

(b)(6)

FEB 23 2009

Dear

(b)(6)

This is in response to your January 7, 2009 letter to this Office, in which you express concerns that appear to relate to your child's special education needs. This Office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues that pertain to education records.

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

It does not appear that your concerns are addressed by FERPA. Rather it appears that the concerns you raise are 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. Larry Taylor
Director
Division of Exceptional Children Services
Kentucky Department of Education
Capitol Plaza Tower
500 Mero Street, Room 801
Frankfort, Kentucky 40601

I trust that the above information is helpful to you.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

Ms. Margaret Parker
Florida Department of Education
325 West Gaines Street
Room 1244
Tallahassee, Florida

FEB 20 2009

Dear Ms. Parker:

This is to respond to your September 29, 2008, letter regarding Florida's State Child Abuse Death Review Committee (Committee) that provides for the review of the circumstances of all deaths of children occurring as a result of abuse or neglect. In order to conduct the reviews, Florida law provides that certain State officials shall be provided with access to any information or records that pertain to a child whose death is being reviewed by the Committee and that are necessary for the committee to carry out its duties, including information or records that pertain to the child's family. You also note that Florida law provides the Committee with the authority to subpoena students' education records. This Office administers the Family Educational Rights and Privacy Act (FERPA) and is responsible for providing technical assistance to educational agencies and institutions on the law.

You ask whether a court order or subpoena is necessary when the Committee is requesting the education records of a deceased child. Specifically, you ask whether the protections and requirements of FERPA that pertain to education records still apply when the child is deceased. This Office has received many inquiries about this question, and our longstanding guidance on it is provided herein.

FERPA provides specifically that the rights afforded by FERPA belong to the student once he or she becomes an eligible student. 34 CFR § 99.3 "Eligible student." The FERPA rights of eligible students lapse or expire upon the death of the student. This interpretation is based on the common law principle that a cause of action based upon an invasion of privacy is personal, and the right to bring such an action lapses with the death of the person who held it. See, e.g., Cordell v. Detective Publications, Inc., 419 F. 2d 989, 990 and n. 3 (6th Cir. 1969). Therefore, FERPA would not protect the education records of a deceased eligible student and an educational agency or institution may disclose such records at its discretion.

However, FERPA rights do not lapse or expire upon the death of a non-eligible student. FERPA provides specifically that the rights it affords rest with the parents of students until that student reaches 18 years of age or attends an institution of postsecondary education. There is nothing to suggest that parents' rights under FERPA should

terminate solely because their child is deceased. Rather, since the parents hold the rights in these circumstances, they may exercise those rights so long as the education records exist. Accordingly, FERPA would not permit the disclosure of the education records of a deceased non-eligible student without the parent's prior written consent or a subpoena. See §§ 99.30 and 99.31(a)(9) of the FERPA regulations.

I trust that the above information is responsive to your inquiry. If you have any additional questions, please do not hesitate to contact this Office again.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

(b)(6)

Dear (b)(6):

FEB 19 2009

This is in response to your letter, dated January 23, 2009, regarding the Family Educational Rights and Privacy Act (FERPA). Specifically, you state that, due to money owed, your former private school will not disclose your education records to your new school so that you can graduate in June.

FERPA applies to educational agencies or institutions that receive Federal funds from programs administered by the U.S. Department of Education. Because private and parochial schools at the elementary and secondary school levels do not generally receive funds from the Department of Education, records and information from records maintained at such schools would not be subject to FERPA. As explained more fully below, even if your former private school were subject to FERPA, the school would not be required to transfer your education records to another school.

FERPA generally requires that parents provide consent for disclosure of education records. However, there are several exceptions to the general consent rule. Section 99.31 of the FERPA regulations outlines exceptions under which schools may disclose education records absent prior written consent. One exception allows for the disclosure, subject to the requirements of § 99.34, to officials of another school where the student seeks or intends to enroll. A school that forwards education records to a school where a student seeks or intends to enroll must make a reasonable attempt to notify the parent or eligible student of the disclosure unless the disclosure is initiated by the parent or student or if the school's annual notification states that it forwards education records to schools where a student seeks or intends to enroll. However, while FERPA permits the transfer of education records, it does not require schools to transfer records to third parties.

I regret that we cannot be of assistance to you. Perhaps if you sat down with an official from your former school and explained your situation, you may be able to work something out with them concerning this matter. Please let us know if you have any further questions.

Sincerely,

Ellen Campbell
Deputy Director
Family Policy Compliance Office

(b)(6)

FEB 18 2009

Dear

(b)(6)

This is in response to your December 4, 2008, letter to this Office, in which you express concerns that appear to relate to your child's special education needs. This Office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues that pertain to education records.

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

It does not appear that your concerns are addressed by FERPA. Rather it appears that the concerns you raise are 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:

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

I trust that the above information is helpful to you.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

(b)(6)

FEB 11 2009

Dear (b)(6)

This is in response to your January 30, 2009, and previous correspondence from you in which you allege that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it improperly disclosed the education records of your child (b)(6) to third parties without your prior written consent. Additionally, you state that the District interviewed your child without your prior 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 education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of a FERPA fact sheet.

Under FERPA, a school may not generally disclose personally identifiable information from the education records of a student to a third party unless the parent has provided written consent. FERPA specifically exempts from the prior written consent requirement those disclosures of education records that are made to other school officials, 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, support staff, attorney, healthcare professional or board 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. Based on the information you provided this Office, it appears that FERPA permits the disclosure of your son's education records to school officials whom you identify in your letter.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has failed to comply with FERPA. You have not provided sufficient information for this Office to investigate your allegation that a violation of FERPA occurred. Accordingly, no basis exists for this Office to investigate your allegation.

Page 2--

(b)(6)

You also state that the District interviewed your child absent your prior consent. Please note that this issue is not addressed by FERPA. This is because FERPA does not protect the confidentiality of information in general. Rather, FERPA prohibits the improper disclosure of information derived from education records.

I trust this information has been helpful in response to your correspondence.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

Dr. Richard M. Freeland
Commissioner
Massachusetts Department of Higher Education
One Ashburton Place, Room 1401
Boston, Massachusetts 02108

FEB 06 2009

Dear Dr. Freeland:

This is to notify you of an apparent conflict between Massachusetts law and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and potential violation of FERPA by Massachusetts State and community colleges (Colleges). This Office administers FERPA and is responsible for providing technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations found at 34 CFR Part 99. We apologize for the long delay in following up on previous correspondence with you.

Section 99.61 of the regulations provides that an educational agency or institution that determines that it cannot comply with FERPA due to a conflict with State or local law shall notify this Office within 45 days and include the text and citation of the conflicting law. Kenneth A. Tashjy, General Counsel for the Massachusetts Community Colleges, notified this Office of the apparent conflict citing § 675 of the Outside Sections of the FY 2004 Massachusetts State Budget. In response to our inquiry, Mr. Tashjy informed this Office in January 2009 that § 675 is unchanged and remains in effect. Specifically § 675 states, in pertinent part:

Notwithstanding the provisions of any general or special law to the contrary, each state and community college shall require that all students enrolled in 9 or more credits submit written documentation evidence of adequate medical insurance coverage. A list of the names, addresses, and social security numbers (SSNs) of all students indicating any form of MassHealth insurance coverage [shall] be forwarded to the Division of Medical Assistance for evaluation of alternative insurance options.

According to § 715 of the Massachusetts State Budget, it appears that § 675 took effect on July 1, 2003. The Division of Medical Assistance is part of the Massachusetts State Department of Health and Human Services.

Mr. Tashjy states he is concerned that compliance with § 675 would violate FERPA requirements because disclosure of students' SSNs would be made without students' prior written consent. In addition, Mr. Tashjy notes that when an institution in

Massachusetts requests the required written documentation verifying health insurance coverage, it is usually doing so at a time before students are actually "attending" the college. In these circumstances, Mr. Tashjy asks whether students generally have any FERPA rights at the time the health insurance information is available for disclosure under § 675.

Under FERPA, an educational agency or institution may not have policy or practice of permitting the release of education records, or personally identifiable information from education records, without the written consent of a parent or eligible student.

20 U.S.C. § 1232g(b)(1); 34 CFR § 99.30. FERPA applies to any "educational agency or institution" to which funds have been made available under any program administered by the Secretary if the "educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions." 34 CFR § 99.1.

The term "education records" is defined as records, files, documents, and other materials that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for the agency or institution.

20 U.S.C. § 1232g(a)(4)(A); 34 CFR § 99.3 "Education records." FERPA defines a student as any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

20 U.S.C. § 1232g(a)(6); 34 CFR § 99.3 "Student." "Attendance" includes, but is not limited to, attendance in person or by paper correspondence, videoconference, Satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom, and the period during which a person is working under a work-study program. 20 U.S.C. § 1232g; 34 CFR § 99.3 "Attendance." Historically, the Department has left it to each institution to determine when a student is considered to be "in attendance" at that particular institution. Such a determination should be justified by some reasonable basis of fact and the Department reserves the right ultimately to conclude whether, as a matter of Federal law, the facts on which the determination is based are relevant and reasonable and that such determination is applied consistently.

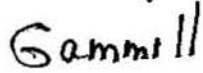
FERPA provides for several exceptions to the prior written consent rule, including an exception for information that has been designated as "directory information" in accordance with regulatory requirements. 34 CFR §§ 99.3 "Directory information" and 99.37. "Directory information" includes a student's name and other information that would not generally be considered harmful or an invasion of privacy if disclosed. A student must be given notice and an opportunity to opt out of disclosures of directory information. 34 CFR § 99.37. Importantly, personally identifiable information about a student, such as SSN and health insurance, may not be linked to directory information and disclosed.

consolidated application submitted by your agency to receive Federal funds. Accordingly, the State must ensure that all the Colleges comply with FERPA regarding the release of student SSNs and health insurance information so that the State may continue receiving Federal education funds.

