

**AUG 06 2010**

Ms. Jennifer Bell-Ellwanger  
Executive Director/Senior Advisor to the Chancellor  
Research Policy and Support Group  
New York City Department of Education  
52 Chambers Street, Room 320  
New York, New York 10007

Dear Ms. Bell-Ellwanger:

This letter is in follow-up to the telephone conversation that General Counsel Michael Best, you, and other New York City Department of Education (District) officials had with officials here at the Department of Education (Department), including General Counsel Charlie Rose, on Friday, July 30, 2010, regarding the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g; 34 CFR Part 99. Specifically, the District has concerns about potential misuse of information in education records, and we discussed whether the District could limit disclosure of "directory information" under FERPA to address those concerns, while at the same time permitting the District to participate in the Department's Free Application for Federal Student Aid (FAFSA) Completion Project.

As you know, FERPA generally prohibits the nonconsensual disclosure of information derived from education records, except in certain specified circumstances. 20 U.S.C. § 1232g(b); 34 CFR §§ 99.30 and 99.31. One of these exceptions permits the nonconsensual disclosure of information derived from education records that has been appropriately designated as "directory information" by the educational agency or institution. 20 U.S.C. § 1232g(b)(1); 34 CFR § 99.31(a)(11). 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. 20 U.S.C. § 1232g(a)(5)(A); 34 CFR § 99.3 "Directory information." Directory information could include 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.

FERPA provides that a school may disclose directory information 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." 20 U.S.C. § 1232g(a)(5)(B); 34 CFR § 99.37(a). A school is not required to inform former students or the parents of former students regarding directory information or to honor their request that directory information not be disclosed without consent.

34 CFR § 99.37(b). However, if a parent or eligible student, within the specified time period during the student's last opportunity as a student in attendance, requested that directory information not be disclosed, the school must honor that request until otherwise notified.

In our phone conference, District officials asked whether the District may specify in its notice the specific parties who may receive directory information, and/or the specific purposes for which the directory information may be disclosed – e.g., whether it would be acceptable for the District to limit its disclosure of students' names, addresses, and dates of birth, directory information items, to the Department for the FAFSA Completion Project. We advised you that specifying recipients and purposes regarding disclosure of directory information is an acceptable option. While FERPA permits the District to disclose directory information about former students without complying with the public notification and opt-out provisions, we encourage you to make a good faith effort to reach former students with the notification and to accept any opt-outs that you may receive from them. We also discussed that you may want to include in the notice that directory information will also be used for the disclosure of information for inclusion in yearbooks, graduation, sports and other programs, as well as announcements concerning students who receive honors and awards. Generally, the directory information items that should be designated for these disclosure purposes are: name, photograph, grade level, participation in officially recognized activities and sports, weight and height of members of athletic teams, and honors and awards.

While we do not know how New York's open records law may be applied to a limited directory information disclosure policy, our office (the Family Policy Compliance Office (FPCO)) will enforce the District's policy under FERPA with regard to any disclosures that are inconsistent with your policy. That means, if the District elects to implement a policy of disclosing directory information only to certain parties, schools in the District must limit their disclosure of directory information to only those particular parties. FPCO will investigate the District if it becomes evident that it or one of its schools discloses directory information to any party or purpose that is not listed in the notice to parents and students.

In our conversation, Mr. Best also mentioned disclosures under the military recruiter requirements of the Elementary and Secondary Act (ESEA), which FPCO also administers. He indicated that the District has been working to minimize any privacy concerns in that regard, while still complying with the ESEA requirements. Section 9528 of the ESEA, 20 U.S.C. § 7908, as amended, as well as § 503(c) of 10 U.S.C. § 503, as amended, require local educational agencies (LEAs) to: (1) give military recruiters the same access to secondary school students as provided to postsecondary institutions or to prospective employers; and, (2) provide students' names, addresses, and telephone listings to military recruiters, when requested, unless a parent has opted out of providing such information.

Please note that, should the District not wish to combine its directory information notice with the notice to parents concerning the disclosure of students' names, addresses, and telephone listings to military recruiters, it is not required to do so. While we explained in the 2002 military

recruiter guidance that an LEA *may* issue a single notice to take care of notifying parents and students about the designation of directory information under FERPA and the disclosure of the required items for military recruiters, it is not required to do so. For example, should an LEA not have a directory information policy or prefer not to designate address and/or telephone listings as directory information, it may issue a notice to parents and students concerning only the disclosure of these items to military recruiters under the ESEA requirements. That way, the information can only be provided to military recruiters and not be treated as directory information under FERPA to be provided to other parties. Here is a web link to the 2002 guidance: <http://www2.ed.gov/policy/gen/guid/fpco/hottopics/ht10-09-02.html>.

I trust that this summary adequately reflects our discussion on July 30<sup>th</sup>. Should you or any other District official need assistance regarding FERPA in general or this matter in particular, please do not hesitate to contact us at (202) 260-3887 or [FERPA@ED.Gov](mailto:FERPA@ED.Gov). You may also write to us at the following address:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-8520

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

AUG 06 2010

(b)(6)

Dear

(b)(6)

This letter is in response to your June 7, 2010, letter to the U.S. Department of Education, Family Policy Compliance Office (FPCO). FPCO administers the Family Educational Rights and Privacy Act (FERPA), which affords parents and eligible students certain rights with regard to education records. Based on the information you provided to this office, you have not provided sufficient information for this office to determine if there has been a violation of your rights under FERPA. Please note this office does not administer California law and, thus, we will not further address statements you made in this regard.

You allege that certain school officials in the (b)(6) (District) disclosed unspecified information from your child's education records to a corporate "employee psychologist" at which the student's mother is also employed. From the information you provided this office, it appears that the mother of the student may have consented to the school's disclosure of your child's education records to this third party. Please verify whether the student's mother provided her consent for such disclosure to this third party. If this is not the case, provide this office with a signed written statement from the student's mother to verify that she did not consent for the school to disclose information from your child's education records to the third party. Also, you should specify the information from your child's education records that was disclosed by the District to this third party. Please help us assist you by outlining the relevant facts clearly and succinctly, and by providing the needed information to this office within 3 weeks of receiving this response. We will review the information you submit and take any appropriate action.

