

(b)(6)

MAY 25 2011

Dear

(b)(6)

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 (b)(6). 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

(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 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, Nubile's admission to reading the record, which has now extended itself to Matthews, 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

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§ 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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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, Ms. Donovan states that Ms. Jerden, 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

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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.

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 (b)(6) 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.

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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 Mr. Aaronson 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