This Office remains committed to working with the State Commissioner and the Colleges to achieve voluntary compliance with FERPA. In that regard, please report to this Office within 30 days of the date of this letter on the steps your agency has taken, or will take, to ensure that the Colleges comply with FERPA requirements as described in this letter, or provide a statement explaining why you believe this action is unwarranted. If compliance is not achieved voluntarily, the Department has authority to take action under 34 CFR 99.67 and 20 U.S.C. § 1234c.

Thank you for your cooperation as we work to bring this conflict to a successful resolution.

Sincerely,


Paul Gimmell
Director
Family Policy Compliance Office

cc: Mr. Kenneth A. Tashjy, Esq.

Mr. J. David Armstrong, Jr.
President
Broward College
111 East Las Olas Boulevard
Fort Lauderdale, Florida 33301

FEB 06 2009

Dear Mr. Armstrong:

This is in response to allegations made by several students (Students) to this Office that Broward College (College) violated their rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from their education records to third parties without their prior written consent. Specifically, the Student's allege that in November 2008, Dr. Peggy Turcotte, associate dean of business administration of the Central Campus at the College, posted a list of the Students' names, student identification numbers, and grades on the wall at the entrance to room 104 in Building 9. Enclosed for your information is a copy of the list. The students alleged further that this is not the first time that Dr. Turcotte has publicly displayed students' names, student identification numbers, and grades. This Office administers FERPA, which addresses issues that pertain to education records.

FERPA is a Federal law that gives eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. 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. Enclosed is a copy of the FERPA regulations.

Under FERPA, a school may not generally disclose personally identifiable information from an eligible student's education records to a third party unless the student has provided written consent. 34 CFR § 99.30. There are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records. However, none of FERPA's exceptions apply to the disclosure alleged by the Students.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides technical assistance to schools to ensure they are in compliance with FERPA. This letter is written as technical assistance relative to the Students' allegation.

You may wish to investigate the Students' allegation. If the allegation is substantiated, please inform Dr. Turcotte that it is a violation of FERPA to disclose a student's name, along with his or her student identification number and grade, unless the student has provided written consent. We suggest you take this opportunity to inform all appropriate school officials of the general requirement in FERPA for obtaining written consent before disclosing personally identifiable information from a student's education records. If you or your staff wish to discuss this matter further, you may contact Mr. Ricky Norment of my staff at 202-260-3887.

Thank you for your cooperation in this matter. The Students requested that we provide a courtesy copy of our letter of technical assistance to Dr. Judith Sherer, vice president of the College's Central Campus.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

cc: Dr. Judith Sherer

JAN 30 2009

Mr. Doug Kosty, Assistant Superintendent
Mr. Tony Alpert, Manager of Assessment Reporting
Office of Assessment and Information Services
Oregon Department of Education
255 Capitol Street NE
Salem, Oregon 97310-0203

Dear Mr. Kosty and Mr. Alpert:

In late 2004 you asked this Office for guidance regarding the disclosure of information by the Oregon Department of Education (ODE) to local school districts under the Family Educational Rights and Privacy Act (FERPA). You explained that ODE maintains an electronic database that contains some of the same information that local school districts maintain on students in paper form, including results of the Statewide assessment used for reporting under the No Child Left Behind (NCLB) Act. You asked whether ODE may essentially follow the process used by school districts with paper records when a student transfers to a new school and allow a district to view records in the ODE database for any student currently enrolled in that district regardless of which district submitted demographic and other information on the student to ODE. We assume for purposes of this inquiry that the student information that ODE wishes to make available to local school districts is an "education record" under FERPA.

Since your initial inquiry the Department has issued amendments to the FERPA regulations that address directly the issue you raised. See 73 *Fed. Reg.* 74806 (Dec. 9, 2008). You may view the Final FERPA Regulations and related information on our website at www.ed.gov/policy/gen/guid/fpco/index.html. The new regulations amend § 99.35(b) by allowing State educational authorities, such as ODE, and other officials listed in § 99.31(a)(3) to make further disclosures of personally identifiable information from education records on behalf of an educational agency or institution, without parental consent, in accordance with the requirements of § 99.33(b). Under § 99.33(b), a non-consensual redisclosure must fall under one of the exceptions listed in § 99.31(a), and the State or Federal official must comply with the recordkeeping requirements in § 99.32(b).

Section 99.31(a)(2) allows an educational agency or institution to disclose education records to a student's new school without consent (subject to the conditions in § 99.34). Under the new regulations, ODE may perform this function and redisclose education records to a student's new school on behalf of a school district. The preamble to the Final FERPA Regulations explains in

detail the conditions surrounding these regulatory provisions. See 73 *Fed. Reg.* 74820-74824. This issue is also discussed at length in the preamble to the Notice of Proposed Rulemaking (NPRM), 73 *Fed. Reg.* 15574 (Mar. 24, 2008) at 15586-15587. Please let us know if you have any further questions in regard to this matter.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc: Donna Foxley, Secretary's Regional Representative for Region X

Mr. James A. Dupree
Superintendent
Monroe City Schools
2101 Roselawn Avenue
Monroe, Louisiana 71201

AUG 24 2009

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

Dear Mr. Dupree:

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

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

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

The Parent alleges that the District violated § 99.30 of the FERPA regulations when it disclosed information from the education records of her (b)(6) (Student), to third parties without her prior written consent. Section 99.30 states in relevant part:

- (a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records. . . .

Specifically, the Parent states:

... On September 30, 2008, [the Student] came home from school and told (b)(6) that (b)(6) a paraprofessional asked (b)(6) out loud in front of the class, Have you had your (b)(6) today? All of the other students were there and heard her. [The Student] stated that (b)(6) was on/by the computer, and (b)(6) [the Student] was at (b)(6) desk with another student, the class was loud and (b)(6) singled (b)(6) out and [t]hen (b)(6) asked this question. Also, (b)(6) said that when the teacher returned back to the classroom, (b)(6) stood in the doorway in front of the class and told the teacher that she asked [the Student] had (b)(6) taken (b)(6). All students [were] still in the classroom.

I contacted the principal (b)(6) on Oct. 1, 2008 [and] explained to (b)(6) what had happened. (b)(6) stated let me go and investigate this. (b)(6) did and confirmed what [the Student] had told me. ...

To complete the procedure outlined in § 99.65(a)(2) of the FERPA regulations, please investigate the Parent's allegation and provide this Office a written response within four weeks after you receive this letter. Please refer to complaint number 1427 in any correspondence regarding this complaint. If you have any questions concerning the Act, the Department of Education's role in its administration, or the complaint procedure, you may contact (b)(6) Normont of my staff. The address and telephone number of this Office are as follows:

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

cc: Parent

Mr. Michael Steinberg
Associate Professor
Massachusetts College of Pharmacy
19 Foster Street
Worcester, Massachusetts 01608

AUG 24 2009

Dear Mr. Steinberg:

This responds to your letter in which you asked for guidance about the conduct of research with education records of students at Massachusetts College of Pharmacy (College) under the Family Educational Rights and Privacy Act (FERPA). This Office investigates, processes, and reviews complaints and violations under FERPA and provides technical assistance to ensure compliance with the statute and regulations. See 20 U.S.C. § 1232g and 34 CFR part 99.

You state that a small group of faculty, admission office personnel, and you are interested conducting a study to determine the degree of correlation that might exist between preadmission characteristics of students that matriculate to your program with the level of academic achievement students attain once they matriculate to your school. The measure you would like to use to gauge academic achievement is each student's grade point average at the end of each academic year as well as the awarding of the degree at the expected year of graduation. Whether students dropped out of the program due to academic reasons or took longer to earn his or her degree would be noted. Pre-admission factors you will note include types of college or school attended (i.e. community college, four-year school, or foreign student), grade point average earned, degree type earned, and any pharmacy employment experience. You state that all the information the College needs to complete its study now exists and is held in electronic or written records on the College's campus. The College's plan is to use all the information it has on all students who matriculated to the College's program between 2000 and 2006. You also state that the goal of the College's study is to better identify which pre-admission factors best predict the academic success of its students, and to create a pool of accumulated data on which statistical analysis can be applied. You also note that it is possible that once the study is completed, the statistical result may be published in a national academic journal or presented at a conference to allow the College to share its findings with other academic centers.

An eligible student (i.e., a student who is 18 years of age or attends a postsecondary institution) must provide a signed and dated written consent in accordance with the requirements in § 99.30 of the FERPA regulations before an educational agency or institution discloses personally identifiable information from the student's education records. 34 CFR § 99.30(a). Exceptions to this requirement are set forth in § 99.31(a) of the regulations.

Section 99.31(a)(1)(A) of the regulations permits an educational agency or institution to disclose personally identifiable information from education records, without consent, to:

other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

An agency or institution that has a policy of disclosing education records under this exception must include in its annual FERPA notification (required under § 99.7) a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. 34 CFR § 99.7(a)(3)(iii).

This Office has advised previously that a school official has a legitimate educational interest in education records if the individual needs to review the records in order to fulfill his or her professional responsibilities. It is our understanding that the professional responsibilities of teachers and other school officials may include conducting research into the effectiveness of the educational programs they provide. As such, we believe that an educational agency or institution may determine that teachers and other school officials within the agency or institution have a "legitimate educational interest" in using the education records of their own students for internal research into the effectiveness of its program of study.

Note that if the College wishes to allow its instructors to use personally identifiable education records in this manner, it should include in its annual FERPA notification a statement that teachers and other school officials have legitimate educational interests in students' education records in order to conduct educational research. Further, in accordance with § 99.33(a) of the regulations, instructors and other school officials who obtain access to education records under this (or any other) FERPA exception to the consent requirement may use the information only for the purposes for which it was disclosed and may not redisclose the information in personally identifiable form to any other party without the prior written consent of the student. The College is not required to record disclosures made to instructors and other school officials with legitimate educational interests. 34 CFR § 99.32(d)(2).