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

(b)(6)

**AUG 05 2010**

Dear (b)(6)

This is to respond to your February 25, 2010, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (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 05 2010

(b)(6)

Dear (b)(6)

This is to respond to your July 22, 2010, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6) (University) 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,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure



(b)(6)

**AUG 05 2010**

Dear

(b)(6)

This is to respond to your July 29, 2010, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6) District (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.

(b)(6)

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,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure

(b)(6)

**AUG 03 2010**

Dear

(b)(6)

This is in response to your May 20, 2010, fax to this Office in which you express concerns related to your child's education records. 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:

Ms. Bambi Lockman  
Chief  
Bureau of Exceptional Education and Student Services  
Florida Department of Education  
325 West Gaines Street, Suite 614  
Tallahassee, Florida 32399-0400

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

(b)(6)

AUG 03 2010

Dear

(b)(6)

This is in response to your May 20, 2010, fax to this Office in which you express concerns related to your child's education records. 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:

Ms. Bambi Lockman  
Chief  
Bureau of Exceptional Education and Student Services  
Florida Department of Education  
325 West Gaines Street, Suite 614  
Tallahassee, Florida 32399-0400

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 02 2010

(b)(6)

(b)(6)

Dear

This letter is in response to your June 4, 2009, letter to the U.S. Department of Education, Family Policy Compliance Office (FPCO). FPCO administers the Family Educational Rights and Privacy Act (FERPA), which affords parents and eligible students certain rights with regard to education records. 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 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 are 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 prohibits a school from disclosing a student's education records to third parties unless the parent of the student to whom the records relate provides written consent. As stated above, FERPA protects information contained in education 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 relating to an alleged disclosure from your child's education records which occurred on December 9, 2008, it is not clear whether any information disclosed by (b)(6) came from your child's education records or whether any education records about your child having any special needs existed on that date. In response to your allegation that on May 5, 2009, information from your child's education records may have been disclosed because your child overheard conversations by teachers speaking about her, you have not provided any evidence that your child's education records were disclosed to anyone other than your child. Because there is no evidence that your child's education records was disclosed to anyone other than your daughter, no basis exists for this Office to investigate your allegation that your child's school violated your rights under FERPA.

Page 2

(b)(6)

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure

(b)(6)

**AUG 17 2010**

Dear (b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO) is not initiating an investigation with regard to a complaint you filed with us on July 14, 2010. In that complaint you alleged that the (b)(6) School) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

FPCO 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 guidance document for your review.

FPCO’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 meet the FERPA timeliness requirement described in (b), above. Your correspondence states that you were aware of the alleged disclosure on August 18, 2009. In order to be considered timely, your complaint should have reached FPCO no later than 180 days after August 18, 2009. Instead, FPCO did not receive your complaint until July 27, 2010, which was almost one year after you became aware of the alleged disclosure. (34 CFR § 99.64).

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,

Kathleen M. Wolan  
Program Analyst  
Family Policy Compliance Office

Enclosure



(b)(6)

AUG 16 2010

Dear

(b)(6)

This is to respond to your May 24, 2010, letter/complaint form 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. Your son (b)(6) (Student) attends school in the District. 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.

(b)(6)

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.

Each of the five allegations in your letter are addressed below.

1. Failure to adhere to District's own Board Policy regarding Parental Challenge of student records.

Please see the part of the guidance document regarding "Amendment of Education Records" on page two. FERPA generally requires a school to meet the procedures summarized in the guidance document. In order to exercise your right to seek to amend inaccurately recorded information in the Student's education records, you should write to the appropriate official in the District and request amendment of the inaccurately recorded information. Along with your request, you should provide the District with evidence to support your belief that such information is inaccurately recorded. Please note that the District is not required by FERPA to respond to a request by a parent to amend information (such as a grade or substantive decision made by a school) that is not amendable under FERPA.

If the school does not amend the inaccurately recorded information as requested, or fails to get back to you within a reasonable period of time, you may contact this Office. At such time, please provide us with a dated copy of your request to the school (including your supporting evidence), any response from the school, and a completed copy of the enclosed complaint form.

(b)(6)

2. Failure to inform Parents of the destruction of testing protocols that were being challenged by parent at time of destruction.

A test protocol is not generally an education record unless it includes the student's name or other personally identifying information and the student's answers to the questions in the test protocol. Also, a school may destroy education records without notice to the parent unless there is an outstanding request by the parent to inspect and review such records. Unless you requested an opportunity to inspect and review a test protocol that was also the Student's education record, and the District destroyed the test protocol/education record before it provided you an opportunity to inspect and review it, it does not appear that a violation of FERPA occurred.

3. Failure to resolve matters of the challenge of invalid assessments.

It is not completely clear what you mean by this allegation. As you may know, there are some additional requirements under Part B of the Individuals with Disabilities Education Act (Part B) for the education records of students who receive special education services. I have included contact information for the organization responsible for administering Part B in your State in case you wish to contact them to see if this concern is addressed by Part B.

4. Failure to remove, acknowledge or respond to parental challenge of student records.

It appears that this allegation is related to your allegation in number two above. Please see our response for allegation number two.

5. Failure to include all records upon previous records requests at the time of request.

Please see the part of the guidance document regarding "Access to Education Records" beginning on page one. Based on the information in your letter, it appears that this concern may have been addressed by the (b)(6) Department of Education in 2009. However, if you believe there are additional education records to which you have not been provided access, I suggest you write again to the District and request an opportunity to inspect and review the education records to which you are still seeking access.

If the District fails to provide you an opportunity to inspect and review the requested education records, or fails to contact you within 45 days of your request, you may write to this Office again. At such time, please provide us with a dated copy of your request to the District, any response from the District, and a completed copy of the enclosed complaint form.

6. District divulged my son's name (who is a minor), our family's first and last name to the public and the nature of our complaint of special education concerns in the minutes of the School Board Meeting . . . When I [G]oogle the (b)(6) School District, (b)(6) [Student's

Page 4 -

(b)(6)

name]” his name and information is disclosed to everyone and anyone. Our request for the removal of this information was ignored by the District.

