

FEB 15 2011

(b)(6)

Dear

(b)(6)

This is to respond to your June 6, 2010, complaint form and subsequent correspondence to this office in which you allege that school districts to which you have written have violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). Specifically, you state that the schools to which you have written fail to respond to your written requests for access to your children's education records, including your children's mailing addresses, phone numbers, and photographs. 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.

As stated above, FERPA generally requires schools to provide parents, custodial and noncustodial alike, access to their children's education records unless there is a court order or other legally binding document which revokes a particular parent's right to those records. This right allows parents the opportunity to inspect and review their children's education records so that they remain informed of their children's progress in school and aware of all records maintained by the school concerning their children. While a student's home address is technically part of his or her education records, it is not information created or developed by the institution that pertains to the student's life as a student, as are academic, disciplinary, or health data. Particularly, in circumstances such as these, where a school district believes that an individual may be a risk, we will not require the school to disclose a student's home address merely because it appears as part of the student's education records.

You have not provided this office with sufficient information (i.e. recent court order) which verifies that you are the parent or whether your parental rights have been terminated. In order to exercise your rights under FERPA if your rights have not been severed by the courts, you need to write to each school district where you believe each child attends or attended, and provide each with your request for each of that child's education records, along with a copy of the most recent court order or other legally binding document which verifies that your parental or FERPA rights have not been terminated. If the school district where your child attends or attended maintains your child's records

and fails to respond or otherwise denies your request, you may write to this office again. At such time, please provide this office with a copy of your request to each school district which has denied you access, along with a completed complaint form (see enclosed) for each school district, and copy, if any, of the district's response. Once this office receives the needed information, we will take any appropriate action.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

FEB 9 2011

Dear (b)(6)

This is to respond to your September 1, 2010, faxed 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) when it disclosed information from your son's education records to a third party without your prior written consent. Specifically, you state that (b)(6), superintendent of the District, disclosed your son's disciplinary record on March 22, 2010, to representatives of the Military Entrance Processing Station personnel in (b)(6) to which your son was processed as a Marine Corps recruit in its early entry program. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their child's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Under FERPA, whenever a student becomes eighteen years of age or attends a postsecondary institution, all rights once afforded to the parents transfer to the student. It is not clear whether or not your son is an eligible student (i.e. at least 18 years of age).

Under FERPA, a school may not generally disclose personally identifiable information from the education records of a student to a third party unless the school has received prior written consent of the party who holds rights under FERPA. It is our understanding that when an individual is accepted in the military's early entry program which you describe, he or she or the parents must provide consent which allows for certain disclosures of information. If consent was provided in this instance, no violation of FERPA occurred. If that is not the case, please have the appropriate individual who holds the FERPA rights complete the enclosed complaint form. In the response, please verify the student's date of birth, the name of the individual to whom the information was disclosed along with a written statement from that individual which verifies any disclosure, and whether or not the school was provided a consent form which permitted it to disclose the student's education records to the military. Please respond within 3 weeks after receiving this response. Once this office receives the needed information, we will review it 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,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure

(b)(6)

FEB 8 2011

Dear (b)(6)

This is in response to your letter dated July 22, 2010, to this Office in which you allege that a private provider under Part B of the Individuals with Disabilities Education Act (Part B) violated your rights under the Family Educational Rights and Privacy Act (FERPA). This Office administers FERPA, which addresses issues that pertain to education records. Enclosed is a fact sheet for your review.

Please note that FERPA applies to education records on "students" who attend an educational agency or institution that receives funds from any program administered by the Department of Education. FERPA does not apply to individuals who are homeschooled. Accordingly, because your concerns may be addressed by Part B, you should contact the appropriate official at the Ohio Department of Education to assist you. The address and contact information is as follows:

Mr. Mike Armstrong
Director
Office for Exceptional Children
Ohio Department of Education
25 South Front Street
Columbus, Ohio 43215-4104
Telephone: (614) 466-2650

I trust that the above information is helpful to you.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

FEB 8 2011

Dear

(b)(6)

This is in response to your June 28, 2010, letter in which you allege that (b)(6) (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it improperly disclosed information from your children's education records. Below is a discussion of FERPA as it relates to your concerns.

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.

Specifically, you allege that the District has refused to conduct a FERPA hearing to seek to amend your daughter's education records; that the inaccurate information in your daughter's record forced a delay in her college applications; that there is information in your daughter's record that should be removed, in particular information relative to another student; and you believe there is information from your daughter's record that is missing.

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

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

You allege that school officials gained unauthorized access to your daughter's education records and improperly informed you that your daughter's education records would not be disclosed to colleges where she was seeking or intending to enroll. FERPA specifically exempts from the prior written consent requirement those disclosures of education records that are made to other school officials, such as teachers, within the educational agency or institution whom the agency or institution has determined to have a legitimate educational interest. A school official is a person employed by the school such as an administrator, supervisor, instructor, or support staff member. 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 responsibility. Additionally, FERPA permits a school to disclose education records to officials of another school where the student seeks or intends to enroll. In this regard, a school district may release a portion or all of a student's education records, under the "seeks or intends" to enroll exception in FERPA, at its discretion. Moreover, the parent or eligible student does not, under FERPA, have the right to prevent a school which a student previously attended from transferring the student's education records or from communicating information about a student to the student's new school.

You also allege that school officials used your daughter's education records in a court of law and that school administrators and their legal counsel improperly disclosed your daughter's education records and other student's education records to the public via the court system. Another exception in FERPA that permits a school district to disclose education records absent consent is when the disclosure is to comply with a judicial order or lawfully issued subpoena. Furthermore, FERPA provides that if a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the

student's education records that are relevant for the educational agency or institution to defend itself. Or, if an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

You also allege that the District violated FERPA when it improperly disclosed to you the records of another student. As for this allegation, FERPA vests the rights it affords with the parent or eligible student whose rights were violated. Thus, the parent or eligible student whose records were disclosed to you would have to file a complaint in order for us to contact the school about this matter.

Finally, you allege that a school official discussed your son's AP exam with third party parents and discussed general progress with students in the hallway. With respect to this allegation, FERPA prohibits the improper disclosure of information derived from education records. Therefore, information that is based on opinion, observation, or hearsay and not specifically contained in education records would not be protected under FERPA.

The other issues you raise in your letter that are addressed at the local school level, not by FERPA. I trust that the above information adequately explains the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

FEB 8 2011

Dear

(b)(6)

This is in response to your January 12, 2011, letter to this Office in which you express concerns related to the School District of (b)(6) and the "inappropriate sharing of our son's Individualized Education Plan (IEP) and/or confidential or identifying information and failure to provide access to requested student educational records by us for the purpose of preparing for an IEP meeting." This Office is responsible for administering the Family Educational Rights and Privacy Act (FERPA), a Federal law that pertains to education records. Enclosed is a fact sheet on FERPA for your reference.