Please note also that § 99.31(a)(1) applies only to teachers and other school officials *within the agency or institution* (which includes, under § 99.31(a)(1)(B), a contractor, consultant, or volunteer under the direct control of the agency or institution). An educational agency or institution may disclose information from education records to *outside* education researchers only under the specific requirements of § 99.31(a)(6) (to organizations conducting studies for or on behalf of the agency or institution for specified purposes); § 99.31(a)(3) (to authorized representatives of the Secretary or a State or local educational authority); or § 99.31(b) (in de-identified form).

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concern. Enclosed for your information is a copy of the FERPA regulations,

Page 3 – Mr. Michael Steinberg

which were amended on December 9, 2008, at 73 FR 74806. Please do not hesitate to contact this Office again if we may be of further assistance.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

Mr. Carl Ellinger
Superintendent
Midland School District
600 East Carpenter
Midland, Michigan 48640

AUG 24 2009

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

Dear Mr. Ellinger:

This is to inform you of our finding in the referenced complaint. This Office notified you by letter dated February 11, 2008, that we were initiating an investigation of the complaint filed by (b)(6) (Parent) alleging that the (b)(6) (District) violated the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from the education records of (b)(6) (Students) to a third party without [redacted] prior written consent. Our letter explained that under § 99.30 of the FERPA regulations, a parent must generally provide signed and dated written consent before an educational agency or institution discloses personally identifiable information from education records. Section 99.31(a)(9) permits an educational agency or institution to disclose personally identifiable information from education records without parental consent in compliance with a judicial order or lawfully issued subpoena. Unless the order or subpoena is for a law enforcement purpose and contains a statement that the contents of the subpoena should not be revealed, an agency or institution is required to make a reasonable effort to notify the parent of the student before making the disclosure of education records requested by the order or subpoena. The parental notification is intended to allow the parent an opportunity to seek to quash the subpoena or obtain other protective action for the education records.

As explained in our letter, the Parent alleged that [redacted] learned in April 2007 that in January 2007 the District had disclosed the education records of the Students to the attorney for the (b)(6) (b)(6). The Parent states that the (b)(6) has no legal or custodial relationship to the Students. Upon questioning District officials why [redacted] had not been notified before the District disclosed the education records, (b)(6) principal of (b)(6) within the District, and (b)(6) director of human resources for the District, informed the Parent that the District complied with the subpoena in the belief that the (b)(6) had "rights to the records because (b)(6) was the other parent." Additionally, (b)(6) advised the Parent that the District was not obligated to notify [redacted] of the subpoena, or to notify [redacted] before disclosing the records in compliance with the subpoena.

You responded on behalf of the District by letter dated March 25, 2008. This letter included a copy of a (b)(6)

P.C., concerning the subpoena at issue and a copy of the subpoena. (b)(6) letter directs the District to provide the records requested in the subpoena to (b)(6) office by January 24, 2007, or 14 days after submission of the letter and subpoena. The District believed the subpoena to be “lawfully issued” as required under FERPA, and (b)(6) advised (b)(6) to comply with the subpoena. You explain that “what (b)(6) did not know was that it was the [Parent]’s (b)(6) . . . who was requesting the information through (b)(6) legal council.” Further, you state that (b)(6) assumed that the man named as a party in the lawsuit “had custodial rights to the children and that he was aware of the information due to his participation in the legal proceedings.” (b)(6) states that “if he [had] known the specifics of the relationships between the parties, he would have advised (b)(6) to make a reasonable effort to notify” the Parent before the District complied with the subpoena.

FERPA generally prohibits the disclosure of personally identifiable information from a student’s education records without the prior written consent of the parent of the student. Exceptions to the need for consent before disclosure are contained in the FERPA regulations at 34 CFR § 99.31. The relevant section in this matter is contained at § 99.31(a)(9)(i-ii). Accordingly, the District violated FERPA when it disclosed the education records of the Students to attorney (b)(6) in response to the subpoena because the District did not provide the Parent with reasonable notice before complying with the subpoena. The Parent will be informed of this decision by copy of this letter.

It appears the District performed an insufficient inquiry to determine whether the party on whose behalf the Subpoena was issued, the (b)(6) of the Parent’s (b)(6) had parental rights under FERPA to provide consent for the disclosure of the Students’ education records. In this case, (b)(6) client, the (b)(6) of the Parent’s (b)(6) did not possess parental rights under FERPA that would permit (b)(6) to authorize the disclosure of the Students’ education records. Also, unless the records are requested on behalf of a parent, the FERPA requirement to notify a student’s parent remains even though the parent may be the other named party in the legal proceeding. A district may not presume that a parent is already aware of the legal proceeding or of the possibility of a subpoena for education records being issued in that matter.

In accordance with § 99.66(c) of the regulations, in order to close this investigation the District must ensure that appropriate officials of the District are informed of the requirement under FERPA for making a reasonable effort to notify a student’s parent(s) before complying with such a subpoena, as well as an understanding of how to determine whether the parties concerned in the subpoena have legal standing to waive such notification. The District may inform

appropriate school officials through training or a written memorandum. Please notify this Office of the date and manner in which the District informed school officials of the FERPA requirements at issue. If the District has instituted any additional procedural measures in response to the Parent's initial complaint to District officials, you should also inform us concerning these measures.

Your voluntary compliance will allow us to issue you a written decision closing this investigation in accordance with § 99.67(b). You may direct your response within four weeks of receipt of this letter to Kathleen Wolan of my staff at:

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

Thank you for your continued cooperation with regard to the resolution of this complaint.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

cc: Parent

Mr. Thomas Dyer
President
Argosy University
2601 A Elliott Avenue
Seattle, Washington 98121

AUG 24 2009

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

Dear Mr. Dyer:

This is to inform you of the finding in the complaint filed with this Office against Argosy (b)(6) (University) by (b)(6) Student). The Student alleged that the (b)(6) violated the Family Educational Rights and Privacy Act (FERPA) when it disclosed information from (b)(6) education records to third parties without (b)(6) prior written consent. Specifically, the Student alleged that (b)(6) professor for a course in the University's education department, disclosed (b)(6) to the other students in the course through a courtesy copy of an April 19, 2008, e-mail. (b)(6) April 19 e-mail was part of a string of e-mails between the Student, (b)(6) chair of the University's education department.

By letter dated December 19, 2008, this office informed you of the Students' allegation and asked that the University provide a written response. (b)(6), senior counsel for the University, responded by letter dated January 27, 2009. In his response, (b)(6) states:

... As [the Student] noted in (b)(6) Complaint, a former [University] professor, (b)(6) did, in fact, disclose (b)(6) [the Student's (b)(6)] to other [University] students in the process of forwarding a string of e-mails related to [the Student's] grades. The inadvertent forwarding was unfortunate, but wholly without malice or intent. [The University] conducts yearly faculty training regarding FERPA compliance; and, as far as the University is aware, this is the first time a violation of FERPA policy has been brought to its attention. Were (b)(6) still employed with the University, (b)(6) would have been counseled and cautioned regarding (b)(6) breach of University policy ...

I have attached for your review a copy of the yearly FERPA presentation given to all [University] employees late in 2008. You will note that care in the forwarding of e-mails is actually addressed in the very first point. The campus president also re-sent this refresher note in the wake of [the Student's] complaint.

Under FERPA, the term “education records” is defined as those records that contain information directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 20 U.S.C. § 1232g(a)(4); 34 CFR § 99.3 “Education records.” A school may not generally disclose personally identifiable information from a student’s education records to a third party unless the student has provided written consent. 34 CFR § 99.30. There are several exceptions to FERPA’s general prohibition against nonconsensual disclosure of student education records. However, none of those exceptions apply to this situation.

Based on the information in (b)(6) January 27 letter, the University improperly disclosed information from the Student’s education records. Therefore, this Office finds that the University violated FERPA as alleged by the Student. The Student will be informed of our finding by copy of this letter.

Also, you provided assurance and evidence that appropriate officials at the University have been apprised of the requirements of FERPA, including the issues related to this complaint. Therefore, this Office is closing the investigation of this complaint.

Below is the address to a link to a final rule amending the FERPA regulations. As a matter of note, you may want to advise appropriate officials at the University of a clarification added to the provision regarding records about a student after he or she is no longer a student. 34 CFR § 99.3 “Education records”(b)(5).

<http://www.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.html>

Also, it may be useful to advise officials that the sole possession records exception is to be construed to generally include memory jogger-type information, not information made in conjunction with a student or information obtained from a student’s education records. 34 CFR “Education Records”(b)(1).

Thank you for your cooperation with regard to the resolution of this complaint.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

cc: Student

Dr. William Pepicello
President
University of Phoenix
4615 East Elmwood Street
Phoenix, Arizona 85040

AUG 24 2009

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

Dear Dr. Pepicello:

This is to inform you of the finding in the complaint filed against the (b)(6) (University) by (b)(6) (Student). The Student alleged that the University violated the Family Educational Rights and Privacy Act (FERPA) when it failed to provide (b) access to certain of (b) education records within 45 days of (b) request. Specifically, the Student alleged that the University failed to provide (b) access to education records related to a complaint (b) filed with the University's Financial Grievance Committee. In the Student's August 12, 2008, letter to this Office, (b) states:

... The initial request for all documents and/or materials was made on January 23, 2008. ... The actual date the documents were mailed is June 24, 2008. Clearly over one hundred-fifty days passed before I received a copy of my records. ...