You provided us with a copy of information that apparently appears at the District’s Website regarding the school board meeting. Please see the part of the guidance document regarding “directory information” beginning near the bottom of page three. Based on our analysis, unless you opted out of directory information, it does not appear that any information from the Student’s education records is disclosed at the Website. However, if you believe differently, please provide us with the specific information from the Student’s education records that you believe is improperly disclosed at the Website. We will review the information you submit and take any appropriate action.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures

Mr. Gary L. Adkins  
Superintendent  
Wayne County Schools  
212 North Court Street  
Wayne, West Virginia 25570

**AUG 17 2010**

Complaint No. (b)(6)  
Family Educational Rights  
and Privacy Act

Dear Mr. Adkins:

(b)(6) (Parent) has filed a complaint with the U.S. Department of Education alleging that Wayne County Schools (District) violated rights afforded parents under the Family Educational Rights and Privacy Act (FERPA). This Office, under authority of § 99.60 of the FERPA regulations (copy enclosed), investigates complaints in accordance with procedures outlined in § 99.65. The section states in summary:

- The Office will notify the complainant and the educational agency or institution against which the violation has been alleged, in writing, if it initiates an investigation of a complaint.
- The notification to the agency or institution under this section shall include the substance of the alleged violation and shall ask the agency or institution to submit a written response to the complaint.

This letter serves to notify you of the allegation and to provide you an opportunity to submit a written response.

The Parent alleges that the District failed to comply with § 99.10 of the FERPA regulations when it did not provide her access to the education records of her son, (b)(6) (Student), in response to several requests. Section 99.10 states in part:

- (a) . . . a parent or eligible student must be given the opportunity to inspect and review the student's education records. . . .
- (b) the educational agency or institution . . . shall comply with a request for access to education records within a reasonable period of time, but not more than 45 days after it has received the request.

Specifically, the Parent alleges that the District did not comply with several requests by her for access to all of the Student's education records. The Parent provided this Office with June 8, 2010, requests by her for access to the Student's education records maintained by (b)(6) High School and (b)(6). Enclosed for your review are copies of the Parent's recent requests.

Please note that a school is required by FERPA to provide a noncustodial parent with access to his or her child's education records unless the school has evidence that there is a court order or State law that specifically provides to the contrary. 34 CFR § 99.10. Also, a school is required to provide the noncustodial 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 noncustodial parent does not live within commuting distance of the student's school. Based on the information provided by the Parent, she lives outside commuting distance of the Student's school.

To complete the procedure outlined in § 99.65(a)(2) of the FERPA regulations, please investigate the Parent's allegation and provide this Office with a written response within four weeks after you receive this letter. Also, please refer to complaint number 1461 in any correspondence regarding this complaint. If you have any questions concerning the Act, the Department's role in its administration, or the complaint procedure, you may contact Mr. Ricky Norment of my staff. The address and phone number of this Office are as follows:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-5920  
202-260-3887

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures

cc: Parent

(b)(6)

**AUG 19 2010**

Dear (b)(6)

This is in response to your October 22, 2009, letter in which you allege that (b)(6) College violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it denied you access to your education records. This Office administers FERPA, which addresses issues that pertain to education records. Because of a backlog of correspondence, we have not been able to address the concerns raised in your letter. I apologize for any inconvenience this may have caused you.

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. Once 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 student. 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.

FERPA requires that schools comply with a student's request for access to his or her education records within 45 days of receipt of the request. Also, a school shall respond to reasonable requests for explanations and interpretations of the records. FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records.

You provided a June 24, 2009, request to (b)(6), Dean of Math and Science for the opportunity to inspect and review your Test-5 answer-book for Math-63 Fall 2007 with instructor (b)(6) along with its "question paper." You also asked for scores from various tests and homework. Due to the lapse in time, we are asking you to inform us whether you wish this Office to pursue your complaint or whether your concerns have been resolved. If you wish to pursue your allegation, please inform us of such a decision within 30 days of the date of this letter. Additionally, we need to receive the following information from you:

- 1) By "question paper," do you mean the test questions that go along with your Test-5 answer booklet?
- 2) Were you given access and an explanation? If not, why?

- 3) Can you provide the response of (b)(6) to this request if any was given?
  
- 4) Also, do you know if these two records, including the tests and homework you reference were maintained by the College at the time of your request?

Our address and telephone number are as follows:

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

We will review the information you provide and take any necessary action.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office



(b)(6)

**AUG 19 2010**

Dear (b)(6)

This is to respond to your August 30, 2010, correspondence sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the University of (b)(6) 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.

\_\_\_X\_\_\_ **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

Enclosures

(b)(6)

AUG 19 2010

Dear (b)(6)

This is to respond to your March 16, 2010, letter to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that (b)(6) (University) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. Specifically, you provided this office with a copy of a February 23, 2010 email to you from (b)(6) at the University who stated that "she received numerous reports that you were trying to skirt the requirements of the [University's] MES degree" and that rumors regarding your degree requirements have affected the other students. You appear to allege that (b)(6) statements verify that she violated FERPA because the other students to whom she generally refers could only have learned about your concerns regarding the University's degree requirements from her, since you did not discuss such concerns with other students. 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.

Under FERPA, students must provide written consent before personally identifiable information is disclosed from their education records, unless one of the exceptions to this general consent rule applies. However, FERPA does not protect the confidentiality of information in general; rather, FERPA prohibits the improper disclosure of information derived from education records. Therefore, if a school official disclosed information about a student that is a result of the official's personal knowledge, observation, or hearsay, then that information would not be protected under FERPA. You have not provided any evidence for this office to determine that information from your education records was disclosed by any University official. It also appears that any information disclosed was based on opinion and hearsay, not information derived from your education records. Accordingly, there is no basis for this office to investigate your allegation that the University disclosed information about you from your education records.

I trust the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

(b)(6)

**AUG 24 2010**

Dear (b)(6)

This is to respond to your August 2, 2010, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6) Law 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 23 2010

Honorable Bernard Sanders  
United States Senator  
1 Church Street, 2<sup>nd</sup> Floor  
Burlington, Vermont 05401

Dear Senator Sanders:

This is in response to your August 10, 2010, letter to this office on behalf of your constituent (b)(6) regarding allegations that she makes against (b)(6) (College) under the Family Educational Rights and Privacy Act (FERPA). This Office administers FERPA which addresses issues pertaining to education records. 20 U.S.C. § 1232g; 34 CFR Part 99.