The concerns you raise may be more appropriately addressed by Part B of the Individuals with Disabilities Education Act (Part B). Although Part B is a Federal law, it is administered by the States. Therefore, we suggest you contact the appropriate official at the Michigan Department of Education regarding your allegations:

Dr. Jacquelyn J. Thompson
Director
Office of Special Education
and Early Intervention Services
Michigan Department of Education
P.O. Box 30008
608 West Allegan Street
Lansing, Michigan 48909-7508
Telephone: (517) 373-9433

I trust that the above information is helpful to you.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

FEB 8 2011

Dear

(b)(6)

This is in response to your October 11, 2010, letter to this office in which you allege that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA). Specifically, you allege that your daughter's education records were disclosed to an attorney representing the District "when no legal action had been initiated on our part." This office administers FERPA.

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. 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. Enclosed is a fact sheet for your review.

As noted above, FERPA generally prohibits the nonconsensual disclosure of information derived from education records. One of the exceptions 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. 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 responsibility.

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.

It appears from the information you provided that the attorney is a school official whom the District determined had a legitimate educational interest in gaining access to your child's education records in compliance with FERPA. There is not a need for litigation or pending litigation to permit a disclosure of education records to a school official with legitimate educational interest under FERPA. Accordingly, there is no basis on which to pursue your allegation.

Sincerely,

Ingrid Brault
Management and Program Analyst
Family Policy Compliance Office

Enclosure

FEB 4 2011

(b)(6)

Dear (b)(6)

This is to respond to your June 21, 2010, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6)

(b)(6) District violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. FPCO administers FERPA, which affords parents and eligible students certain rights pertaining to education records.

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

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

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

FEB 3 2011

(b)(6)

Dear (b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on December 1, 2010. In that complaint, you are alleging that (b)(6) in Palm Springs and (b)(6), violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. (b)(6) (Student), attended both these schools.

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>. Also, enclosed for your information are a FERPA guidance document and complaint form.

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

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

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

Given the facts alleged, the disclosure you described would generally be authorized under Section 99.31(a)(2). It appears (b)(6), the Student's father, informed (b)(6) that he intended to enroll the student in (b)(6). Once (b)(6) had evidence that the Student was seeking or intending to enroll at (b)(6), (b)(6) would generally be permitted to nonconsensually forward education records to (b)(6). Also, please see the second paragraph on page three of the guidance document.

The provisions of 34 CFR § 99.10 detail the right of inspection and review of education records. Also, you will find an overview of the access provision beginning near the bottom of page one of the guidance document. 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. However, a school is not required to provide a parent with copies of education records unless 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 student's school. Based on the information in your letter, it appears that (b)(6), school director of (b)(6), provided you an opportunity to inspect and review the Student's education records during your August 10, 2010, visit to (b)(6).

Based on your letter, you visited the School again on August 11, 2010, and requested a copy of all the Student's education records. At that time, it appears you were still within commuting distance of (b)(6). Thus, (b)(6) would not be required to provide you with copies of the requested education records. Rather, it would be required to provide you with an opportunity to inspect and review the requested records. If you requested copies of the Student's education records after you left (b)(6) and returned to (b)(6), and you wish this Office to further consider such an allegation, please provide us with the following information: the date you requested access to the education records, the name of the official to whom your request was made (please provide us with any written copy of your request), and the date on which you received copies of the requested education records. We will review the information you provide and take any appropriate action.

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

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Dr. Heath Morrison
Superintendent
Washoe County School District
380 Edison Way
Reno, Nevada 89520-3425

FEB - 2 2011

Dear Dr. Morrison:

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 an email dated January 11, 2011, from (b)(6) Senior Director Public Policy, Washoe County School District, in which she reported a breach that occurred under FERPA. (b)(6) explained that a special education case manager accidentally provided a list of 152 special education students attending (b)(6) High School to a parent. (b)(6) also provided the subsequent steps the District has taken to rectify the breach.

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,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc: (b)(6)

Mr. Scott G. Reynolds
Assistant Superintendent
Washoe County School District

(b)(6)

MAY 31 2011

(b)(6)

Dear

This is to respond to your March 4, 2011, letter to this office in which you allege that the (b)(6) (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it disclosed information about your child to a third party without your prior written consent. This office administers FERPA, which addresses issues pertaining to education records.

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

FERPA generally requires that an educational agency or institution obtain written consent before disclosing education records or personally identifiable information from education records. Accordingly, FERPA applies to the disclosure of tangible records and of information derived from tangible records. FERPA does not protect the confidentiality of information in general, and, therefore, does not apply to the disclosure of information derived from a source other than education records, even if education records exist which contain that information. As a general rule, information that is obtained through personal knowledge or observation, and not from an education record, is not protected from disclosure under FERPA.

In your letter to this office, you have not provided sufficient information for this office to determine that a violation of FERPA occurred. Based on the information you provided to this office, it appears that the information disclosed by the school principal to the police came from his personal observation. Furthermore, you do not explain which, if any, of your daughter's education records were disclosed by the principal to the police. Accordingly, no basis exists for this office to investigate your allegation that the school disclosed information from your child's education records.

Page 2

(b)(6)

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure

Kathleen Zimmerman
Executive Director
Not Your Ordinary School
Administrative Offices
12301 North Lamar Boulevard
Austin, Texas 78753

MAY 31 2011

Dear Ms. Zimmerman:

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. By letter dated November 16, 2010, a parent in the Not Your Ordinary School Charter School (School) alleged that her son's education records were improperly disclosed to parents of another student. The School acknowledged the disclosure, claiming that it was inadvertent, and apologized to the parent. We are nonetheless sending this letter to provide the District technical assistance to ensure compliance with FERPA.

Under FERPA, a school may not generally disclose personally identifiable information from a minor student's education records to a third party unless the student's parent has provided written consent. However, there are a number of exceptions to FERPA's prohibition against non-consensual disclosure of personally identifiable information from education records. Under these exceptions, schools are permitted to disclose personally identifiable information from education records without consent, though they are not required to do so by FERPA. Following is general information regarding some of these exceptions.

One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to personally identifiable information contained in education records provided the school has determined that they have "legitimate educational interest" in the information. Although the term "school official" is not defined in the statute or regulations, this Office generally interprets the term to include parties such as: a teacher; administrator; board member; support or clerical staff; attorney; nurse and health staff; counselor; human resources staff; information systems specialist; school security personnel; and a contractor, consultant, volunteer or other party to whom the school has outsourced institutional services or functions.

A school may disclose personally identifiable information from education records without consent to a "school official" under this exception only if the school has first determined that the official has a "legitimate educational interest" in obtaining access to the information for the school. A school that allows school officials to obtain access to personally identifiable information contained in education records under this exception must include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interests." A school official generally has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Another exception permits a school to disclose personally identifiable information from a student's education records, without consent, to another school in which the student seeks or intends to enroll. The sending school may make the disclosure if it has included in its annual notification of rights a statement that it forwards education records in such circumstances. Otherwise, the school must make a reasonable attempt to notify the parent in advance of making the disclosure, unless the parent or eligible student has initiated the disclosure. The school must also provide a parent with a copy of the records that were released if requested by the parent.

FERPA permits a school non-consensually to disclose personally identifiable information from a student's education records when such information has been appropriately designated as directory information. "Directory information" is defined as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as the student's name, address, e-mail address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended, photograph, grade level (such as 11th grade or junior year), and enrollment status (full-time or part-time).

A school may disclose directory information without consent if it has given public notice of the types of information 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 that he or she does not want any or all of those types of information designated as directory information. Also, FERPA does not require a school to notify parents individually of the types of information it has designated as directory information. Rather, the school may provide this notice by any means likely to inform parents of the types of information it has designated as directory information.

There are several other exceptions to FERPA's prohibition against non-consensual disclosure of personally identifiable information from education records specified under § 99.31 of the FERPA regulations. As stated above, the conditions specified in the FERPA regulations have to be met before a school may non-consensually disclose personally identifiable information from education records in connection with any of the exceptions mentioned in the Act.

We hope you find the above information helpful. If you have any questions, please contact this Office at (202) 260-3887.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

MAY 25 2011

(b)(6)

Dear

This is in response to your February 23, 2011, letter concerning your complaint under the Family Educational Rights and Privacy Act (FERPA) against the Bureau for Private Postsecondary Education (BPPE), a State agency in California. This Office, under the authority of § 99.60 of the FERPA regulations (copy enclosed), investigates complaints in accordance with procedures outlined in § 99.65.

You state that you attended Masters Institute from 1994 to 1996 and graduated with an A.S. Degree in Systems Administration/Database Management. In March of 1991 the school abruptly closed. You further state that you have learned that your school records are in the custody of BPPE. On October 1, 2010, you called BPPE and requested that they send you copies of your transcripts from Masters Institute because you need them to continue your education toward a B.S. degree and get credit for your A.S. Degree. You state that BPPE provided you a transcript that is not the same as the old copies that you have, and that the transcript did not include a number of items of information about you that BPPE should have provided. You further state that BPPE refused to correct your transcripts, and that BPPE said it would be fraud for BPPE to make the changes you have requested.

FERPA is a Federal law that is administered by the Family Policy Compliance Office (Office) in the U.S. Department of Education (Department). 20 U.S.C. § 1232g; 34 CFR Part 99. FERPA applies to all educational agencies and institutions (e.g., schools) that receive funding under any program administered by the Department. Once a student reaches 18 years of age or attends a postsecondary institution, he or she becomes an "eligible student," and all rights formerly given to parents under FERPA transfer to the student. The eligible student has the right to have access to his or her education records, the right to seek to have the records amended, the right to have control over the disclosure of personally identifiable information from the records (except in certain circumstances specified in the FERPA regulations), and the right to file a complaint with the Department. 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. See the enclosed guidance document for eligible students.

FERPA applies to an educational institution to which funds have been made available under any program administered by the Secretary of Education if the educational institution provides education services or instruction, or both, to students. Thus, we assume for purposes of this discussion that FERPA applied to Masters Institute until such time that it no longer provided either educational services or instruction or both to students and closed.

The phrase "State and local educational *authorities*" is not defined in FERPA or elsewhere in Federal law or regulations. However, this office has generally interpreted the term to mean an agency or other party with educational expertise and experience that is responsible for and authorized under State or local law to regulate, plan, coordinate, advise, supervise or evaluate elementary, secondary, or postsecondary education programs, services, agencies, or institutions in the State. We have not reviewed BPPE's statutory authority to determine if indeed BPPE qualifies as a "State educational authority" under FERPA. However, assuming it is an agency with educational expertise and experience that is responsible for and authorized under State law to regulate, plan, coordinate, advise, supervise and evaluate postsecondary education programs, services, agencies, and institutions in the State, it would generally be considered an educational authority under FERPA.

Please note that, under FERPA, a State educational authority is generally required to provide an eligible student with access to his or her education records. It is not, however, required to disclose education records upon the student's request, nor is it required to provide a student with an opportunity to seek to amend the records.

I regret that we cannot further assist you with your concerns. I suggest that you continue to try to work with BPPE regarding these issues.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

MAY 17 2011

(b)(6)
Dear (b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on February 27, 2011. In that complaint, it appears you are alleging that (b)(6) (College) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 20 USC Part 99. Specifically, it appears you are alleging that the College violated your rights when it failed to provide you access to information in your education records; when it failed to amend information in your education records or offer you the opportunity for a hearing on the matter; and when it disclosed information from your education record to a third party without your prior written consent.

It appears you are also raising concerns regarding the College's alleged failure to follow its stated policies and procedures regarding dismissal of a student and admission/reinstatement of a student. These specific concerns, as you have raised them, 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 and complaint forms.

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

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

The term "education records" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." A school is not generally required by FERPA to maintain particular education records or education records that contain specific information. Rather, a school is required to provide certain privacy protections for those education records that the school selects to maintain. Also, unless there is an outstanding request by a student to inspect and review education records, the school may destroy such records without notice to the student. Please note that a school is not required to provide a student access to information that is not maintained or to create education records in response to a student's request. Accordingly, a school is not required to provide a student with updates on his or her progress in a certain subject unless such information already exists in the form of an education record.

The College would not generally be required by FERPA to maintain redacted records regarding your nursing courses or records regarding the rape or sexual harassment claims. Conversely, FERPA would not generally prohibit the College from maintaining these records. If the College does maintain the records, you would have the right to inspect and review them.

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

In your letter you state:

... I was never given the original test documents to review. ...

In order to exercise your right to inspect and review the "original test documents" or other education records, I suggest you send a dated request to the appropriate official at the College asking for an opportunity to inspect and review the specific education record to which you are seeking access. We advise that this Office can assist you best if your request for access to education records does not include other concerns and issues you may have with the College outside your request for access to education records. If the College fails to provide you an opportunity to inspect and review 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 College, any response from the College, and a completed copy of one of the enclosed complaint forms. We will review the information you submit and take any appropriate action.

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

The FERPA amendment procedure may be used to challenge facts that are inaccurately recorded. However, it may not be used to challenge a grade, an opinion, or a substantive decision made by

a school about a student. FERPA requires only that schools conform to fair recordkeeping practices. It does not provide a means to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. For example, you may not use the FERPA amendment procedure to gain readmission to the College, i.e., challenge a substantive decision made by the College regarding you.

However, if you believe there is inaccurately recorded information in your education records, you should write to the appropriate official at the College and request amendment of the specific information in your education records that you believe is inaccurately recorded. We advise that this Office can assist you best if your request for amendment of information in education records does not include other concerns and issues you may have with the College outside your request for amendment of education records. Along with your request for amendment, you need to include evidence to support your assertion that such information is inaccurately recorded.

If the College does not amend the information in accordance with your request or offer you the opportunity for a hearing on the matter, you may write to this Office again. At such time, please provide us with a dated copy of your request to the College for amendment of your education records (including your evidence that the information is inaccurately recorded), any response from the College, and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

The provisions of 34 CFR Part 99, Subpart D specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written consent for the disclosure. FERPA allows for limited disclosure of such records without consent under limited circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31. Given the facts alleged, most of the disclosures you described would generally be authorized under FERPA's school official exception.

In your letter, you state:

... (b)(6), the Associate Dean of Nursing, and (b)(6) the program coordinator, at [the College] were not employed during the time I was sexually assaulted and dismissed from the college. ... and additionally, (b)(6) admission to reading the record, which has now extended itself to (b)(6) the damage I have experienced is considerable. ...

One of the exceptions to FERPA's prior written consent requirement allows "school officials," including teachers, within a school to obtain access to education records provided the school has determined that they have "legitimate educational interest" in the information. 34 CFR

§ 99.31(a)(1). Although the term "school official" is not defined in the statute or regulations, this Office generally interprets the term to include parties such as: professors; instructors; administrators; health staff; counselors; attorneys; clerical staff; trustees; members of committees and disciplinary boards; and a contractor, volunteer or other party to whom the school has outsourced institutional services or functions.

A school may disclose education records without consent to a "school official" under this exception only if the school has first determined that the official has a "legitimate educational interest" in obtaining access to the information for the school. A school that allows school officials to obtain access to education records under this exception must include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interests."

(b)(6) (then) dean of health sciences at the College, and (b)(6) an instructor at the College, would all generally be school officials. A school official generally has a legitimate educational interest if the school official needs access to information in an education record to carry out his or her responsibilities. As stated above, the disclosures you describe appear to be permitted under FERPA.

In your letter, you also state:

... Due to the heinous gossip by (b)(6) the damage I have experienced is considerable. ...

If you have evidence that (b)(6) or other school official disclosed information from your education records to an unauthorized third party (who is not a school official) absent your prior written consent, you may write to this Office again. In order for us to further consider such an allegation, you should complete one of the enclosed complaint forms and include the following information: the date or approximate date the information was improperly disclosed from your education records, or the date you learned of the disclosure; the name of the school official who made the disclosure, if that is known; the third party or parties to whom the information was disclosed; and the specific nature of the information disclosed from your education records. We will review the information you submit and take any appropriate action.

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(b)(6)

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

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

MAY 17 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 March 14, 2011. In that complaint, you are alleging that (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. Your son, (b)(6) (Student), attends (b)(6) (School) in the District.

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

- (a) Is filed by the "parent" of a 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 convenience is a FERPA 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. A school is required to provide a parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from obtaining access to the records. 34 CFR § 99.10. A case in point would be a situation in which the parent does not live within commuting distance of the school. Based on the information in your letter, it appears that you live within commuting distance of the Student's school. Therefore, the District is required by FERPA to provide you with an opportunity to inspect and review the Student's education records. The District is not required to provide you with copies of the records, though it is permitted to do so. Also, FERPA permits a school to charge a fee for copies of education record unless the imposition of a fee effectively prevents the parent from exercising the right to inspect and review a student's education records.

It appears you are alleging that the District violated FERPA when it did not provide you an opportunity to inspect and review the Student's education records within 45 days of your January 27, 2010, request. Along with your letter to this Office, you enclosed a copy of a March 15, 2010, e-mail to you from (b)(6) principal of the School. Based on the information in her e-mail it appears that the District attempted to set up an appointment for you to inspect and review the Student's education records. Also, based on the information in (b)(6) e-mail, it appears that you did not attempt to establish a date for an appointment until around March 11, 2010. If this is true, that is about two days before the 45-day period ends. We believe it is unreasonable for a parent to expect a school to set up an appointment for the Parent to inspect and review education records in that timeframe.

Unless you have specific evidence that the information in the above paragraph and/or in (b)(6) March 15 e-mail is inaccurate, there is no basis for this Office to further consider your allegation. In her e-mail, (b)(6) states that (b)(6) a school official, telephoned you on January 28 and 29, 2010, and sent you an e-mail on January 29, in an attempt to schedule

an appointment. (b)(6) states (b)(6) telephoned you again on February 16 in an attempt to schedule an appointment. Based on (b)(6) e-mail, you did not agree to a date for an appointment on any of these occasions. If this is not accurate, please provide us with specific evidence that you did attempt to agree to a date for an appointment, such as a copy of an e-mail proposing a date for the appointment. We will review the information you submit and take any appropriate action.

However, in order to exercise your right to inspect and review the Student's education records, I suggest you write again to the appropriate official in the District and request an opportunity to inspect and review the Student's education records to which you are seeking access. This Office can assist you best if your request for access to education records does not include other concerns and issues you may have with the District outside of your request for access to education records. Also, you should work with the District around the time of your request to establish a date for an appointment for you to inspect and review the Student's education records. Perhaps, you could suggest some dates when you would be available in your request for access to the records.

If the School fails to comply with your request, or fails to contact you within 45 days, you may contact this Office. At such time, please provide us with a dated copy of your request to the District for access to the Student's education records, any response from the District, and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

The term "education records" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." The provisions of 34 CFR Part 99, Subpart D specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written signed consent for the disclosure. FERPA allows for limited disclosure of such records without consent under limited circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31.

One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to education records provided the school has determined that they have "legitimate educational interest" in the information. 34 CFR § 99.31(a)(1). Although the term "school official" is not defined in the statute or regulations, this Office has interpreted the term broadly to include a teacher; administrator; board member; support or clerical staff; attorney; nurse and health staff; counselor; human resources staff; information systems specialist; and attorney.

(b)(6)

A school may disclose education records without consent to a "school official" under this exception only if the school has first determined that the official has a "legitimate educational interest" in obtaining access to the information for the school. A school that allows school officials to obtain access to education records under this exception must include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interests."

It also appears you are alleging that the District violated FERPA when (b)(6), an attorney for the District, improperly disclosed information from the Student's education records in a March 19, 2010, e-mail to (b)(6), the student's one time tutor, in an effort to obtain records regarding the Student from (b)(6). As a matter of note, during the time (b)(6) worked for the District, she was a school official and would have a legitimate educational interest in obtaining access to information in education records that she needed to carry out her responsibilities.

However, it appears you are asserting that while (b)(6) tutored the Student, she created records independent of existing education records maintained by the District. If this is true, these records maintained by (b)(6) would not meet the FERPA definition of education records and would not be protected by FERPA. The District would not generally be prohibited by FERPA from seeking to obtain these records. However, (b)(6) would be prohibited from disclosing information from the Student's education records maintained by the District in her attempt to obtain Ms. Gates' records.

If you wish this Office to further consider this allegation, we need to receive additional information from you, including a completed copy of the enclosed complaint form. It appears that (b)(6) no longer worked for the District at the time of (b)(6) March 19 e-mail. Please verify whether this is accurate. Based on the information in your letter, it is not clear that (b)(6) email to (b)(6) disclosed any information beyond the Student's name and that the District maintains education records regarding him (i.e., that he attends or attended school in the District). Unless you opted the Student out of directory information, this would generally be a permissible disclosure of information under FERPA. Please inform us whether you opted the Student out of directory information. If not, you need to provide this Office with the specific nature of the information you are alleging (b)(6) disclosed from the Student's education record in the March 19 e-mail. We will review the information you submit and take any appropriate action.

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

Mr. David R. Smedley
Associate Director
Compliance and Training
The George Washington University
800 21st Street, N.W.
Washington, D.C. 20052

MAY 17 2011

Dear Mr. Smedley:

This is in response to your letter, dated May 2, 2011, in which you ask about the applicability of the consent provisions of the Family Educational Rights and Privacy Act (FERPA) to guidance contained in the *Federal Student Financial Aid Handbook*. Because the Department's Federal Student Aid (FSA) issued the guidance to which you refer, I have asked the following official in FSA to respond to your question:

Mr. Philip B. Aaronson
Operations Services
Federal Student Aid
U. S. Department of Education
830 First Street, N.E.
Suite 44G2
Washington, D.C. 20202

We work very closely with (b)(6) on FSA issues as they relate to FERPA, and he will coordinate with us on any FERPA issues in his response.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc: Mr. Philip B. Aaronson
FSA

(b)(6)

MAY 17 2011

Dear (b)(6)

This is in response to your July 15, 2010, facsimile and letter to this office that we received on July 18, 2010, in which you allege that (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it denied you access to your son's education records. As you know, we administer FERPA, a Federal law that pertains to education records.

You explained that on June 3, 2010, you made a request to the District for copies of all of your son's education records. While it appears from the information you provided that the District responded to you within 45 days of your request, you provided this office a list of documents that you allege the District has not provided to you. The reason that the District has given you for not providing access to certain records on your list was that the District could not locate those records because they were either missing or destroyed.

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. 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.

FERPA requires that schools comply with a parent's request for access to his or her children's education records within 45 days of receipt of the request. A school is *not* required by FERPA to provide copies of education records to a parent unless a failure to do so would effectively prevent the parent from exercising the right to inspect and review the records. For example, a school could be required to provide copies, or make other arrangements, if the parent does not live within commuting distance of the school.

FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records. Additionally, a school may not destroy education records if there is an outstanding request to inspect and review the records. FERPA does not otherwise address the destruction of education records by a school.

This office does not have the staff resources to review voluminous documents to determine whether specific allegations of a school's failure to comply with FERPA are included. Rather, it is the responsibility of the complainant to clearly and succinctly state his or her allegation and to only provide relevant supporting evidence.

It appears from the information you provided that the District has provided you copies of your child's education records in compliance with your request. However, due to the passage of time and in order to assist you with regard to your allegation, we need to receive responses to the following questions if you wish to pursue your allegation:

1. Are the records that you wish to view related to services that your child may receive under Part B of the Individuals with Disabilities Education Act (IDEA)? If yes, the concerns you have raised may be better addressed by IDEA because you might have additional rights beyond FERPA. Although IDEA is a Federal law, it is administered by the states. For further information regarding IDEA, you may contact:

Mr. Gene Lenz
Deputy Associate Commissioner for Special Education
Department of Special Education
Texas Education Agency
W.B. Travis Building
1701 N. Congress Avenue, Room 6-127
Austin, Texas 78701-1494
Telephone: (512) 463-9414

2. If not, please inform us whether the records you sought were maintained at the time you make your June 2 request?
3. Were those specific records deemed missing or destroyed?
4. If destroyed, on what approximate date were they destroyed? If destroyed, was that after the District received your follow up request and prior to your getting access?
5. If there are specific documents that you know the District maintains, but refuses to provide you, please describe the record and the reason given by the District as to why it won't provide it to you.

Please complete the enclosed complaint form and mail it to this office within 3 weeks of receipt of this letter so that we can review it. Please succinctly complete the enclosed complaint form including responses to the above questions. We will review the information you provide and take any necessary action.

As indicated above, this office cannot assist you with regard to missing documents. Record maintenance issues need to be addressed at the local school or State level. Finally, the other issues that you raise are not addressed by FERPA. We are returning your documents to you in case you need them for future reference.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

MAY 17 2011

Dear

(b)(6)

This is to respond to your November 5, 2010, letter to this office in which you inform this office that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated when unnamed officials at the (b)(6) (University) appear to have disclosed information from your education records, as reported to you by the University. 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.

In response to your inquiry, this office wrote to (b)(6) president of University, to provide her and the University staff with technical assistance in regard to FERPA (see attached) to ensure the University's compliance. In response to the incident which you identify in your letter, University staff took immediate measures to investigate the data breach to which you have been apprised. Should you require additional information in regard to the steps that the University has taken to ensure compliance with FERPA, you may wish to contact the University as follows:

(b)(6)

Page 2--

(b)(6)

I trust this addresses your concern as it relates to FERPA.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

cc:

(b)(6)

Dr. Mary R. C. Greenwood
President
University of Hawaii
Bachman 202
2444 Dole Street
Honolulu, Hawaii 96822

MAY 17 2011

Dear Dr. Greenwood:

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 writing in response to a November 5, 2010, inquiry from a former student, (b)(6) (Student), who informed this Office that the (b)(6) (University) wrote to him regarding the fact that his education records were improperly disclosed (see enclosed). We note that the University was the subject of an article in (b)(6) which reported that the University improperly disclosed education records of 40,101 students who attended the University between 1990 and 1998 and in 2001 (see enclosed). Additionally, the article reported two other disclosures of education records prior to that date. Based on conversations on November 3, 2010, between (b)(6) registrar at the University and Mr. Bernard Cieplak of this Office, and information included in the article, we understand that the University took steps to address these disclosures. In follow-up to this Office's previous conversations with the University and to forward the Student's letter to you, we are writing this letter to provide the University with technical assistance as it relates to FERPA's provision relating to disclosure of education records.

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.

Page 4 – Dr. Mary R. C. Greenwood

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

cc:

(b)(6)

MAY 17 2011

(b)(6)
Dear (b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on June 10, 2010. In that complaint, you are alleging that the (b)(6) (Law School), which is a component of (b)(6) (College) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

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

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

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

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

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

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

One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to education records provided the school has determined that they have "legitimate educational interest" in the information. 34 CFR § 99.31(a)(1). Although the term "school official" is not defined in the statute or regulations, this Office has interpreted the term broadly to include parties such as: professors; instructors; administrators; health staff; counselors; attorneys; clerical staff; trustees; members of committees and disciplinary boards; and a contractor, volunteer or other party to whom the school has outsourced institutional services or functions.

A school may disclose education records without consent to a "school official" under this exception only if the school has first determined that the official has a "legitimate educational interest" in obtaining access to the information for the school. A school that allows school officials to obtain access to education records under this exception must include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interests."

FERPA does not specifically address disclosure of education records to contractors, consultants, volunteers, and service providers who are not employees of a school. However, the statutory definition of "education records" recognizes the use of outside service providers in calling for the protection of records maintained by "a person acting for the" school.

Under FERPA, a school must annually notify eligible students in attendance of their rights under FERPA. 34 CFR § 99.7. Among other things, the annual notification must inform eligible students of how the school defines the terms "school official" and "legitimate educational interest." After that, a school may nonconsensually disclose education records to a school official when such official has a legitimate educational interest.

FERPA does not require a school to notify eligible students individually of their rights under FERPA. Rather, the school may provide the notice by any means likely to inform eligible students of their rights. Thus, the annual notification may be published by various means, including any of the following: in a schedule of classes; in a student handbook; in a calendar of

school events; on the school's website (though this should not be the exclusive means of notification); in the student newspaper; and/or posted in a central location at the school or various locations throughout the school. Additionally, some schools include their directory information notice as part of the annual notice of rights under FERPA.

Specifically, it appears you are alleging that the College violated FERPA when your "contracts professor" disclosed information from your education records to his "teaching assistants (who are also students)." You state:

... I was outraged to learn that a student was allowed to 1) read my final 2) assist in grading our final by providing feedback to the professor 3) was actually given access to my final and that if I wanted to discuss my grade on the final I needed to see the student [teaching assistant] instead of the professor. . .

Teaching assistants at the graduate level are generally employed by the school. They generally meet the definition of school officials and generally have a legitimate educational interest in obtaining access to education records regarding the types of responsibilities you describe above. Generally, a school official has a legitimate educational interest when that official needs access to information in an education record to carry out his or her responsibilities. Unless you have evidence that the College does not define these terms such that your contracts professor is permitted to nonconsensually disclose information from your education records to his teaching assistants for the purposes you describe above, there is no basis for this Office to assist you regarding your concern.

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

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures

MAY 17 2011

(b)(6)

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on February March 7, 2011. In that complaint, you are alleging that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 20 U.S.C. Part 99. Your son, (b)(6) (Student), attends (b)(6) in the District.

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>.

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

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

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

The term "education records" 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. 34 CFR § 99.3 "Education records." The provisions of 34 CFR Part 99, Subpart D specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written signed consent for the disclosure. FERPA allows for limited disclosure of such records without consent under limited circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31.

Specifically it appears you are alleging that (b)(6) director of special education for the District, violated FERPA when she improperly disclosed information from the Student's education records to (b)(6) (Other Parent) and (b)(6), the Other Parent's attorney at the (b)(6) Legal Rights Service. The information disclosed relates to special education services received by the Student from the (b)(6) Autism Spectrum Disorders. You became aware of the disclosure on February 10, 2011, when you received an e-mail from the Other Parent.

If you wish this office to further consider your allegation, we need to receive additional information from you. Please provide us with the name and address of the superintendent of the District and verify that we have accurately stated your allegation. We will review the information you submit and take any appropriate action.

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

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

(b)(6)

MAY 17 2011

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on January 15, 2011. In that complaint, you are alleging that (b)(6) (College) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. You allege that the College failed to comply with your request for access to certain of your education records.

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>.

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

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

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

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

A school is not required to provide a student with copies of education records unless a failure to do so would effectively prevent the student from obtaining access to the records. A case in point would be a situation in which the student does not live within commuting distance of the school. Based on the information in your letter, it appears that you live within commuting distance of the College (generally thought of as 50 miles one-way). Therefore, the College is required by FERPA to provide you with an opportunity to inspect and review your education records. The College is not required to provide you with copies of the records, though it is permitted to do so.

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

Under FERPA, a school is not required to provide a student access to information that is not maintained or to create education records in response to a student's request. Accordingly, a school is not required to provide a student with updates on his or her progress in a course unless such information already exists in the form of an education record.

Based on the information in your January 15 letter, it appears you are requesting that the College provide you access to your "financial aid file" and "a financial aid calculation worksheet or whatever methodology the [C]ollege uses to calculate the financial aid award process." Based on the e-mail exchanges between you and school officials at the College enclosed with your letter, it appears that these officials have provided you with the names and numbers of school

officials you contact to set up an appointment to inspect and review your education records. In order to exercise your right to inspect and review your financial aid records, I suggest you contact one of these officials to set appointment.

With regard to obtaining access to a financial aid calculation worksheet or other methodology used by the College to calculate information regarding the process of awarding financial aid, please review the FERPA definition of education records above. If the College maintains a so-called calculation worksheet regarding how it calculated financial aid information regarding you, such worksheet would be directly related you and a part of your education records to which you would have the right to inspect and review. If you believe the College maintains such information, again I suggest you contact the College to set up an appointment to inspect and review your financial aid records, including the calculation worksheet. However, FERPA does not address your obtaining access to the College's policies and procedures regarding award of financial aid that are not directly related to you.

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

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

MAY 09 2011

(b)(6)

Dear

(b)(6)

This is in response to your November 8, 2010, letter to this office relative to Jefferson Parish Public Schools (District) and the Family Educational Rights and Privacy Act (FERPA). You explained that some parents of children in the District are concerned that the District has improperly disclosed student education records to the public and the press. As you know, we administer FERPA, a Federal law that pertains to education records.

FERPA generally requires that an educational agency or institution obtain written consent before disclosing education records or personally identifiable information from education records. 34 CFR 99.30 and 99.31. FERPA defines "education records" as:

those records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

This Office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. In this regard, FERPA vests the rights it affords with the parent or eligible student. See 20 U.S.C. § 1232g(b)(1) and (d). The statute does not provide for these rights to be vested in a third party that has not suffered an alleged violation. Thus, an individual must have "standing," i.e., have suffered an alleged violation, in order to file a complaint under FERPA.

Additionally, 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.

Due to the passage of time and in order to assist you with regard to your allegation, we need you to complete the enclosed complaint form, including the name of your child, and to receive responses to the following questions if you wish to pursue your allegation:

1. Are you a parent of a child from the District and as such, have standing with regard to your FERPA allegation?
2. Was the source of the alleged disclosure to the public and the press by the District from your child's education records as defined in FERPA?

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

Sincerely,

Ingrid Brault
Management and Program Analyst
Family Policy Compliance Office

MAY 09 2011

Mr. Will Austin
President
Gretna No. 2 Academy Dad's Club
701 Amelia Street
Gretna, Louisiana 70053

Dear Mr. Austin:

This is in response to your November 5, 2010, facsimile to this office relative to (b)(6) (b)(6) (District) and the Family Educational Rights and Privacy Act (FERPA). You explained that some parents of children in the District are concerned that the District has improperly disclosed student education records to the public and the press. As you know, we administer FERPA, a Federal law that pertains to education records.

FERPA generally requires that an educational agency or institution obtain written consent before disclosing education records or personally identifiable information from education records. 34 CFR 99.30 and 99.31. FERPA defines "education records" as:

those records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

This Office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. In this regard, FERPA vests the rights it affords with the parent or eligible student. See 20 U.S.C. § 1232g(b)(1) and (d). The statute does not provide for these rights to be vested in a third party that has not suffered an alleged violation. Thus, an individual must have "standing," i.e., have suffered an alleged violation, in order to file a complaint under FERPA.

Additionally, 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.

Page 2 – Mr. Will Austin

Due to the passage of time and in order to assist you with regard to your allegation, we need you to complete the enclosed complaint forms separately, including the name of your child, and to receive responses to the following questions if you wish to pursue your allegation:

1. Are you a parent of a child from the District and as such, have standing with regard to your FERPA allegation?
2. Was the source of the alleged disclosure to the public and the press by the District from your child's education records as defined in FERPA?

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

Sincerely,

Ingrid Brault
Management and Program Analyst
Family Policy Compliance Office

MAY 09 2011

Ms. Rebekah Kraus
Gretna No. 2 Academy Parent Teacher Organization
701 Amelia Street
Gretna, Louisiana 70053

Dear Ms. Kraus:

This is in response to your November 5, 2010, facsimile to this office relative to (b)(6) (b)(6) (District) and the Family Educational Rights and Privacy Act (FERPA). You explained that some parents of children in the District are concerned that the District has improperly disclosed student education records to the public and the press. As you know, we administer FERPA, a Federal law that pertains to education records.

FERPA generally requires that an educational agency or institution obtain written consent before disclosing education records or personally identifiable information from education records. 34 CFR 99.30 and 99.31. FERPA defines "education records" as:

those records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

This Office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. In this regard, FERPA vests the rights it affords with the parent or eligible student. See 20 U.S.C. § 1232g(b)(1) and (d). The statute does not provide for these rights to be vested in a third party that has not suffered an alleged violation. Thus, an individual must have "standing," i.e., have suffered an alleged violation, in order to file a complaint under FERPA.

Additionally, 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.

Due to the passage of time and in order to assist you with regard to your allegation, we need you to complete the enclosed complaint forms ~~separately~~, including the name of your child, and to receive responses to the following questions if you wish to pursue your allegation:

1. Are you a parent of a child from the District and as such, have standing with regard to your FERPA allegation?
2. Was the source of the alleged disclosure to the public and the press by the District from your child's education records as defined in FERPA?

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

Sincerely,

Ingrid Brault
Management and Program Analyst
Family Policy Compliance Office

MAY 09 2011

(b)(6)

(b)(6)

Dear

(b)(6)

This is in response to your November 5, 2010, facsimile to this office relative to (b)(6) (b)(6) (District) and the Family Educational Rights and Privacy Act (FERPA). You explained that some parents of children in the District are concerned that the District has improperly disclosed student education records to the public and the press. As you know, we administer FERPA, a Federal law that pertains to education records.

FERPA generally requires that an educational agency or institution obtain written consent before disclosing education records or personally identifiable information from education records. 34 CFR 99.30 and 99.31. FERPA defines "education records" as:

those records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

This Office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. In this regard, FERPA vests the rights it affords with the parent or eligible student. See 20 U.S.C. § 1232g(b)(1) and (d). The statute does not provide for these rights to be vested in a third party that has not suffered an alleged violation. Thus, an individual must have "standing," i.e., have suffered an alleged violation, in order to file a complaint under FERPA.

Additionally, 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.

Due to the passage of time and in order to assist you with regard to your allegation, we need you to complete the enclosed complaint forms separately, including the name of your child, and to receive responses to the following questions if you wish to pursue your allegation:

1. Are you a parent of a child from the District and as such, have standing with regard to your FERPA allegation?
2. Was the source of the alleged disclosure to the public and the press by the District from your child's education records as defined in FERPA?

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

Sincerely,

Ingrid Brault
Management and Program Analyst
Family Policy Compliance Office

(b)(6)

MAY 04 2011

Dear

(b)(6)

This is in response to recent telephone conversation with a member of my staff. Specifically, you ask for information that explains how the Family Educational Rights and Privacy Act (FERPA) applies to providing parents access to education records, specifically to their children's test results. This Office administers FERPA, a Federal law that pertains to education records.

Under FERPA, 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. Generally, any record that contains any personally identifiable information, such as name, student identification number, or other information which would link the document to the individual, is an education record protected under FERPA. Any test protocols or test question booklets which do not contain information directly related to the student are not education records under FERPA.

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 following its receipt of a request. A school is required to provide a parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from obtaining access to the records. 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, a school 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.

As noted above, FERPA does not require disclosure of *copies* of education records. Even if an education record were part of a copyrighted secure test, a copy of the test need not be provided in order to comply with a parent's request for access so long as the parent is given the opportunity to inspect and review the record. FERPA also requires that a school respond to reasonable requests for explanations and interpretations of education records, such as answer sheets not accompanied by the question booklets. Thus, a school district should, upon request, provide an opportunity for a parent to review the education records and provide any explanations and interpretations necessary. This would include the interpretation of standardized test results.

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(b)(6)

Finally, FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records. Also, FERPA would not require a school district to honor a request that education records not be destroyed. However, a school may not destroy education records if there is an outstanding request to inspect and review the records.

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

MAY 04 2011

Dear

(b)(6)

This is in response to your recent complaint forms to this Office regarding the Family Educational Rights and Privacy Act (FERPA) in which you allege that the (b)(6) Schools violated your rights in the manner it has handled implementation of your daughters' Individualized Education Plans under Part B of the Individuals with Disabilities Education Act (Part B). This Office administers FERPA which pertains to education records and it doesn't pertain to the disclosure of information that comes from a source other than an education record, such as observation or hearsay. Nonetheless, it appears that the concerns you have raised may be better addressed by the Individuals with Disabilities Education Act (IDEA). Although IDEA is a Federal law, it is administered by the states. For further information regarding IDEA, you may contact:

Mr. Douglas Cox
Assistant Superintendent for Instructional
Support Services
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23218-2120
Telephone: (804) 225-3252

With regard to ^{the} Health Insurance Portability and Accountability Act (HIPAA), this Office does not enforce that law; rather, it is enforced by the U.S. Department of Health and Human Services (HHS). You may find information helpful to you on their website: www.hhs.gov or contact HHS at 800-368-1019. The other issues you raise are not addressed by FERPA and should be directed to the appropriate school officials at the local or State level, not the Federal level.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

MAY 04 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 March 2, 2011. In that complaint, you are alleging that (b)(6) (College) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 20 USC Part 99. Specifically, you allege that the College violated your rights when it disclosed information from your education records to third parties without your prior written consent.

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

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

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

This Office's enforcement process is intended to work cooperatively with colleges and other postsecondary institutions to achieve their voluntary compliance with FERPA's requirements. Following a review of the allegations and evidence submitted by a complainant, this Office may initiate an administrative investigation by sending the college and the complainant a notification letter about the allegation, and requesting a written response from the college concerning the

allegation. If this Office then determines that a college is in violation of FERPA, the college and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the college in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a college take punitive or disciplinary action against an individual as the result of a FERPA violation. This Office closes its investigation when the college has completed the required corrective actions.

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

The term "education records" 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. 34 CFR § 99.3 "Education records." The provisions of 34 CFR Part 99, Subpart D specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written signed consent for the disclosure. FERPA allows for limited disclosure of such records without consent under limited circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31.

If you wish this Office to further consider your allegation we need to receive additional information from you. It appears you are alleging that the College violated FERPA when it "did publish my student identification number, linked with my name, on a public website." If you wish this Office to further consider your allegation, we need to receive additional information from you. Please provide us with the name and address of the president of the College. Also, we were unable to reach the webpage for either of the addresses provided in your letter. Please provide us with more information regarding these web pages. For example, provide us with a copy of both web pages at issue and, if not evident, a brief description of what they are about. Also, please provide us with evidence you may have to support your allegation. This could include a copy of the webpage when it contained your name and student identification number or a letter or e-mail from you to the College requesting that your name and identification number be removed from the web page. We will review the information you submit and take any appropriate action.

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(b)(6)

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

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosure

Mr. Michael Haynes
Superintendent
NICE Community School District
300 Westwood Drive
Ishpeming, Michigan 49849

MAY 04 2011

Dear Mr. Haynes:

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 March 17, 2011, in which you explained that a potential FERPA breach occurred when staff discovered that student records were missing, including certain student progress reports and 2009-10 folders of students enrolled in the NICE Community School District's (District) Special Education programs. You state that on February 26, 2011, the progress reports were located but that the District has been unable to locate the 2009-10 folders as of the date of your letter.

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,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

MAY 31 2011

Dear

(b)(6)

This is to respond to your March 4, 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 disclosed information about your child to a third party without your prior written consent. This office administers FERPA, which addresses issues pertaining to education records.

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

FERPA generally requires that an educational agency or institution obtain written consent before disclosing education records or personally identifiable information from education records. Accordingly, FERPA applies to the disclosure of tangible records and of information derived from tangible records. FERPA does not protect the confidentiality of information in general, and, therefore, does not apply to the disclosure of information derived from a source other than education records, even if education records exist which contain that information. As a general rule, information that is obtained through personal knowledge or observation, and not from an education record, is not protected from disclosure under FERPA.

In your letter to this office, you have not provided sufficient information for this office to determine that a violation of FERPA occurred. Based on the information you provided to this office, it appears that the information disclosed by the school principal to the police came from his personal observation. Furthermore, you do not explain which, if any, of your daughter's education records were disclosed by the principal to the police. Accordingly, no basis exists for this office to investigate your allegation that the school disclosed information from your child's education records.

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(b)(6)

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure

Kathleen Zimmerman
Executive Director
Not Your Ordinary School
Administrative Offices
12301 North Lamar Boulevard
Austin, Texas 78753

MAY 31 2011

Dear Ms. Zimmerman:

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. By letter dated November 16, 2010, a parent in the Not Your Ordinary School Charter School (School) alleged that her son's education records were improperly disclosed to parents of another student. The School acknowledged the disclosure, claiming that it was inadvertent, and apologized to the parent. We are nonetheless sending this letter to provide the District technical assistance to ensure compliance with FERPA.

Under FERPA, a school may not generally disclose personally identifiable information from a minor student's education records to a third party unless the student's parent has provided written consent. However, there are a number of exceptions to FERPA's prohibition against non-consensual disclosure of personally identifiable information from education records. Under these exceptions, schools are permitted to disclose personally identifiable information from education records without consent, though they are not required to do so by FERPA. Following is general information regarding some of these exceptions.

One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to personally identifiable information contained in education records provided the school has determined that they have "legitimate educational interest" in the information. Although the term "school official" is not defined in the statute or regulations, this Office generally interprets the term to include parties such as: a teacher; administrator; board member; support or clerical staff; attorney; nurse and health staff; counselor; human resources staff; information systems specialist; school security personnel; and a contractor, consultant, volunteer or other party to whom the school has outsourced institutional services or functions.

A school may disclose personally identifiable information from education records without consent to a "school official" under this exception only if the school has first determined that the official has a "legitimate educational interest" in obtaining access to the information for the school. A school that allows school officials to obtain access to personally identifiable information contained in education records under this exception must include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interests." A school official generally has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Another exception permits a school to disclose personally identifiable information from a student's education records, without consent, to another school in which the student seeks or intends to enroll. The sending school may make the disclosure if it has included in its annual notification of rights a statement that it forwards education records in such circumstances. Otherwise, the school must make a reasonable attempt to notify the parent in advance of making the disclosure, unless the parent or eligible student has initiated the disclosure. The school must also provide a parent with a copy of the records that were released if requested by the parent.

FERPA permits a school non-consensually to disclose personally identifiable information from a student's education records when such information has been appropriately designated as directory information. "Directory information" is defined as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as the student's name, address, e-mail address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended, photograph, grade level (such as 11th grade or junior year), and enrollment status (full-time or part-time).

A school may disclose directory information without consent if it has given public notice of the types of information 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 that he or she does not want any or all of those types of information designated as directory information. Also, FERPA does not require a school to notify parents individually of the types of information it has designated as directory information. Rather, the school may provide this notice by any means likely to inform parents of the types of information it has designated as directory information.

There are several other exceptions to FERPA's prohibition against non-consensual disclosure of personally identifiable information from education records specified under § 99.31 of the FERPA regulations. As stated above, the conditions specified in the FERPA regulations have to be met before a school may non-consensually disclose personally identifiable information from education records in connection with any of the exceptions mentioned in the Act.

Page 3 – Ms. Kathleen Zimmerman

We hope you find the above information helpful. If you have any questions, please contact this Office at (202) 260-3887.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office