In an enclosure to the Student's August 12 letter to this Office, he states:

... On January 23, 2008 I emailed (b)(6) [University] Sr. Relations Administrator requesting information. I said, "I would like to receive a complete copy of all materials and/or documents included in this investigation. Any material and/or documents that [were] used by the committee to arrive at their decision." ... (b)(6) replied on January 24, 2008, and said, "Please complete and fax the attached request form so that I may release the Financial Grievance Committee packet to you. ... Referencing the University of Phoenix "Student Request of Information from Files" [it] states clearly, "I understand that under FERPA, I may request a copy of student file or certain documents in my file at any time. ... On January 30, 2008, (b)(6) wrote, "If you agree to the electronic receipt there will be no charges involved. Once we receive a newly

completed form, University Legal Services will begin their review of the packet prior to release.

By letter dated March 17, 2009, this Office informed you of the Student's allegation and asked that the University provide a written response. You responded to the allegation by letter dated April 14, 2009. In your April 14 letter, you state:

... In investigating this complaint, it was found that the student had filed a financial aid complaint in December 2007 which escalated to the Financial Grievance Committee (FGC) in Phoenix, Arizona. On January 23, 2008, the Student requested a copy of the [FGC] packet of documents for [redacted] case which was an unusual request. The Office of Dispute Management then sent [redacted] a form to complete on January 24, [redacted] for the request. Since it is not kept with the other student education records, it was necessary to have a legal review prior to disclosure. After the legal office reviewed and sent the FGC packet back to the Office of Dispute Management, the Student was corresponding directly with the Office of Dispute Management on a regular basis and no longer expressed an interest in it so it was not sent. The student had additional inquiries, including a complaint to the Florida Board of Education, and was not actively pursuing the FGC packet but stressing [redacted] account and other issues. Since the student seemed to have moved on to other issues and was in constant communication with the Office of Dispute Management without mentioning the status of the FGC packet of information or still wanting to review it, it was assumed [redacted] was no longer interested in the FGC records but was pursuing the other issues instead. In response to the Florida Department of Education letter dated June 11, 2008, the FGC packet was included as an attachment.

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. 20 U.S.C. § 1232g(a)(4); 34 CFR § 99.3 "Education records." Under FERPA, a school is required to provide a student with an opportunity to inspect and review his or her education records within 45 days of the receipt of a request. 34 CFR § 99.10. 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, such as that of the Student, in which a student does not live within commuting distance of the school.

Based on the information provided in your April 14 letter, the University did not provide the Student with a copy of "all materials and/or documents included in this investigation" (or the FGC packet) within the 45 days permitted by FERPA for complying with such requests. Therefore, this Office finds that the University violated FERPA as alleged by the Student. The Student will be informed of our finding by copy of this letter.

In order to close the investigation of this complaint, please provide this Office with assurance and evidence that appropriate officials at the University have been informed of the requirements of FERPA as it relates to the issues in this complaint. Please provide us with the requested assurance and evidence within three weeks of your receipt of this letter.

Thank you for your continued cooperation with regard to the resolution of this complaint.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

cc: Student

(b)(6)

AUG 18 2009

This is in response to your May 25, 2008, letter to this Office in which it appears you are alleging that the (b)(6) (District) violated FERPA when it failed to amend the education records of your (b)(6) (Student), in response to your request. Specifically, it appears you are alleging that the District failed to include on the Student's transcript credits which the Student earned through the (b)(6) School. This Office administers FERPA which addresses issues that pertain to education records.

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

Under FERPA, a parent has the right to request that inaccurate or misleading information in his or her child's education records be amended. While a school is not required to amend education records in accordance with a parent's request, the school is required to consider the request. If the school decides not to amend the record in accordance with the parent's request, it must inform the parent of the right to a hearing on the matter. If, as a result of the hearing, the school still decides not to amend the record, the parent has the right to insert a statement in the record setting forth his or her views. That statement must be maintained with the record for as long as the record is maintained.

However, while the amendment procedure may be used to challenge facts that are inaccurately recorded, it may not be used to challenge a grade or a substantive decision made by a school about a student. 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 and decisions.

Based on the information in your letter, it appears that the District held a hearing to determine whether it was going to provide the Student with credit for the courses taken while (b)(6) was a student at (b)(6) School during the 2000-2001 and 2001-2002 school years; and credit for courses the Student took through the American School during the 2004-2005 school year. It further appears the District conducted this hearing using the procedures outlined in the

(b)(6)

FERPA regulations for hearings on amendment of education records. The hearing panel's substantive decision was that the District provide the Student with credit for the courses [REDACTED] took at [REDACTED] but no credit for the courses he took through the [REDACTED] School.

As indicated above, the focus of the FERPA amendment procedure is to provide a parent the opportunity to seek to amend inaccurately recorded information in his or her child's education record. The hearing at issue was held to determine whether the District was going to provide credits for certain courses the Student had taken, i.e., whether these credits were earned "in accordance with [REDACTED] School Board Policies and Regulations." This hearing was not held to determine whether the Student's transcript was inaccurately recorded. Thus, the hearing held by the District was not a FERPA hearing, even though it appears FERPA amendment-like hearing procedures were used.

As you stated, the hearing panel provided the Student with credit for the courses taken at [REDACTED] [REDACTED]. If the District failed to add these credits to the Student's transcript, if that is the general procedure in such instances, you could seek to amend the Student's transcript under FERPA because the transcript would be inaccurately recorded. If the school failed to amend the transcript or offer you the opportunity for a hearing on the matter, you may write to this Office again.

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Honorable Kay Bailey Hutchinson
United States Senator
300 East 8th Street
Austin, Texas 78701

AUG 07 2009

Dear Senator Hutchinson:

This is in response to your July 9, 2009, e-mail correspondence to the Office of Legislation and Congressional Affairs Office on behalf of your constituent, (b)(6) (Parent). The Parent requested the status of her complaint filed under the Family Educational Rights and Privacy Act (FERPA) against the Eanes Independent School District (District). Your inquiry was forwarded to this Office for response because we administer FERPA which addresses issues that pertain to education records.

There are two outstanding allegations in the Parent's complaint against the District. This Office plans to make findings in these remaining allegations within the next three weeks. We will provide you with a courtesy copy of our letter of finding to the District once it is completed.

If you have any additional questions about this matter or FERPA in general, you may contact this Office directly as follows:

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Dr. Paul Pai
President
St. Louis Community College at Meramec
11333 Big Bend Road
St. Louis, Missouri 63122-5720

AUG 05 2009

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

Dear Dr. Pai:

This is to follow up on this Office's June 17, 2009, letter to you concerning the FERPA complaint that (b)(6) (Student) has submitted to this Office. Thank you for the July 9, 2009, response you provided to our letter.

This letter also serves to notify you of an additional allegation the Student has submitted to this Office, and to provide you the opportunity to submit a written response. The Student alleges that the College violated § 99.30 of the FERPA regulations by disclosing personally identifiable information from (b)(6) education records without (b)(6) prior written consent. Specifically, the Student alleges that on April 17, 2009, (b)(6); (b)(7)(C), Chancellor of the College, disclosed the Student's mid-term grade and enrollment information to a third party, and that (b)(6) never gave permission to the College to make the disclosure.

Regarding these matters, please provide a copy of the College's annual notification under FERPA for each of the past three years, including full details about the College's policy regarding how it discloses information from students' education records to school officials with legitimate educational interests. Also, for the allegations of improper disclosures described in this Office's April 2, 2009 letter to you, and the allegation above concerning (b)(6), please explain the legitimate educational interest that the respective school officials have with respect to each alleged improper disclosure.

In addition, with respect to alleged improper disclosures, please advise whether the College has a "law enforcement unit" (LEU) under § 99.8 of the FERPA regulations and whether any of the records in the possession of the LEU were either "education records" or LEU records. In either case, if the College disclosed the records to a third party, please describe the nature of the records, explain who disclosed the records, to whom, and when, and explain whether the individuals to whom the records were disclosed were school officials, school officials with a legitimate educational interest, or LEU officials.

Page 2 – Dr. Pai

Please refer to complaint number (b)(6) in your response. Your continued cooperation in these matters and in resolving the Student's complaint will be most appreciated. The address and telephone number of this Office are as follows:

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

(b)(6)

AUG 06 2009

Dear (b)(6)

This is in response to your January 27, 2009, complaint form to this Office in which you allege that the (b)(6) (College) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from your education records to a third party without your prior written consent. This Office administers FERPA which addresses issues that pertain to education records.

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

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

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. It appears you are alleging that sometime in August 2008 you learned that the College nonconsensually disclosed information from your education records (personal and financial information) to (b)(6) a friend whose name and contact information you provided to the College as an emergency contact. If you wish this Office to further consider your allegation, we need to receive additional information from you.

Please verify that we have accurately stated your allegation above or provide us with any necessary changes. Also, please provide us with the specific nature of the information that was disclosed to (b)(6) and evidence to support your assertion that such information was disclosed. For example, you could provide us with a signed statement

Page 2 -

(b)(6)

from (b)(6) the disclosure of information to (b)(6) and the specific nature of the information that was disclosed. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

(b)(6)

AUG 06 2009

Dear (b)(6)

This is in response to your March 29, 2009, complaint form to this Office in which you allege that (b)(6) (School) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed information from the education records of your (b)(6) (Student), to a third party without your prior written consent. This Office administers FERPA which addresses issues that pertain to education records.

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

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. If you wish this Office to further consider your allegation, we need to receive additional information from you. It appears that you are alleging that (b)(6); (b)(7), principal of the School, and (b)(6), a secretary at the School, disclosed information regarding the Student's attendance to (b)(6) in a February 2, 2009, letter from (b)(6) to (b)(6).

Please verify whether we have accurately stated your allegation or provide us with clarifying information. Also, please verify whether there is a person named (b)(6) who opened and read the February 2, 2009, letter. Finally, please inform us how you received a copy of the letter and envelope. For example, did (b)(6) provide you with the original letter and envelope sent to (b)(6) or did the School provide you with copies of these documents. We will review the information you submit and take any appropriate action.

Page 2 -

(b)(6)

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosure

(b)(6)

AUG 06 2009

Dear (b)(6)

This is in response to your March 11, 2009, letter to this Office in which it appears you are alleging that (b)(6) (University) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it failed to provide you access to certain of your education records within 45 days of your request. Specifically, it appears you are alleging that the University failed to provide you access to records related to your assessments performed at the Office of Student Affairs and the University Counseling Center. This Office administers FERPA which addresses issues that pertain to education records.

FERPA is a Federal law that gives eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. 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. Enclosed for your information are a FERPA fact sheet, guidance document, and complaint form.

Under FERPA, a school is required to provide a student with an opportunity to inspect and review his or her education records within 45 days of a request. A school is not, however, required to provide a student with copies of education records unless a failure to do so would effectively prevent the student from obtaining access to the records. A case in point would be a situation in which the student does not live within commuting distance of the school. Based on the information in your letter, it appears you live within commuting distance of the University. Therefore, the University is required to provide you an opportunity to inspect and review your education records, though it is permitted to provide you with copies.

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 to those education records that it selects to maintain.

Also, a school may destroy education records without notice to the student unless there is an outstanding request by the student to inspect and review such records.

Under FERPA, a school is not required to provide information that is not maintained or to create education records in response to a student's request. For example, 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.

Please note that a school is required to annually notify students in attendance of their rights under FERPA. However, a school is not required to notify students, individually, of their rights. Rather, the school is required to publish the notice by any means likely to inform students of their rights, including any of the following: in a schedule of classes, in a student handbook, in a calendar of events, in the student newspaper, and/or posted in a central location or various locations throughout the school. You may want to inquire how the University notifies students of their rights under FERPA. This notice is required to include the procedure for a student to request an opportunity to inspect and review his or her education records.

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

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures

Honorable Mario Diaz-Balart
Member, House of Representatives
12851 SW 42nd Street, Suite 131
Miami, Florida 33175

MAY 12 2009

Dear Congressman Diaz-Balart:

This is in response to your April 24, 2009 facsimile message, and the attached letters concerning issues raised by your constituents (b)(6) on behalf of (b)(6) (Parents) under the Family Educational Rights and Privacy Act (FERPA). The Department's Office of Legislation and Congressional Affairs has forwarded your facsimile and the letters to this Office for our response. The Parents' concerns pertain to the complaint under FERPA that they filed against a school district in Virginia.

I trust that the information provided in our enclosed April 22, 2009, letter is helpful in explaining FERPA as it relates to the Parents' concerns. If you or your staff have any questions regarding this matter, you may contact this Office directly at:

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

(b)(6)

MAY 12 2009

Dear (b)(6)

This is in response to your February 19, 2007, letter to this Office, in which you express concerns that appear to relate to your child's special education needs. This Office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues that pertain to education records.

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

It does not appear that your concerns are addressed by FERPA. Rather, some of the concerns you raised are 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:

Dr. Mabrey Whetstone
Director, Special Education Services
Alabama State Department of Education
50 North Ripley Street
Gordon Persons Building, Box 302101
Montgomery, Alabama 36130

Also, I am returning the materials you sent to this office because they may be useful to you when contacting the office mentioned above.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

MAY 12 2009

(b)(6)

Dear (b)(6)

This is in response to your February 4, 2009, letter to this Office in which you appear to be seeking to have a (b)(6) This Office administers the Family Educational Rights and Privacy Act (FERPA) which addresses issues that pertain to education records.

FERPA is a Federal law that gives eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" 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. Enclosed for your information are a FERPA fact sheet and guidance document.

Under FERPA, a student has the right to request that inaccurate or misleading information in his or her education records be amended. While a school is not required to amend education records in accordance with a student's request, the school is required to consider the request. If the school decides not to amend the record in accordance with the student's request, the school must inform the student of the right to a hearing on the matter. If, as a result of the hearing, the school still decides not to amend the record, the student has the right to insert a statement in the record setting forth his or her views. That statement must be maintained with the record for as long as the record is maintained.

However, while the amendment procedure may be used to challenge facts that are inaccurately recorded, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about a student. The FERPA amendment procedure is 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. Accordingly, the FERPA amendment procedure may not be used to seek to amend the grades your teacher has given you. As such, there is no basis for this Office to assist you regarding your concern.

Page 2 -

(b)(6)

I hope that the above information is helpful in explaining the scope and limitations of FERPA.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

(b)(6)

MAY 12 2009

Dear

(b)(6)

This is in response to your February 12, 2009, letter to this Office, in which you express concerns that appear to relate to your child's special education needs. This Office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues that pertain to education records.

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

It does not appear that your concerns are addressed by FERPA. Rather, some of the concerns you raised may be 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. 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

Also, I am returning the materials you sent to this office because they may be useful to you when contacting the Office mentioned above. I trust that the above information is helpful to you.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

MAY 12 2009

(b)(6)

Dear (b)(6)

This responds to the complaint you submitted to this Office on November 26, 2007, alleging that the (b)(6), violated your rights under the Family Educational Rights and Privacy Act (FERPA). A large backlog of correspondence and limited resources in this Office have prevented us from responding sooner, and I apologize for the delay. Due to the amount of time that has elapsed, please inform us whether you want this Office to pursue your complaint. If so, then we ask that you provide additional information to clarify your allegations.

It appears that you alleged that (b)(6) disclosed personally identifiable information from your education records without your prior written consent in violation of § 99.30 of the FERPA regulations. The enclosed Guidance for Eligible Students explains that a school may disclose information from a student's education records, without consent, to teachers and other school officials whom the agency or institution has determined to have legitimate educational interests. After reviewing the guidance, if you wish to pursue this allegation please indicate the date on which (b)(6) allegedly disclosed the information; the precise information from your education records that you believe was disclosed; and the parties to whom you believe the information was disclosed.

It is not clear from your letter whether you also alleged that the school violated FERPA when it refused to purge your academic record of the unsatisfactory (b)(6) you received in (b)(6) (b)(6) course. The enclosed guidance explains that eligible student may ask a school to amend education records that are inaccurate, misleading, or in violation of privacy rights under FERPA. Note that while a student may seek to amend a record on the grounds that a grade is recorded inaccurately, a student may not use this procedure to challenge or appeal a grade or other substantive decision made by the school.

Please inform this Office of your decision within 30 days of your receipt of this letter at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5920

If you have any further questions, please call Frances Moran of my staff at 202-260-3887.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

Honorable David Dreier
Member, United States House of
Representatives
510 East Foothill Boulevard
Suite 201
San Dimas, California 91773

MAY 7 2009

Dear Mr. Dreier:

This is in response to your April 17, 2009, letter to the Department's Office of Legislation and Congressional Affairs, on behalf of your constituent, (b)(6) alleges that (b)(6) (District) violated (b)(6) rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from (b)(6) education records to third parties without (b)(6) prior written consent. Your letter was forwarded to this Office for response because we administer FERPA which addresses issues that pertain to education records.

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

This Office responded to the (b)(6) directly by letter dated May 5, 2009. A copy of our letter is enclosed for your reference. Should you have any questions about our response to the (b)(6), you may contact this Office directly. Our address and telephone number are as follows:

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

Mr. Joseph R. Pye
Superintendent
Dorchester School District Two
102 Greenwald Boulevard
Summerville, South Carolina 29483

MAY 7 2009

Complaint No. (b)(6)
The Protection of Pupil
Rights Amendment

Dear Mr. Pye:

This is to inform you of this Office's finding in the complaint filed against (b)(6) District Two (District) filed by (b)(6) (Parents). The Parents alleged that rights afforded them under the Protection of Pupil Rights Amendment (PPRA) were violated by the District when it failed to notify them of their rights under PPRA. The Parents further alleged that the District failed to offer them an opportunity to opt-out their child (b)(6) (Student) from participating in the (b)(6) (Survey) that asked questions from some of PPRA's eight sensitive areas. As explained more fully below, this Office has determined that the District's abstinence education program included a survey which was administered to the Student and which asked questions about two of PPRA's eight sensitive areas.

By correspondence dated November 23, 2007, this Office informed the District of the Parents' allegations and requested a written response. By letter dated December 12, 2007, (b)(6) (b)(6) legal counsel for District, responded on behalf of the District. In her December 2007 response, she stated:

... I am enclosing...a Consent form, signed by (b)(6) allowing [the Student] to participate in the (b)(6) (b)(6) program and in the Heritage internal evaluation process.

...the Parents were given the right to opt out of this program and knew that their (b)(6) would participate in a survey. The District had a policy setting forth a parent's rights under PPRA, a copy of which is attached hereto as Exhibit C.

These policies were available on line, as well as in the media centers of all of the District's schools. However, there was no specific notice directly provided to Parents of the existence of this policy. For the 2007-[20]08 school year, the District did provide a copy of that policy in its Student Parent Handbook, on pages 91-94 and are attached hereto as Exhibit D.

... Any violation of PPRA, by failing to provide notice of rights under PPRA to the [Parents] was unintentional...

PPRA governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

1. Political affiliations or beliefs of the student or the student's parent;
2. Mental or psychological problems of the student or the student's family;
3. Sex behavior or attitudes;
4. Illegal, anti-social, self-incriminating, or demeaning behavior;
5. Critical appraisals of other individuals with whom respondents have close family relationships;
6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. Religious practices, affiliations, or beliefs of the student or student's parent; or
8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

This Office has determined that PPRA applies in this instance because the District's survey asked the Student to respond to questions pertaining to items 3 and 4 above.

Under PPRA, schools and contractors must obtain written parental consent before minor students are required to participate in any survey, analysis, or evaluation that is funded, in whole or in part, by the U. S. Department of Education (Department) and that reveals information concerning any of the eight protected area noted above. 20 U.S.C. § 1232h; 34 CFR Part 98. For surveys funded by a source other than the Department but administered by a local educational agency (LEA) that receives funds from any applicable program of the Department, PPRA requires that the LEA "directly" notify, such as through U. S. Mail or email, parents of students who are scheduled to participate in a survey that asks questions from one or more of the eight protected areas listed above. LEAs are required to offer an opportunity for parents to opt their child out of participating in the administration of any survey containing one or more of the eight protected areas of information listed above.

PPRA requires that an LEA “directly” notify, such as through U.S. Mail or email, parents of students who are scheduled to participate in the specific activities or surveys noted above. The District must provide an opportunity for the parent to opt his or her child out of participation in the specific event or survey. The notification must be provided at least annually at the beginning of the school year and must include the specific or approximate dates during the school year when activities described below are scheduled, or expected to be scheduled. If the LEA is unable to identify the specific or approximate dates of the activities or surveys requiring specific notification at the beginning of the school year, it must provide this notification to parents once the activity or survey is scheduled.

In response to the Parents’ allegation that the District failed to notify them of their rights under PPRA, the District acknowledged in (b)(6) December 2007 response to this Office that it failed to provide parents notice of their rights under PPRA. Accordingly, we find that the District violated PPRA when it failed to annually notify parents of their rights as alleged by the Parents.

The Parents also alleged that the District failed to comply with PPRA when it failed to offer them an opportunity to opt-out their child from participating in any survey that asks questions from any of PPRA’s eight sensitive areas. In response to this allegation, the District provided this Office with a copy of a consent form entitled “Active Informed Consent for Participation in the (b)(6) Community Services Character-based Abstinence Education Program and Pre- and Post-program Survey.” On the form is stated “your signature on this form grants your permission for your child ... to participate in the program and in the (b)(6) internal evaluation process,” which included participation in the Survey. Based on these statements in the consent form, parents were specifically given an option to allow or disallow their child’s participation in the District’s abstinence program and Survey. In this instance, the Parents were specifically given the option to provide consent for the Student to participate in the program and the Surveys. The District provided this Office with a copy of a consent form which was signed by one of the Parents and dated on September 9, 2005. Because a Parent consented to the Student’s participation in the program and the consent form informed parents that their child would participate in the pre- and post program surveys, this Office finds that the District complied with PPRA when it administered the Surveys with the one of the Parents prior written consent.

As a matter of technical assistance, please note that the District should specify in any direct notice to parents prior to administering these types of surveys which of PPRA’s eight sensitive areas are included in the survey. Please review the attached guidance for further information relating to this matter (see enclosed).

It is the District's responsibility to comply with PPRA as an entity that receives funding from this Department. In order to close the investigation of this complaint, the District needs to provide this Office with written assurance that appropriate District officials have been informed of PPRA's provisions, and that it annually notifies parents of their rights under PPRA. Specifically, it should train appropriate officials regarding the administration of PPRA and its requirements. Furthermore, the District must review whether all schools in the District are annually notifying parents of their rights, and directly notifying parents and offering them an opportunity to opt out their children's participation in surveys that ask questions from any of PPRA's protected areas as discussed above. Finally, it should adopt, and provide this Office a copy of its annual notice that complies with PPRA.

The District should provide its response within 4 weeks of receiving this letter. When we have received the required assurances, this Office will close the investigation of this complaint. Should you or your staff have any further questions relating to the administration of PPRA or its provisions, you may contact Bernard Cieplak of this Office at 202-260-3887.

Sincerely,

Paul S. Gammill
Director
Family Policy Compliance Office

Enclosures

cc: Parents

MAY 7 2009

TO: William D. Hamel
Assistant Inspector General
for Investigations

FROM: Thomas Skelly
Delegated the Authority to perform the functions and duties
of the Assistant Secretary
Office of Planning, Evaluation
and Policy Development

SUBJECT: Jeffco Public Schools
Hotline Complaint Number (b)(6)

This is to respond to the inquiry you have received from (b)(6) (Parent) who continues to allege that the (b)(6) (District) violated rights afforded him under the Family Educational Rights and Privacy Act (FERPA). The Parent alleges that both the District and the Family Policy Compliance Office (FPCO) which administers FERPA in the Department improperly responded to (b)(6) allegations.

I have contacted (b)(6), director of FPCO, who has reviewed that Office's correspondence to the Parent. FPCO responded to the Parent by letters dated July 7, and August, 4, 2006, and informed (b)(6) to write to the District to request access to (b)(6) children's education records. In FPCO's recent February 6, 2009, response to the Parent's January 20, 2009, letter (which (b)(6) enclosed as an attachment in (b)(6) letter to you), (b)(6) stated that the Parent subsequently requested access to the District. In response, (b)(6) of the District stated in a November 7, 2007, letter to the Parent that the District complied with the Parent's request for access by providing (b)(6) access to the requested records. Based on information provided by the Parent, specifically the fact that the District complied with the Parent's request, FPCO informed the Parent that no further action would be taken in response to (b)(6) allegation.

For your convenience, I have enclosed copies of FPCO's responses to (b)(6). Should you have any further questions regarding this matter, do not hesitate to contact me at 202-401-1700.

Attachments

cc: Paul Gammill, Director, FPCO

(b)(6)

MAY 6 2009

Dear

(b)(6)

This is in response to your March 5, 2009, letter and April 20, 2009, complaint form to this Office in which you allege that (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from the education records of your (b)(6) (Student), to third parties without your prior written consent. This Office administers FERPA which addresses issues that pertain to education records.

Specifically, you state in your complaint form:

... (b)(6) principal at the Student's school, set up a "care plan" meeting to discuss and set a plan about getting the [the Student] back to school. At this time I was supposed to have [the Student's] results back from tests performed by [the Student's] (b)(6) wanted to discuss these results, grades, etc. at this meeting. The meeting was set for November 12, 2008. When I showed up for the meeting there were several individuals present. I thought the meeting was going to be with me, [the Student's] teacher, (b)(6), the principal, (b)(6) and maybe [the Student's] (b)(6). However, there were several other people present minus (b)(6). [The Student's] (b)(6) wasn't there but her (b)(6) and her (b)(6) were present. I am not sure of the laws of whether [the Student's] (b)(6) could attend without (b)(6) but I'm sure it was a violation of [the Student's] rights and privacy for (b)(6) to attend and be allowed to participate in this meeting and give input and hear [the Student's] educational information. ...

FERPA is a Federal law that gives custodial and noncustodial parents alike certain rights with respect to their children's education records unless there is a court order or State law that specifically provides to the contrary. A parent has the right to have access to his or her child's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. 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.

The term "parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent. Also, please note that this Office has determined that the term parent includes a stepparent when the stepparent is present on a day-to-day basis with the natural parent and the child, and the other natural parent is absent from the home. Custodial stepparents generally have the same rights under FERPA as do natural parents. However, a noncustodial stepparent does not have rights under FERPA. Based on the information in your letter and complaint form, it appears that the Student's stepmother would not have rights under FERPA.

Under FERPA, a school may not generally disclose personally identifiable information from an eligible student's education records to a third party unless the student's parent has provided written consent. However, the Student's father could provide the District with written consent for the School to disclose information from the Student's education records at a meeting such as the one you describe. This Office would not generally initiate an investigation into an allegation such as yours if it believed that the Student's father provided written consent for disclosure of the Student's education records, or if the Student's father intended for such disclosure of the Student's education records to occur but neglected to actually provide the District with written consent.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. If you wish this Office to further consider your allegation, we need to receive additional information from you. Please provide us with some of the specific information from the Student's education records that you allege were disclosed at the meeting. Also, please inform us, to the best of your knowledge, whether the Student's father provided written consent for information from the Student's education records to be disclosed to the Student's stepmother and grandmother at the meeting, or whether it was the father's intent for such information to be disclosed to them at the meeting. We will review the information you submit and take any appropriate action.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Mr. Tom Courtway
Interim President
University of Central Arkansas
201 Donaghey Avenue
Conway, Arkansas 72035

MAY 6 2009

Dear Mr. Courtway:

This is in response to your recent letter in which you ask about the applicability of the Family Educational Rights and Privacy Act (FERPA) to the disclosure of education records by the (b)(6) (University) to the (b)(6) newspaper. This Office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations, which are codified at 20 U.S.C. § 1232g and 34 CFR Part 99 respectively.

Your inquiry relates to the University's Presidential Discretionary Scholarship Program (Program), through which certain students were granted waivers for some or all tuition and fees, as well as room and board charges. These scholarships granted by the president were discretionary. No published criteria existed for the grant of the scholarship, the amount granted to each student varied, and there were no published criteria for receiving such scholarships in a subsequent semester. You also note that the Program will end at the end of the current semester. You further state that the (b)(6) has submitted to the University an open records request for the names of the students receiving scholarships under the Program and the dollar amount of such scholarships for each semester beginning with the fall 2006 semester and ending with the current semester. You state that in addition to the Program, the University has scholarship programs, such as for academic achievement, band, choir, athletics and other types of endeavors. You also explain that the University's Student Handbook designates "degrees and awards received" as "directory information" under FERPA. In addition, the University's Office of General Counsel website states that students who meet required academic criteria are periodically identified as Dean's List students or recipients of various academic awards.

FERPA protects the privacy interests of eligible students in their education records. "Education records" are 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"). Institutions subject to FERPA may not have a policy or practice of permitting the release of or providing access to "education records, or personally identifiable information contained therein" without the written consent of parents or eligible students (i.e., those who have reached 18 years of age or attend a postsecondary institution). Exceptions to this requirement are set forth in § 99.31 of the regulations.

One FERPA disclosure exception permits schools to disclose a student's appropriately designated "directory information" without written consent, unless a student has advised the school to the contrary in accordance with school procedures. "Directory information" means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

(a) Directory information includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

(b) Directory information does not include a student's –

(1) Social security number; or

(2) Student identification (ID) number, except as provided in paragraph (c) of this section.

(c) Directory information includes a student ID number, user ID, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user.

Therefore, if a scholarship is considered an honor or award based on academic or athletic or other achievement, the University could disclose that category of information and the amount of the award if it has been properly designated as "directory information" as set forth in § 99.37 of the FERPA regulations, and if the student whose records have been requested has not indicated that he or she does not want directory information disclosed. However, this would not be the case in situations where the basis for the scholarship is undefined or could be need based or related to a student's financial need. Therefore, because the release of this type of scholarship information in personally identifiable form could be potentially harmful or an invasion of privacy, FERPA would preclude the University from disclosing this information without the prior written consent of the recipient.

Regarding several questions you ask in your letter, we also note that directory information generally cannot be disclosed linked to other, non-directory information about a student, such as grades or financial status. In the same vein, this Office has concluded that social security numbers cannot be designated as directory information because disclosure of such information would be considered an invasion of privacy. Additionally, this Office has determined that

Page 3 – Mr. Tom Courtway

gender or race should not be designated as directory information by an educational agency or institution because it is not like the types of information specified as directory information in the statute.

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

(b)(6)

MAY 5 2009

Dear

(b)(6)

This is in response to your October 31, 2008, letter to this Office in which you allege that the (b)(6) District (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from the education records of your (b)(6) (Student), to third parties without your prior written consent. This Office administers FERPA which addresses issues that pertain to education records.

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

Under FERPA, a school may not generally disclose personally identifiable information from a minor student's education records to a third party unless the student's parent has provided written consent. However, FERPA does not protect the confidentiality of information in general and, therefore, does not apply to disclosure of information derived from a source other than education records, even if education records exist which contain that information. Rather, FERPA protects information derived from education records from improper disclosure. As a general rule, information obtained through personal knowledge or observation, and not from an education record, is not protected from disclosure under FERPA.

There are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records. One of these exceptions allows "school officials," including teachers, within a school to obtain access to education records provided the school has determined that they have a "legitimate educational interest" in the

information. 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, 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 interest." Generally, a school official has a legitimate educational interest if the official needs to review information in an education record in order to fulfill his or her professional responsibility.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. A timely complaint is defined as one that is submitted to this Office within 180 days of the date that the complainant knew or reasonably should have known of the alleged violation. If you wish this Office to further consider your allegation, we need to receive additional information from you.

Based on the information in your letter and enclosures, it appears that all of the individuals to whom information from the Student's education records was disclosed in the e-mails are school officials (except one who is discussed below). It appears you are alleging that some of these school officials did not have a legitimate educational interest in obtaining access to the information in the e-mails. As indicated above, a school official generally has a legitimate educational interest when that official needs access to information in education records to do his or her job. Administrative assistants, secretaries, and clerks who have been designated as school officials may have access to information in education records when they have a legitimate educational interest, i.e., need access to information in education records to do their jobs. However, if you believe one of these school officials did not have a legitimate educational interest in obtaining access to the Student's education records, please inform us of the name and title of that official and the specific reason why you believe he or she does not have a legitimate educational interest in the information in one of the e-mails at issue.

You state that (b)(6) is "(b)(6)." If (b)(6) is not also a school official, the District would generally be prohibited from disclosing information from student education records to her absent written parental consent. However, it is not clear

that (b)(6), superintendent of the District, disclosed information from the Student's education records to (b)(6). Perhaps you are alleging that the District disclosed the fact that an investigation of your residency status in the District had been conducted. If this is true, we need to receive additional information from you. As stated above, FERPA protects information derived from education records. Please provide us with evidence that the District maintains information regarding an investigation of your residency status. Also, please provide us with a statement that, to the best of your knowledge, (b)(6) did not learn of such an investigation from a source other than the District. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures

Mr. John C. Hitt
President
University of Central Florida
P.O. Box 160002
Orlando, Florida 32816-0002

Dear Mr. Hitt:

MAY 5 2009

This is to inform you that we are closing the technical assistance review related to the April 2008 theft of a computer flash drive from a locked office in the History Department of the University of (b)(6) (University). The flash drive contained information protected under the Family Educational Rights and Privacy Act (FERPA).

The University notified this Office of the incident by letter dated May 13, 2008, from (b)(6) (b)(6), associate registrar of the University. The letter included information concerning the steps taken by the University to notify the affected students of the breach, the protocols in place at the University designed to protect confidential information, and additional steps the University planned to implement to improve security of confidential information at the University.

On December 19, 2008, this Office requested further information concerning the specific incident as well as the general handling of confidential information at the University. The additional information would allow us to better evaluate the University's efforts to comply with the requirements of FERPA.

Your letter of March 17, 2009, provided the additional information requested. Your letter responded to our inquiries concerning the University's (b)(6) notification to the affected students, and specific actions taken by the University to improve its data security procedures. We note that the incident occurred in April 2008, and to date this Office has not received a student complaint concerning the incident.

The University has provided the requested information to facilitate our review of the incident and the University's efforts to comply with the requirements of FERPA. Accordingly, we are closing our technical assistance review of the April 2008 incident at this time. Thank you for your cooperation with regard to this matter.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

(b)(6)

APR 24 2009

Dear (b)(6)

This is in response to your February 9, 2009, letter to this Office which you allege that (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA). Specifically, you state that the District failed to provide you with copies of your child's education records.

FERPA is a Federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "Education records" is defined as 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 for your information are a FERPA fact sheet and guidance document.

FERPA requires that educational agencies and institutions afford parents the opportunity to inspect and review their minor children's education records within 45 days after receipt of a request. Thus, if a parent does not live in commuting distance of the school, an educational institution would generally be required to provide the parent a copy of his or her children's records or make other arrangements for inspection and review in accordance with FERPA to provide access to the records.

Based on the information in your letter, it appears that you lived within commuting distance to the District and that the District would only be required to provide you with an opportunity to inspect and review your child's education records, although it could choose to provide you with copies. Because it appears that you are seeking copies of your child's education records, and you have not indicated that the district is denying you the opportunity to inspect and review the records, there is no basis for us to consider your allegation.

Also, you specifically stated that you requested your child's education records from the Assistant Superintendent of the District. I suggest that you contact the school in which your child attends and clarify that you are addressing your request to the appropriate school official. If you require further assistance, you may contact this Office again.

I hope that the above information is helpful in explaining the scope and limitations of FERPA.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

(b)(6)

Dear

(b)(6)

APR 24 2009

This is in regards to your complaint filed under the Family Educational Rights and Privacy Act (FERPA). I apologize for the amount of time it is taking us to respond to your letter. Due to the large amount of correspondence this Office receives, the complex nature of some of the issues involved, and our staff limitations, we are currently have a backlog that we are working to resolve. However, your letter is very important to us, and we are actively working to provide you a detailed response as soon as possible.

Thank you for you patience and understanding.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Honorable Carl Levin
United States Senator
477 Michigan Avenue
Suite 1860
Detroit, Michigan 48226

APR 24 2009

Dear Senator Levin:

This is in response to your March 15, 2009, letter to the Office of Legislation and Congressional Affairs concerning issues raised by your constituent (b)(6) under the Family Educational Rights and Privacy Act (FERPA) in his complaint against (b)(6). (b)(6) I have been asked to respond to your letter because this Office administers FERPA. 20 U.S.C. § 1232g; 34 CFR Part 99.

On April 2, 2009, this Office sent a letter (copy enclosed) informing the College that (b)(6) has filed a complaint with the U.S. Department of Education alleging that the College violated rights afforded him under FERPA. When this Office receives the College's response to the complaint letter, we will review it and provide you a copy of our response.

I trust that the information we are providing herein is helpful to you and (b)(6) in explaining FERPA as it relates to his complaint. If you or your staff have any questions regarding this matter, you may contact this Office directly at:

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

Honorable Kay Bailey Hutchinson
United States Senator
3133 General Hundell, Suite 120
San Antonio, Texas 78226

APR 22 2009

Dear Senator Hutchinson:

This is in response to your letter to the Office of Legislation and Congressional Affairs on behalf of your constituent, (b)(6) (Student). The Student alleges that (b)(6) (University) violated (b)(6) rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from (b)(6) education records to third parties without (b)(6) prior written consent. Your letter was forwarded to this Office for response because we administer FERPA which addresses issues that pertain to education records.

FERPA is a Federal law that gives eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. 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.

This Office has responded directly to the Student regarding her concern by letter dated April, 21, 2009. Enclosed for your information is a copy of that letter. Also enclosed are the FERPA regulations and a FERPA guidance document. Should you have any questions about our response to the Student or about FERPA in general, you may contact this Office directly. Our address and telephone number are:

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

Honorable Jim Webb
United States Senator
507 East Franklin Street
Richmond, Virginia 23219

APR 22 2009

Dear Senator Webb:

This is in response to your March 19, 2009, letter addressed to the Office of Legislation and Congressional Affairs concerning issues raised by your constituent (b)(6) under the Family Educational Rights and Privacy Act (FERPA) in her complaint against (b)(6) County Public Schools. I trust that the information provided in our enclosed letter to (b)(6) is helpful in explaining FERPA as it relates to (b)(6) concerns. If you or your staff have any questions regarding this matter, you may contact this Office directly at:

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

APR 22 2009

(b)(6)

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

Dear (b)(6)

This is to respond to the March 4, 2009, written request for assistance that you submitted to the office of Senator (b)(6). The request pertains to the complaint against (b)(6) Schools (District) under the Family Educational Rights and Privacy Act (FERPA) that you and (b)(6) have submitted to this Office.

By letter dated February 24, 2009, this Office informed you and the District of our finding that the District violated FERPA when it improperly disclosed information from your children's education records. The letter also informed the District that to close the complaint, appropriate school officials should be informed that the improper disclosures are not permissible under FERPA. This Office also stated that we need to receive written assurances that the District has taken the steps to remind appropriate school officials that FERPA protects education records from disclosure absent consent except in certain limited circumstances, none of which apply in this case. This Office further stated that the District can inform all appropriate school officials through training or via a memorandum.

We also note that you have expressed disagreement with this Office's action to close the complaint, as described above. Specifically, you argue that to close the complaint this Office should require the District to:

1. Conduct a financial and managerial audit of the District, and do not disburse any "stimulus funds" until the audit is complete;
2. Annually require all District employees to sign a statement that they understand FERPA requirements;
3. Amend school board policy to require members of the board to resign if they violate FERPA;
4. Monitor District actions to assure that it complies with all Federal statutes and regulations;
5. Publicly sanction the District;
6. Develop the Parent's complaint as a case study in FERPA violations; and
7. Create a permanent school board committee to be used by parents to discuss complaints and issues related to the District.

There is no basis under FERPA for this Office to take any of the above actions that you request against any educational agency or institution. However, if this Office finds a violation(s) under

FERPA, the regulations specify that this Office shall provide a statement of the steps that the school must take to comply, and provides a reasonable period of time during which the school may comply voluntarily. In summary, given the FERPA requirements described herein, this Office will take appropriate action under the Act to resolve the complaint.

I trust the information and guidance provided herein is helpful in explaining FERPA as it relates to your concerns.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Mr. Jerald Sirbu
Platt College
3100 S. Parker Road, Suite 200
Aurora, Colorado 80014

APR 21 2009

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

Dear Mr Sirbu:

This is in regard to the complaint filed by (b)(6) (Student) against (b)(6) (College) under the Family Educational Rights and Privacy Act (FERPA). By letter dated April 3, 2008, this Office informed you of the Student's allegation that between in 2007, at least up until September 2007, student transcripts, resumes, letters of recommendation were left in folders in an open hallway of the College for accreditation purposes. The Student also alleged that (b)(6) saw other students rummage through the folders to view other student's grades and transcripts. Therefore, (b)(6) subsequently removed (b)(6) own education records from the hallway. Additionally, the Student alleged that the College posts student grades by the last digits of their social security number and that (b)(6) instructor left scan-tron tests and test grades unprotected in plastic portable file folders for anyone to view or take.

By letter dated April 25, 2008, you responded to the allegations. With regard to the first two allegations, you state that in the past the (b)(6) class sample portfolios for accreditation were stored kept in a work-ready room for the accreditation visitors. You explained that a consent form was signed by each student that voluntarily chose to participate and included a copy of the consent form. Also, you explained that the samples portfolios were stored in the President's office during and after the accreditation visit from April to August 2007 and that they were later given to the Director of Nursing Education Program to distribute individually to students. In this regard you state:

Through a thorough investigation, it was discovered that a few portfolios were never retrieved by students. Portfolios were left for several students, who at the time were attending class, and were instructed to pick up the portfolios immediately after the class session was complete. When the remaining portfolios were not retrieved, it was recognized that a problem was occurring, so eventually, the portfolios were moved to a

secured faculty office complex where they remained for students to pick up. It became apparent that abandoned portfolios had not been picked up by students who were no longer attending school. Therefore, the remaining portfolios were placed in a conference room and the door was to be kept locked. It was during this time, that a shift in administration occurred. In late September 2007, there was a pending change in the nursing administration unit. A new Director of Nursing Education Program was named. The new director discovered the remaining portfolios were still in the conference room. At that time, [REDACTED] paper shred the remaining portfolios.

Between late September and early October 2007, the new Director of [REDACTED] Program recognized that FERPA retraining of all faculty and staff was needed. The new Academic Dean of Faculty and Director of Nursing Education Program implemented FERPA awareness for faculty and staff at the college.

Since that time, the portfolio assignment has been revised with seven sections, none which require, personal, confidential material to be included. Likewise, graded assignments are returned directly to the student and are not left to be retrieved by the student at his/her leisure.

You provided the College's annual notification of rights under FERPA, including the College's policy on the release of directory information, and rights of parents of eligible student. Section 99.30 states:

The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records.

"Education records" means those records that are:

- (a) Directly related to a student; and
- (b) Maintained by an educational agency or institution or by a party acting for the agency or institution.

34 CFR § 99.3 "Education records." As such, the sample portfolios meet the definition of education records under FERPA. FERPA requires that a consent for disclosure of education records must be signed and dated and must specify the records that may be disclosed; state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made. 20 U.S.C. § 1232g(b); 34 CFR § 99.30.

The consent you provided permits the release of education records sample portfolios to accrediting entities. However, your explanation indicates that the manner in which the portfolios were maintained and returned to students may have permitted the improper disclosure of the portfolios to unauthorized individuals such as other students. There is no indication from either the College or the Student that her education records were improperly accessed. Instead, the Student stated that she removed her own education records from the hallway. When an individual alleges that a violation of FERPA has occurred, the burden of proof rests with that individual. Because there is no evidence to indicate the College improperly disclosed her education records, we find that no violation of FERPA occurred with respect to this allegation. However, you indicate the changes that have taken place with regard to the portfolios and those changes meet the requirements of FERPA that would protect the education records from improper disclosure.

In response to the last two allegations made by the Student, you state the following:

In complete compliance with FERPA, grades at (b)(6) are not posted by social security number at any time. To ensure a thorough and fair investigation of the allegations made by [the Student], administration investigated the allegation that grades were or had been posted by students' social security numbers. [The Student's] account is inaccurate. At the nursing program's inception, grades were posted by random identification number chosen by each individual student.

In January 2007, a new grade policy was implemented. Grades were generated by a program, Grade Book 5.12, and from that time no grades were ever posted again.

Grades are returned personally to students or may be obtained personally by the student. . . .

While there has been no confirmation by any full or part-time instructor at (b)(6) that tests and grades were left unprotected, all nursing faculty and staff were re-educated with the FERPA guidelines through an all-day faculty seminar. This seminar was held on December 20, 2007, ; (please see *What is FERPA? power point slides* in addition to a *FERPA quiz*) that was delivered and discussed during the seminar.

As outlined above, when an individual alleges that a violation of FERPA has occurred, the burden of proof rests with that individual. The Student did not provide specific evidence to support her allegation that grades are posted by social security number and that grades and tests are left unprotected from disclosure. In light of the College's denial that these disclosure occurred, we find no violation of FERPA with respect to the allegation.

Page 4 – Mr. Jerald Sirbu

Finally, while there is no finding of a FERPA violation on any aspect of this complaint, the College provided assurance that it understands and complies with the requirements of FERPA as it pertains to disclosing education records. Accordingly, we are closing this complaint and will notify the Student by copy of this letter.

Thank you for your cooperation with regard to this matter.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

cc: Student

(b)(6)

APR 21 2009

Dear

(b)(6)

This is in response to your undated letter that was received in this Office on March 18, 2009, in which you allege that (b)(6) (University) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from your education records to third parties without your prior written consent. This Office administers FERPA, which addresses issues that pertain to education records.

FERPA is a Federal law that gives eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. 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. Enclosed for your information is a FERPA fact sheet and guidance document.

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

A school may not generally disclose personally identifiable information from an eligible student's education record to a third party unless the student has provided written consent. "Personally identifiable information" includes a personal identifier, such as the student's social security number, student number, or biometric record. It also

includes other information that alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

As such, FERPA would generally prohibit a school from posting or otherwise disclosing a list of student grades using complete or partial student social security numbers or student numbers. Rather, this Office has advised that an individual instructor would be permitted to assign individual numbers to students (numbers known only to the student and the instructor who assigned them) for the purpose of posting or otherwise disclosing a list of student grades.

Please note that there are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records. One such exception permits "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. 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; law enforcement unit personnel; and a contractor, consultant, volunteer or other party to whom the school has outsourced institutional services or functions.

A school must inform students of how it defines the terms "school official" and "legitimate educational interest" in its annual notification of FERPA rights. 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.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. It appears you have two allegations. If you wish this Office to further consider your allegations, we need to receive additional information from you. Please provide us with the name and address of the president of the University in addition to the information requested below.

It appears you are alleging that (b)(6) a professor in your advanced social statistics course, improperly disclosed information from your education records when he included your grade along with a part of your "PLID" in a December 19,

2008, e-mail to other students in the course. Please verify whether we have accurately stated your allegation, and verify that your (b)(6) is the same as a student identification number at the University. If your (b)(6) is not the same as a student identification number, please explain why you believe your grade in the e-mail would be personally identifiable to you by the other students. Also, please inform us which grade and PLID in (b)(6) e-mail belong to you. We will review the information you submit and take any appropriate action.

Also, it appears you are alleging that (b)(6) an official at the University, disclosed to other school officials and other students that you were accused of sending anonymous e-mails to school officials and other students, and that the University was taking disciplinary action against you for that offense. Please provide us with (b)(6) official title at the University. Based on the information in one of your enclosures to your letter, it appears (b)(6) was chair of your thesis committee. In that position, (b)(6) would generally be a school official with a legitimate educational interest in obtaining access to (b)(6) accusation about you and any information related to disciplinary action.

With regard to other school officials and other students, whom you allege (b)(6) improperly disclosed information from your education records, please provide us with the following information: please verify that education records existed containing the information which you allege (b)(6) disclosed; inform us of the date or approximate date that (b)(6) disclosed such information from your education records or the date you learned of such disclosures; and provide us with the names of the third parties to whom you allege the information was disclosed. Also, please clarify the specific information that you believe (b)(6) improperly disclosed from your education records and provide us with any evidence you may have that (b)(6) disclosed such information. We will review the information you submit and take any appropriate action.

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures