls are in place so that the education records of all students are handled in accordance with FERPA's privacy protections. *See 73 Fed. Reg. 74806, 74843 (Dec. 9, 2008)*. The "Department Recommendations for Safeguarding Education Records" (Safeguarding Recommendations) that were published in both the Notice of Proposed Rulemaking (NPRM) and the Final Regulations are intended to provide agencies and institutions additional information and resources to assist them in meeting this responsibility. (The NPRM was published at *73 Fed. Reg. 15574, March 24, 2008*.)

The FERPA Safeguarding Recommendations recognize that no system for maintaining and transmitting education records, whether in paper or electronic form, can be guaranteed safe from every hacker and thief, technological failure, violation of administrative rules, and other causes of unauthorized access and disclosure. Although FERPA does not dictate requirements for safeguarding education records, the Department encourages the holders of personally identifiable information to consider actions that mitigate the risk and are reasonably calculated to protect

such information. Of course, an educational agency or institution may use any reasonable method, combination of methods, or technologies, taking into consideration the size, complexity, and resources available to the institution; the context of the information; the type of information to be protected (such as SSNs or directory information); and methods used by other institutions in similar circumstances. The greater the harm that would result from unauthorized access or disclosure and the greater the likelihood that unauthorized access or disclosure will be attempted, the more protections an agency or institution should consider using to ensure that its methods are reasonable.

As explained in the FERPA Safeguarding Recommendations, one resource for administrators of electronic data systems is “The National Institute of Standards and Technology (NIST) 800-100, Information Security Handbook: A Guide for Managers” (October 2006). See <http://csrc.nist.gov/publications/nistpubs/800-100/SP800-100-Mar07-2007.pdf>. Another resource is NIST 800-53, Information Security, which catalogs information security controls. See <http://csrc.nist.gov/publications/nistpubs/800-53-Rev1/800-53-rev1-final-clean-sz.pdf>. Similarly, a May 22, 2007, memorandum to heads of Federal agencies from the Office of Management and Budget requires executive departments and agencies to ensure that proper safeguards are in place to protect personally identifiable information that they maintain, eliminate the unnecessary use of SSNs, and develop and implement a “breach notification policy.” Although directed towards Federal agencies, this memorandum may also serve as a resource for educational agencies and institutions. See <http://www.whitehouse.gov/omb/memoranda/fy2007/m07-16.pdf>.

The Department’s FERPA Safeguarding Recommendations specify that an educational agency or institution that has experienced a theft of files or computer equipment, hacking or other intrusion, software or hardware malfunction, inadvertent release of data to Internet sites, or other unauthorized release or disclosure of education records, should consider one or more of the following steps:

- Report the incident to law enforcement authorities.
- Determine exactly what information was compromised, i.e., names, addresses, SSNs, ID numbers, credit card numbers, grades, and the like.
- Take steps immediately to retrieve data and prevent any further disclosures.
- Identify all affected records and students.
- Determine how the incident occurred, including which school officials had control of and responsibility for the information that was compromised.
- Determine whether institutional policies and procedures were breached, including organizational requirements governing access (user names, passwords, PINS, etc.); storage; transmission; and destruction of information from education records.
- Determine whether the incident occurred because of a lack of monitoring and oversight.
- Conduct a risk assessment and identify appropriate physical, technological, and administrative measures to prevent similar incidents in the future.
- Notify students that the Department’s Office of Inspector General maintains a website describing steps students may take if they suspect they are a victim of identity theft at <http://www.ed.gov/about/offices/list/oig/misused/idtheft.html>; and <http://www.ed.gov/about/offices/list/oig/misused/victim.html>.

The Safeguarding Recommendations note also that FERPA does not require an educational agency or institution to notify students that information from their education records was stolen or otherwise subject to an unauthorized release, although it does require the agency or institution to maintain a record of each disclosure. 34 CFR §99.32(a)(1). However, student notification may be required in these circumstances for postsecondary institutions under the Federal Trade Commission’s Standards for Insuring the Security, Confidentiality, Integrity and Protection of Customer Records and Information (“Safeguards Rule”) in 16 CFR part 314. In any case, direct student notification may be advisable if the compromised data includes student SSNs and other identifying information that could lead to identity theft.

Under FERPA, no funds shall be made available to an educational agency or institution that has a policy or practice of permitting the release of personally identifiable information in education records except as authorized by statute. 20 U.S.C. §1232g(b). Failure to take reasonable and appropriate steps to protect education records could result in the release or disclosure of personally identifiable information from education records and may also constitute a policy or practice of permitting the release or disclosure of education records in violation of FERPA requirements. Should this Office investigate a complaint or other indications of noncompliance, we would take into consideration what steps an educational agency or institution has taken in response to a data breach or other unauthorized access to, release, or other disclosure of education records.

I hope the above information is helpful to you. If you have any questions, please contact this office at (202) 260-3887.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office



Mr. Ruben Corral Caraveo

(b)(6)

**JAN 18 2012**

Dear Mr. Caraveo:

This letter is in response to your recent correspondence you sent to the U.S. Department of Education. Your letter was referred to this office because we administer the Family Educational Rights and Privacy Act (FERPA), which affords parents and eligible students certain rights with regard to education records. Specifically you are trying to obtain education records on (b)(6) (b)(6) your father.

The Department of Education does not maintain records on students. Because it appears that the school district does not have any of your father's education records, you may wish to contact the Texas Education Agency [TEA]. The general address is as follows:

Texas Education Agency  
1701 N. Congress Avenue  
Austin, Texas, 78701

I trust that this information is helpful to you. Enclosed for your reference is a FERPA fact sheet.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures

APR 5 2012

Ms. Julie Munn

(b)(6)

Dear Ms. Munn:

This is to respond to your March 1, 2012, complaint forms to this office in which you allege that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it disclosed information from your son's education records to a third party without his prior written consent. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their child's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Under FERPA, whenever a student becomes eighteen years of age or attends a postsecondary institution, all rights once afforded to the parents transfer to the student. You state that your son (b)(6) is an eligible student (i.e. at least 18 years of age). Because your son holds the rights under FERPA, this office requires him to file the complaint with this office. Please note however that based on the information you provided, it appears that the District would be permitted to nonconsensually disclose your son's education records to third parties as it did in this instance. You may have your son refer to the highlighted sections of the enclosed guidance document for clarification.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concerns. Should your son have any further questions relating to this matter, he may contact our office at:

Family Policy Compliance Office  
U. S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
Telephone: 202-260-3887

Page 2 -- Ms. Julie Munn

Sincerely,

Bernard Cicplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

APR 17 2012

Ms. Heather Gilbert

(b)(6)

Dear Ms. Gilbert:

We are writing to inform you that the Family Policy Compliance Office (FPCO or this office) is not initiating an investigation with regard to a complaint you filed with us on September 24, 2010. In that complaint, you are alleging that the (b)(6) (School) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

This office investigates certain complaints alleging violation of FERPA if it:

- (a) Is filed by the “parent” of a student at a public elementary or secondary school or an “eligible student” who is at least 18 years of age or who attends or attended a postsecondary institution with FERPA rights in the education records which are the subject of the complaint;
- (b) Is filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known about the violation; and
- (c) Contains specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred.

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>.

This office’s enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA’s requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation, and requesting a written response from the district concerning the allegation. If we then determine that a district is in violation of FERPA, the district and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the district in order to

come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a district take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the district has completed the required corrective actions.

The term "education records" means those 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 "Education records." The provisions of 34 CFR Part 99, Subpart B detail the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request. FERPA also provides that noncustodial parents must be provided access to their children's education records unless the school has evidence that there is a court order, State statute, or other or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

A school is required to provide a parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from obtaining access to the records. A case in point would be a situation in which the parent does not live within commuting distance of the school. Based on the information in your letter, it appears that you live within commuting distance of the School. Also, the School would not be required by FERPA to provide you access to the Student's education records through its "computer program 'Power School.'" Rather, the School is required by FERPA to provide you with an opportunity to inspect and review the Student's education records. While the School is not required to provide you with copies of the records or access to the records through its computer program, it is permitted to do so in response to a request for access.

In order to exercise your rights under FERPA, I suggest you write to the appropriate official at the School and request the specific education records to which you are seeking an opportunity to inspect and review. Though it is not required, you may want to include a copy of this letter along with your request. If the School fails to provide you access to the requested education records or fails to contact you within 45 days, you may write to this office again. At such time, please provide us with a dated copy of your request to the School and any response from the School. We will review the information you submit and take any appropriate action.

Page 3 - Ms. Heather Gilbert

If you have questions regarding this matter, you may contact me. The name, address, and telephone number of the office are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
(202) 260-3887

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

APR 18 2012

Mr. Robert L. Hughes, III

(b)(6)

Dear Mr. Hughes:

We are writing to inform you that the Family Policy Compliance Office (FPCO or this office) is not initiating an investigation with regard to a complaint you filed with us on September 29, 2011. In that complaint, you are alleging that (b)(6) (School) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

This Office investigates certain complaints alleging violation of FERPA if it:

- (a) Is filed by the “parent” of a student at a public elementary or secondary school or an “eligible student” who is at least 18 years of age or who attends or attended a postsecondary institution with FERPA rights in the education records which are the subject of the complaint;
- (b) Is filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known about the violation; and
- (c) Contains specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred.

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>. Enclosed for your information are a FERPA guidance document and complaint form.

This Office’s enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA’s requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation, and requesting a written response from the district concerning the allegation. If we then determine that a district is in violation of FERPA, the district and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the district in order to come into compliance with FERPA. Such measures can include training of school officials or a

memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a district take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the district has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it does not provide specific allegations of fact which give this Office reasonable cause to believe that a FERPA violation occurred. In order for this Office to initiate an investigation, a complaint must contain such specific allegations.

Only a parent or eligible student (as those terms are defined in 34 CFR § 99.3) has rights protected by FERPA. FERPA does not vest these rights in any third party. An individual must have suffered an alleged violation of his own protected rights, in order to file a valid complaint under FERPA. Once a student turns 18 years of age or attends a postsecondary institution at any age, he or she becomes an "eligible student," and all rights under FERPA transfer from the parent to the eligible student. 34 CFR § 99.5.

The term "education records" means those 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 "Education records." The provisions of 34 CFR Part 99, Subpart D specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written signed consent for the disclosure. 34 CFR § 99.30. FERPA allows for limited disclosure of such records without consent under limited circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31.

It appears you are alleging that the School violated FERPA on September 26, 2011, when it disclosed your name on a list of students who were required to attend "Saturday School." All students and parents in the school community are aware that attendance at Saturday School is disciplinary action given to a student who has broken a school policy, rule or guideline. The information in the list includes your name, grade, and the hours you were required to complete in Saturday School.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. In order for this office to further consider your allegation, we need to receive additional information from you. Please complete the enclosed complaint form and verify that you are at least 18 years of age and thus have standing to file a complaint with this office, and that we have accurately stated your allegation. We will review the information you submit and take any appropriate action.



Page 3 - Mr. Robert L. Hughes, III

If you have questions regarding this matter, you may contact me. The name, address, and telephone number of the Office are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520  
(202) 260-3887

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office