As you know, FERPA is a Federal law that affords parents and eligible students 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. Education records are those records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for the agency or institution. Under FERPA, "Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

FERPA generally requires prior written consent for the disclosure of personally identifiable information, from 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 student of the disclosure, unless the disclosure is initiated by the 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. Your constituent explains that two professors at the College may have learned of her previous history at the prior school where she was enrolled. As noted above, at the time (b)(6) transferred to the College, her records from her previous school may have been forwarded to the College under this exception in compliance with FERPA.

Another exception to the prior written consent requirement in FERPA allows "school officials, including teachers, within the agency or institution" to obtain access to education records provided the educational agency or institution has determined that they have "legitimate educational interests" in the information. 34 CFR § 99.31(a)(1). Although "school official" is not defined in the statute or regulations, this Office has interpreted the term broadly to include a teacher; school principal; president; chancellor; board member; trustee; registrar; counselor; admissions officer; attorney; accountant; human resources professional; information systems specialist; and support or clerical personnel.

Section 99.7(a)(3)(iii) of the FERPA regulations requires an educational agency or institution to include in its annual notification of rights under FERPA a statement indicating whether it has a policy of disclosing personally identifiable information under § 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest. See online – Post secondary model notification: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/ps-officials.html> Because the two professors in question are currently teaching (b)(6) it appears that they meet the exception under FERPA that permits school officials with legitimate educational interest to access her education records in compliance with FERPA. Finally, FERPA prohibits the improper disclosure of information derived from education records. Therefore, information that is based on opinion or hearsay and not specifically contained in education records would not be protected under FERPA.

We are enclosing for your constituent a FERPA guidance document, and complaint form. If, after reviewing these documents, she continues to believe the College failed to comply with the requirements of FERPA, she may complete the complaint form and return it to this Office. 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

Enclosures





UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

(b)(6)

AUG 31 2010

Dear (b)(6)

This is to respond to your recent complaint form sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6) (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/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,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

AUG 31 2010

(b)(6)

Dear (b)(6)

This is in response to your letter to this Office in which you express concerns related to your child's special education file. 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  
Director  
California Department of Education  
Special Education Division  
1430 N Street  
Suite 2401  
Sacramento, California 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

(b)(6)

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

(b)(6)

**AUG 31 2010**

Dear (b)(6)

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:

John Tommasini  
Director  
Pennsylvania Department of Education  
Bureau of Special Education  
333 Market Street  
7th Floor  
Harrisburg, PA 17126-0333

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,

(b)(6)

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

400 MARYLAND AVE., SW, WASHINGTON, DC 20202  
[www.ed.gov](http://www.ed.gov)

OCT 19 2010

(b)(6)

Dear

(b)(6)

This is in response to your letter, dated September 9, 2010, addressed to Secretary Duncan, concerning the Family Educational Rights and Privacy Act (FERPA). As with your previous letter, dated April 29, 2010, regarding the same matter, your current letter was referred to the Family Policy Compliance Office for response because we administer FERPA. By letter dated May 27, 2010, we responded to your concerns, explaining how FERPA applies to your situation. A copy of that letter is enclosed for your review.

Also enclosed is a fact sheet on FERPA. As noted in our May 27<sup>th</sup> letter, even if FERPA permitted you to have access to the records you are seeking, (b)(6) College would not be required to provide you with such access. Rather, it would only be permitted to do so.

I regret that we can be of no further assistance to you on this matter.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

(b)(6)

OCT 19 2010

Dear (b)(6)

This is to respond to your August 19, 2010, letter to this Office in which you allege that (b)(6) (b)(6) (School) violated the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. You allege that the above school, school district, 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 you information is a FERPA Guidance Document and complaint form.

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 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.)

2

(b)(6)

- 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.)
- 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 highlight portion of the enclosed guidance.)

With respect to your allegation regarding the School improperly disclosing to you information from the education records of a student who is not your child, please see page six of the enclosed FERPA guidance document regarding "standing." I have enclosed a complaint form which you may forward to the other parent should that parent wish to file a complaint with this Office.

With regard to your allegation concerning inaccurate information in your child's education records, please see page two of the guidance document regarding "amendment of education records," and page 7 of the guidance document regarding the information that must be included in any complaint to this Office regarding amendment of education records. Please note that the focus of the FERPA amendment procedure is for consideration of "inaccurately recorded" information in education records. A school is not required to respond to a request from a parent seeking to amend information that is not amendable under FERPA. Examples of information not amendable under FERPA are grades, opinions, student placement determinations, and substantive decisions made by schools about students.

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

Sincerely,

(b)(6)

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

Dr. Angela Lynn  
Registrar  
Office of the Registrar  
Sherman Hall 110  
1 University Circle  
Macomb, Illinois 61455-1390

OCT 29 2010

Dear Dr. Lynn:

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. See 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 letter dated September 24, 2010, in which you explained that on September 3, 2010, an academic advisor inadvertently sent a joint email to all of her advisees that contained protected student education records. Within 1 ½ hours of the breach, the emails were retracted and you notified each advisee that their education records may have been compromised.

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.

If you have any questions, please contact this Office at (202) 260-3887.

Sincerely,

(b)(6)

Ellen Campbell  
Acting Director  
Family Policy Compliance Office



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

OCT 29 2010

(b)(6)

Dear

(b)(6)

This is to respond to your May 19, 2010, email correspondence and September 7, 2010, complaint form 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). Specifically, you allege that the District violated FERPA when it denied you access to education records of your child (b)(6) Student) and when it failed to amend certain of her education records in response to your written requests. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents, custodial and non-custodial alike, the right to have access to his or her 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, unless there is a court order or State law that specifically provides to the contrary. The school may ask for legal certification denoting parenthood, such as a court order or birth certificate, from the parent requesting access to education 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 for the agency or institution.

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 a parent with copies of education records, or make other arrangements, only 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.

While a school is required to comply within 45 days with each individual request for access, it is not required by FERPA to honor standing requests, to provide immediate access to records, or to send out grades to parents at the end of marking periods. Further, a school is not required to provide information that is not maintained or to create records that do not exist.

Additionally, FERPA would not require a school to provide parents documents such as school calendars, updates, or notices of parent/teacher conferences because such documents are generally not directly related to individual students. Also, FERPA does not address who will attend parent/teacher conferences or provide a parent with access to teachers – such decisions are made at the discretion of local and State officials.

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.

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. Based on the May 19, 2010, date when this office received your original inquiry, any allegations you made regarding violations of FERPA which occurred prior to November 20, 2009, are untimely. Allegations that are not timely are not investigated.

In response to your allegation that the District denied you access to the student's education records, you provided information which indicates that the District's stated policy requires parents who request copies of education records to provide it with a self-addressed, stamped envelope before the District forwards such copies to parents. Such a policy does not violate FERPA, unless a failure to do so would effectively prevent the parent from obtaining access to the records. You have not provided information to this office to demonstrate that the District's policy effectively denied you access to the Student's education records when it required you to comply with its access policy. In fact, you acknowledged the District's policy and agreed to

(b)(6)

comply with the District's access policy, and did not further clarify to the District your February 9, 2010, request. Based on copies of your correspondence you provided this office, District officials, including (b)(6) assistant superintendent of educational services, offered you access to the Student's education records in compliance with FERPA. Accordingly, no basis exists for this office to investigate your allegation that the District denied you access to the Student's education records.

In response to your allegation that the District failed to amend the Student's education records in response to your specific request to modify her education records to reflect the Student's birth name as it appears on her birth certificate, the District held a hearing on July 22, 2010. At that hearing, the District considered your request for amendment, denied your request to modify her records and complied with your request to insert your statement in the records in regard to your request for amendment in compliance with FERPA. Accordingly, no basis exists for this office to investigate your allegation that the District failed to afford you an opportunity to seek an amendment of the Student's records as you alleged.

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

Sincerely,

(b)(6)

Ellen Campbell  
Acting Director  
Family Policy Compliance Office



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

NOV 03 2010

(b)(6)

Dear

(b)(6)

This is in response to your faxed letter that we received on October 18, 2010, regarding the Family Educational Rights and Privacy Act (FERPA). You allege that (b)(6) Academy, which appears to be a private school, violated your rights under FERPA.

FERPA applies to educational agencies and institutions that receive Federal funds from programs administered by the U.S. Department of Education (Department). Because private and parochial schools at the elementary and secondary levels do not generally receive funds (grants, subgrants, or cooperative agreements) from the Department, FERPA does not apply to these schools. A private school that has students and teachers who receive services from a local or state education agency funded by a Departmental program does not bring the school under the coverage of FERPA.

Please note that, even if the school were subject to FERPA, it would only be required to provide you with access, within 45 days, to your child's education records, a school is not required to provide information that is not maintained or to create education records that do not exist. Additionally, FERPA would not require a school to provide parents documents such as school calendars, updates, or notices of parent/teacher conferences because such documents are generally not directly related to individual students. Also, FERPA does not address appointments with school officials; such decisions are made at the discretion of the school.

Enclosed for your information is a fact sheet on FERPA. For information on the requirements, visit the Department's FERPA web site at:  
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

I trust this explains the scope and limitations of FERPA as it pertains to your concerns.

Sincerely,

(b)(6)

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

NOV 04 2010

(b)(6)

Dear

(b)(6)

This is to respond to your May 5 and July 30, 2010, letters to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by (b)(6) (University) when it denied you access to your education records. This office administers FERPA, which addresses issues pertaining to 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 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. Generally, a case in point would be a situation in which the student does not live within commuting distance of the school.

On September 7, 2010, I spoke with (b)(6) University associate counsel, via telephone who stated that the University complied with your February 24, 2010, request for access when it offered you the opportunity to inspect and review your education records. She confirmed this in her April 9, 2010, response to you, which you provided to this office. Furthermore, she confirmed that you commuted to the University at the time of your request.

This office must determine whether a school has a policy or practice that has the effect of preventing access to education records under FERPA. Specifically, you alleged that the University violated your rights under FERPA when it failed to provide you copies, because you reside outside of commuting distance to the school. However, the University substantiated that you commuted to the campus and asserted that it would be reasonable for you to inspect and review your records, as it offered you in its April 9 response, at such time when you were at the campus. Accordingly, we cannot conclude that the University has a policy or practice that has the effect of preventing you access to your education records in violation of FERPA. Based on this information and information you provided, the University complied with FERPA when it

Page 2—Ms. Marita E. Hyman

provided you with an opportunity to inspect and review your education records, although it would have been permitted, not required, to provide you with copies. Should you wish to inspect and review your education records, you should make appropriate arrangements with the University.

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

Sincerely,

(b)(6)

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure





UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

NOV 04 2010

(b)(6)

Dear (b)(6)

This is to respond to your October 12, 2010, 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). This office administers FERPA, which addresses issues pertaining to education records.

This office responded to your March 1, 2010, letter on July 15, 2010, in which we requested that you complete the provided complaint form and include only relevant back-up documentation that supports your allegation (see enclosed). In your October 12, 2010, response you have not provided this office with a completed complaint form, which clearly specifies your allegation. Furthermore, it appears you have expanded your inquiry to include other allegations and information not included in your original March 2010 correspondence. Again, we are returning your correspondence on in order that you may use it to resubmit your complaint.

Please refer to our July 2010 response for further information and carefully read and complete the enclosed complaint form. Also, please provide only relevant documentation which supports your specific allegation. In order for this office to proceed, you should provide this office with the necessary information within 2 weeks after you receive this response. Once you resubmit only your completed complaint form and only relevant documentation which supports your allegation in a succinct and clear manner, this office will provide you with a response as soon as possible. Otherwise, this office will be unable to assist you further in regard to your current allegation.

Sincerely,

(b)(6)

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

NOV 04 2010

(b)(6)

Dear (b)(6)

This is to respond to your September 4, 2010, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that (b)(6) University 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. Because you live within commuting distance to your institution, FERPA would not require it to provide you with copies of your education records. Furthermore, it appears that Dr. Cheryl Somers at your institution provided you access to your education records when it "read aloud" excerpts from your education records. (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,

(b)(6)

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

(b)(6)

NOV 05 2010

Dear

(b)(6)

This is in response to your September 4, 2010, letter to this office in which you inquire about the Family Educational Rights and Privacy Act (FERPA) relative to a request made under the State of Connecticut's open records law for the disclosure of hearings concerning two children's residency eligibility with respect to a school they were attending. This Office administers FERPA, a Federal law, which addresses issues pertaining to education records. Specifically, FERPA affords parents and eligible students the right to have access to their children's or 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.

Under FERPA "education records" are broadly defined to mean any records that are (a) directly related to a student; and (b) maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." Thus, the type of records to which you refer would be "education records" under FERPA if the records are directly related to the student and maintained by the school. Accordingly, in order for the State Board of Education to disclose the student's education record absent consent of the parent, an exception in FERPA would have to apply that allows for the disclosure absent the prior written consent of the parent, and if not, the parent must provide his or her prior written consent allowing for the disclosure of their child's education records. In this regard, FERPA requires that a consent for disclosure of education records must be signed and dated and must specify the records that may be disclosed; state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concern.

Sincerely,

(b)(6)

Ellen Campbell  
Acting Director  
Family Policy Compliance Office



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

(b)(6)

NOV 09 2010

Dear (b)(6)

This correspondence is written in reference to our November 4, 2010, conversation regarding this office's complaint procedure. As you know, this office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues pertaining to education records.

This office responded to your May 19 and September 7, 2010, correspondence regarding FERPA by letter dated October 29, 2010, in which we concluded that no violations of FERPA occurred based on the information provided by you and your child's school (see attached). Furthermore, this office informed you of the complaint process, specifically that complaints and inquiries are received via U. S. mail, and not via email. In our November 4 telephone conversation, this office reiterated our complaint process, and discussed our inability to respond to inquiries that are not received in a manner that protects the privacy of our complainants or those which circumvent our administrative complaint procedures. Should you have any additional questions beyond those issues previously addressed in our recent telephone conversation or October 29 response, you may write to this office at the following address:

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

I trust this information clarifies your concerns regarding the administration of FERPA.

Sincerely,

(b)(6)

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

(b)(6)

Dear

(b)(6)

This is to respond to your June 7, 2010, letter to this Office in which you allege that (b)(6) Independent School District (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 and complaint form.

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 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.)
- 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.)

It appears you are alleging that the District violated FERPA when , high school instructional leader for the District, discussed a discipline infraction committed by your son, a student in the District (Student), at a meeting of the Board of Trustees (Board) held to discuss your Level III complaint. You believed that this "closed session" of the Board was being held to discuss only an "academic issue and the failure of teachers to provide work while [the Student] was absent from school, suspended and/or in In-School Suspension."

Based on information in your letter, it appears that the discipline infraction was related to the issues up for discussion at the closed session of the Board, and that the school officials at the closed session would generally have a legitimate educational interest in obtaining access to information in the Student's education records. It appears you invited   to attend the closed session to present your complaint. By inviting  to the closed session, you provided the school with implied consent to disclose information from the Student's education records to her. It is not clear whether you invited  garrison commander at Fort Hood, to the closed session or what his position is relative to the District and your complaint. However, if you invited him to the closed session, you also gave the District implied consent to disclose information from education records to him.

It appears you are also alleging that the District violated FERPA when it disclosed information from the Student's education records to (b)(6). If you wish this Office to further consider this allegation, we need to receive additional information from you. Please inform us whether (b)(6) is a school official in the District, and if so, why you believe he does not have a legitimate educational interest in obtaining access to information in the Student's education records. Generally, a school official has a legitimate educational interest if he or she needs access to information in education records to carry out his or her responsibilities.

Also, please provide us with the date or approximate date the District allegedly disclosed information from the Student's education records to (b)(6) or the date you learned of the disclosure, and the name of the school officials who made the disclosure (if that is known). Also, provide us with the specific nature of the information disclosed to (b)(6) which included the Student's grades. We will review the information you submit and take any appropriate action.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

(b)(6)

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures





UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

(b)(6)

NOV 11 2010

Dear (b)(6)

This is in response to your June 14, 2010, letter to this office in which you allege that the (b)(6) (b)(6) (School) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from the education records of your daughter (Student) to a third party without your prior written consent. This Office administers FERPA which addresses issues that pertain to education records. We will respond to your letter regarding amendment of education records under separate cover.

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" is defined as those records that contain information directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information are a FERPA fact sheet, guidance document, and complaint form.

Under FERPA, a school may not generally disclose personally identifiable information from the education records of a minor student to a third party unless the student's parent has provided written consent. There are several exceptions to FERPA's prohibition against nonconsensual disclosure of education records. However, it does not appear that any of these exceptions apply to your situation.

It appears you are alleging that the School violated your rights when (b)(6), a school official at the School, disclosed information regarding the Student's disability to another individual (or third party) to whom your incoming cell phone calls had been transferred. Please see page six of the guidance document for the types of information this Office requires from parents in order to consider conducting an investigation of an alleged improper disclosure of information from a student's education records.

If you wish this Office to further consider your allegation, we need to receive additional information from you. Please complete the enclosed complaint form and include: your daughter's name, (b)(6) position at the school, the name of the "individual" to whom information from the Student's education records was disclosed, and the specific nature of the information regarding the Student's disability that (b)(6) allegedly disclosed to the individual. Also, if possible, please provide us with a written statement from the individual regarding the disclosure and the specific information that was improperly disclosed. We will review the information you submit and take any appropriate action.

Page 2 - Ms. Mary Ruffin

I trust that the above and the enclosed information are helpful in explaining the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

(b)(6)

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

NOV 12 2010

(b)(6)

Dear

(b)(6)

This letter is in response to your May 25, 2010, 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 when the educational agency or institution that your child attends failed to provide you copies of your child's education records. You also request information regarding the requirements of FERPA's amendment provision. FPCO administers FERPA, which affords parents and eligible students certain rights with regard to education records.

FERPA is a Federal law that gives parents and eligible students the right to have access to their child's or their education records, the right to seek to have the records amended, and the right to consent to the disclosure of information from the records, except where permitted by law. 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 school is required to provide a parent or eligible student an opportunity to inspect and review the student's education records within 45 days of a request; however, a school is only required to provide copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent or eligible student from obtaining access to the records. A case in point would be a situation in which the parent or eligible student does not live within commuting distance of the school.

Our review of the information that you provided does not indicate that the school has denied you an opportunity to inspect and review your child's education records but, rather, has denied you copies of those records. Because a school is not required to provide a parent or eligible student with copies of education records, except under certain circumstances, it appears that the school has complied with FERPA's access provisions.

In response to your inquiry regarding FERPA's amendment provision, requests to modify a grade, opinions of school officials in education records, and other substantive decisions are not subject to FERPA's amendment provision. Based on the information you provided FPCO, you are seeking to amend those of your child's education records which are based on opinion and are substantive decisions. Accordingly, FERPA's amendment provision does not apply to your circumstance. For your convenience, I have highlighted the applicable portion of the enclosed guidance document.

Ms. Theresa French–Page 2

You may also find more information regarding FERPA on our website at:  
<http://www2.ed.gov/policy/gen/guid/fpco>.

Sincerely

(b)(6)

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

(b)(6)

NOV 22 2010

Dear (b)(6)

This is to respond to your September 12, 2010, letter and your November 2, 2010, e-mail to this Office in which you allege that (b)(6) (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 school, school district, 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 are a FERPA Guidance Document and the FERPA regulations.

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 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.)
- \_\_\_\_\_ 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 highlight portion of the enclosed guidance.)

In your letter, you indicate that your son (Student) attends (b)(6) (School) in the District where he was involved in an altercation with another student (Other Student). (b)(6) principal of the School, asked both students involved in the altercation to "write a statement which explains what happened and to sign it." Subsequently, the resource officer (for the School or District) informed each student that "what they have just signed is a police report and that they are to be criminally charged with disorderly conduct," and the resource officer collected the statements. Specifically, you allege that the District violated your rights under FERPA when the resource officer disclosed the statement written and signed by the Student to the "police department, the juvenile prosecutor, and the juvenile probation department."

As indicated above, your complaint does not meet FERPA's threshold requirement for timeliness. As such, there is no basis for this Office to further consider it. Notwithstanding the fact that your complaint is not timely, it also does not appear that the District violated FERPA as you allege. It is not clear from the information you have provided to us whether the "resource officer" was also designated as a school official and/or as a law enforcement unit official. See the bottom of page two and top of page three of the guidance document for a discussion of the school official exception and § 99.8 (the clipped and highlighted portion) of the FERPA regulations for a discussion about law enforcement units and officials.

Let's say the resource officer was a school official and a law enforcement unit official. Once he collected the Student's statement, the statement became an education record subject to FERPA. However, the statement would also qualify as a law enforcement unit record which the resource

Page 3 -

(b)(6)

officer would be permitted by FERPA to nonconsensually disclose to third parties, including officials in the local police department. If the resource officer was not a school official, the Student's statement was never maintained by the District, and therefore, it never became an education record protected by FERPA.

It does not appear that the District's procedure for obtaining statements from students involved in altercations and subsequently having the student statements provided to the police department, as set forth in your allegation, is a violation of FERPA. However, if you and other parents in the District are unhappy with this District procedure, you may want to discuss your concerns with your local board of education.

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

Sincerely,

(b)(6)

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures

(b)(6)

FEB 28 2011

Dear

(b)(6)

This is in response to your complaint, dated January 30, 2011, alleging that the New York City Department of Education (District) and the (b)(6) (Center) violated your rights under the Family Educational Rights and Privacy Act (FERPA). You state that your daughter (b)(6) age 21, was placed by the District in the Center under the Individuals with Disabilities Education Act (IDEA), and that the Center has denied you access to her records. This office administers FERPA, which affords parents and eligible students with certain rights with regard to education records.

FERPA is a Federal law that affords 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. When a student reaches the age of 18 or attends an institution of postsecondary education, that student is deemed an "eligible student" and all of the rights afforded by FERPA transfer from the parents to the student.

In your situation, it does not appear that FERPA applies. This is because your daughter is over 18 years of age and she is no longer in an educational agency or institution subject to FERPA. As such, the District and/or the Center are not required under FERPA to provide you with access to your daughter's education records. However, you may have rights under IDEA. As you may know, although IDEA is a Federal law, it is administered by the States. You may wish to contact the special education director for the State of New York. Her name and address are as follows:

Rebecca H. Cort  
Associate Commissioner for Special Education  
New York State Department of Education  
One Commerce Plaza, Room 1606  
Albany, New York 12234

Also, to assist you, I contacted a colleague in the Department's Office of Special Education Services (OSEP). You may wish to give Angela Tanner-Dean of OSEP a call at (202) 245-6320 for information about IDEA requirements. I trust this adequately explains the scope and limitations of FERPA as it pertains to your concern. We are returning the information you sent us in case it may be of assistance to you at a later date.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure



(b)(6)

FEB 24 2011

Dear

(b)(6)

This is to respond to your May 29, 2010, letter to this Office in which you allege that (b)(6) (b)(6) (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).

Enclosed for your information is a FERPA guidance document.

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.

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 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.)

\_\_\_\_\_ 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.)

You allege that the District violated FERPA when it disclosed personally identifiable information from your education records to third parties without your prior written consent. By letter dated April 14, 2010, Ms. Kathleen Wolan, program analyst, informed your mother that the allegations included in her February 1, 2010, complaint form were not timely. I reviewed the information in your mother's February 1 complaint form (and accompanying information), and I also find that the allegations are not timely.

Based on the information in your May 29 letter, it appears you believe that you or your mother submitted allegations to this Office previously that do meet FERPA's 180-day timeliness requirement. However, I searched our paper files, our automated tracking system, and our e-mail box (though we do not accept complaints over the Internet), and I could not locate any submissions from you other than your May 29 letter, or any submission from your mother other than the February 1 complaint form. If you have contacted other agencies regarding this matter, such as your State Department of Education, or contacted other offices, such as the Department's Office for Civil Rights, regarding your concerns, you may have provided them with the information that you believe you provided to us.

As indicated above, due to privacy and administrative concerns, this Office does not accept complaint over the Internet. Also, for purposes of timeliness, the date of a phone call to this Office does not count as the date a complaint was submitted to us. Thus, if you wish this Office to further consider your allegation, you need to provide us with a copy of a document you previously submitted to this Office which includes a timely allegation, and provide us with

evidence that such document was previously submitted to us in a timely manner through the U.S. Postal Service or through a fax. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

(b)(6)

FEB 24 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 February 9, 2010. 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. Specifically, you allege that the District failed to provide you access to all of your children's education records, including "emergency contact information." Please note that the other issues raised in your letter are not addressed by FERPA and will not be discussed in this letter.

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 are a FERPA guidance document for parents and a 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 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. You do not provide us with evidence that the District failed to comply with a specific request by you for access to information contained in your children's education records.

Specifically, you allege that the District did not provide you access to all of your children's education records. If you wish this Office to further consider your allegation, we need to receive additional information from you. Please complete the enclosed complaint form and include the following: the date you requested access to your children's education records; name of the official to whom your request was made (include your dated letter to the official, if possible); the response of that official, if any; the specific nature of the education records to which you believe you were denied access; and evidence that such education records are currently maintained by the District. We will review the information you submit and take any appropriate action.

However, in order to exercise your rights under FERPA, I suggest you write again to the appropriate official in the District and request the specific education records of your children to which you are seeking access. 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 District, any response from the District; the specific nature of the education records to which you believe you were denied access; evidence that such education records are currently maintained by the District; and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

As we explained to you in a January 28, 2011, e-mail, this Office would not require a school to provide a noncustodial parent with information regarding the home or work locations (addresses and telephone listings) of the student, custodial parent, or others if the school has evidence that the noncustodial parent might present a physical danger to any of them. Based on the information in the September 28, 2006, court order enclosed with your letter to this Office, we would not require the District to provide you with "emergency contact information" relative to the custodial parent's home or work locations even if such information is a part of your children's education records.

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

Enclosures

Mr. Gregory S. Frayser  
Cline Williams Wright Johnson & Oldfather, L.L.P.  
Attorneys at Law  
233 South 13<sup>th</sup> Street  
1900 U.S. Bank Building  
Lincoln, Nebraska 68508-2095

FEB 17 2011

Dear Mr. Frayser:

This is in response to your letter, dated February 15, 2011, regarding the applicability of the Family Educational Rights and Privacy Act (FERPA) to records of a deceased student sought by a third party. This office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations, which are codified at 20 U.S.C. § 1232g and 34 CFR Part 99 respectively.

FERPA provides specifically that the rights afforded by FERPA belong to the student once he or she becomes an eligible student. 34 CFR § 99.3 "Eligible student." The FERPA rights of eligible students lapse or expire upon the death of the student. This interpretation is based on the common law principle that a cause of action based upon an invasion of privacy is personal, and the right to bring such an action lapses with the death of the person who held it. Therefore, FERPA would not protect the education records of a deceased eligible student and an educational agency or institution may disclose such records at its discretion.

However, FERPA rights do not lapse or expire upon the death of a non-eligible student. FERPA provides specifically that the rights it affords rest with the parents of students until that student reaches 18 years of age or attends an institution of postsecondary education. There is nothing to suggest that parents' rights under FERPA should terminate solely because their child is deceased. Rather, since the parents hold the rights in these circumstances, they may exercise those rights so long as the education records exist.

I trust this is responsive to your inquiry.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

(b)(6)

FEB 16 2011

Dear (b)(6)

This is to respond to your June 5, 2010, complaint form 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 denied you access to your children'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 custodial and noncustodial parents alike the right to have an opportunity to inspect and review their children's education records, unless there is a court order or State law that specifically provides to the contrary. The school may ask for legal certification denoting parenthood, such as a court order or birth certificate, from the parent requesting access to education 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 for the agency or institution. Enclosed for your information is a FERPA fact sheet.

On January 26, 2011, (b)(6) superintendent of the District, informed this office that a court order exists which restricts your access to your children's information (see enclosed). Based on this office's review of the court orders which pertain to you that were provided by the District, FERPA permits the District to deny you access to your children's education records as discussed above. Accordingly, this office is unable to further assist you with regard to your inquiry.

I trust this information is helpful to address the scope and limitations of FERPA.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures



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

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

FEB 14 2011

(b)(6)

Dear (b)(6)

This is to respond to your March 17, 2010, letter to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated when the (b)(6) District) disclosed certain of your child's education records to a third party without your prior written consent. Specifically, you state that on November 11, 2009, (b)(6), special education case manager for the District, disclosed a copy of a letter to (b)(6), a driving instructor with the "Driver Education Department of Traffic Education." You state this letter was written by your wife to (b)(6) and included information about your child's mental state and medications. You state this private entity is separate from Stevensville High School. This office administers FERPA, which addresses issues pertaining to education records.

FERPA generally prohibits a school from disclosing a student's education records to third parties unless the parent to which the records relate provides his or her prior written consent. One of the exceptions to FERPA's prior written consent requirement allows "school officials" within the agency or institution to obtain access to education records provided the educational agency or institution has determined that they have "legitimate educational interest" in the information. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibilities. This Office has interpreted the term broadly to include such positions as a teacher; counselor; board member; registrar; counselor; admissions officer; attorney; accountant; human resources professional; information systems specialist; and support or clerical personnel.

To obtain additional information about the driver's education program at your son's school, I spoke on February 9, 2011, with (b)(6) principal in the District, who confirmed that the school district operates the school's driver education program in which your son was enrolled. Accordingly, (b)(6), the school's driver's education instructor, is a school official with a legitimate educational interest (i.e. he needed to know the information about your son in order to perform his professional duties) in your child's education records that were disclosed. Based on the information you provided to this office and information provided by the District, no basis exists for this office to investigate your allegation that the District violated FERPA when it disclosed your child's education record to a District official.

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

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

FEB 14 2011

(b)(6)

Dear (b)(6)

This is to respond to your January 19, 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 respond to your questions with regard to a disciplinary event involving your son. 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 fact sheet.

Under FERPA, a school must provide a parent or eligible student 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 or eligible student 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. Based on the information in your correspondence, it appears that you live within commuting distance to the District and it is required only to provide you with an opportunity to inspect and review the Student's education records, although it is permitted to provide you with copies.

In accordance with FERPA, a school generally is not required to maintain particular education records or education records that contain specific information. Rather, a school is required to provide certain privacy protections relative to those records it selects to maintain. Nor does FERPA require schools to create or to re-create lost or destroyed education records. It may destroy education records without notice to the parent, unless there is an outstanding request from the parent to inspect and review such records.

In this instance, you appear to allege that the District did not reply to certain of your questions involving your child's October 8, 2010, disciplinary event. As stated above, FERPA does not require a school to create records that it does not maintain in an education record. Although not required to do so under FERPA, (b)(6) of the District replied to your October emails in their responses of October 8 – 12, 2010. Accordingly, no basis exists for this office to investigate your allegation that the District violated FERPA when it did not respond to your requests for information that is not contained in an education record.

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

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosures