

(b)(6)

MAR 27 2010

Dear (b)(6)

This is to respond to your September 24, 2009, complaint form to this Office in which you allege that rights afforded you under the Protection of Pupil Rights Amendment (PPRA) were violated by the (b)(6) District) when it failed to notify you prior to administering a survey to your son (b)(6) Student). Specifically, you allege that the District violated PPRA when it did not notify you or offer you an opportunity for you to opt your child out in advance of your son's participation in the National Research Post-Secondary Survey. This Office administers PPRA, a Federal law that addresses issues pertaining to surveys.

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).

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 and that reveals information concerning any of the eight protected areas noted above. 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 the a survey that asks questions from one or more of the eight protected areas listed above. This notification must provide parents with reasonable notification of the planned survey, and provide parents an opportunity to opt their child out, as well as an opportunity to review any pertinent surveys.

After reviewing the information you provided this Office, PPRA does not apply in this instance because the National Research Post-Secondary Survey, which your son took, does not ask questions from any of PPRA's eight sensitive areas. Accordingly, no basis exists for this Office to investigate your allegation.

I trust this addresses your concern as it relates to scope and limitations of PPRA as it relates to your concern.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

Dear (b)(6)

MAR 25 2010

This responds to your June 3, 2009, letter and December 9, 2009, email to this Office in which you allege that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it did not provide you access to your daughter's education records. As you know, this Office administers FERPA, which pertains to education records. We tried to contact you at the number you provided in your correspondence to see if this matter had been successfully resolved, but the number you provided was not a working number.

FERPA is a Federal law that gives parents, custodial and noncustodial alike, the right to inspect and review their children's education records, unless the school has evidence that there is a court order or State law which specifically provides to the contrary. A school may ask for legal certification denoting parenthood, such as a birth certificate or court order, from the parent requesting access. FERPA requires that schools comply with a parent's request for access to his or her children's education records within 45 days of receipt of the request. Enclosed is a FERPA fact sheet on the rights of noncustodial parents.

This Office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a school has failed to comply FERPA. The information you provided indicates that your parental rights to access your child's education records under FERPA may have been terminated. If that is the case, FERPA would not permit the District to comply with your request to access the education records. If, however, you have evidence that your rights under FERPA have not been terminated, you should make a dated request in writing to the appropriate school official for access to your daughter's education records and include that supporting documentation. If after 45 days the District refuses to provide you access or does not respond to your request, you should provide this Office the copy of your dated, written request to the District, including supporting documentation, and any response you may have received. We will review the information you provide and take any appropriate action.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Mr. Jack Cozort
Acting Superintendent
Laramie County School District #2
P.O. Box 489
311 E. Eighth Street
Pine Bluffs, Wyoming 82082

MAR 25 2010

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

Dear Mr. Cozort:

This is to notify you that we are closing this complaint in accordance with 34 CFR § 99.67(b) based on the District's voluntary compliance with FERPA requirements.

This Office notified Superintendent Margie Simineo by letter dated May 15, 2008, that we were initiating an investigation of a complaint filed by (b)(6) (Parent) alleging that Laramie County School District #2 (District) violated the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g and 34 CFR Part 99. The District submitted a written response on June 3, 2008.

On December 29, 2009, we notified Superintendent Simineo of our findings that the District violated § 99.10(a) of the FERPA regulations when it failed to allow the Parent to inspect and review the District's digital recording of an individualized education program (IEP) meeting held on October 24, 2007, and violated § 99.10(e) when it destroyed the recording pending the Parent's outstanding request to review the record (allegation #1). (In regard to allegation #2, we had insufficient evidence to conclude that the District violated § 99.30 of the FERPA regulations when it copied attorney (b)(6) of the (b)(6) Education Association on the District's August 16, 2007, letter to the Parent.) We advised Superintendent Simineo that in accordance with § 99.66(c), in order to close this investigation the District must provide this Office with documentation showing that it has provided written guidance or training for appropriate

institutional personnel regarding a parent's right to inspect and review any education records in audio or visual format maintained by the District, regardless of whether the District is able to make a copy of the record, and the District's further obligation to preserve those records pending a parent's inspection and review in accordance with the guidance and findings in our letter.

Brent Bacon, Director of Special Services, responded for the District by letter dated January 13, 2010. Thereafter, this Office notified Superintendent Simineo by letter dated February 17, 2010, that Mr. Bacon's letter did not adequately document the District's voluntary compliance with FERPA and, therefore, did not allow us to close the investigation.

In particular, some of the information in Mr. Bacon's letter referred to general FERPA requirements but did not show that the District had clearly advised or trained its staff about the problems that led it to violate §§ 99.10(a) and 99.10(e) when it refused to allow the Parent to inspect and review the recording in question and destroyed that recording after the Parent had exercised her right under FERPA to inspect and review it because the District determined that it could not make a copy. We were also concerned that some of the commentary in the "Student Records" policy (Code JRB) that the District provided with Mr. Brent's letter was ambiguous and did not clearly communicate that a parent (or eligible student) has a right to inspect and review any video or audio recordings maintained by the District that are directly related to a student regardless of whether the District is able to make a copy. We were further concerned that certain language in the policy actually suggested to staff and parents that the District believes it has no obligation to allow a parent (or eligible student) to inspect and review an audio or video recording if it is unable to provide a copy of the recording, which is contrary to FERPA requirements and contrary to our December 29, 2009, findings in this investigation. We also expressed our concern that the District may refuse to allow a parent (or eligible student) to inspect and review an audio or video recording (or other education record) if the parent (or eligible student) does not provide the District with their own personal copy of the recording. As a result, we asked the District to send this Office documentation showing that it has provided appropriate institutional personnel with specific documentation or training regarding a parent's (or eligible student's) right to inspect and review any education record, including those maintained as video or audio recordings, regardless of the District's ability to make a copy of the record, and regardless of whether the parent (or eligible student) provides the District with a copy of the parent's (or eligible student's) own copy of the record.

Mr. Brent responded by letter dated March 8, 2010, and included a copy of a directive memo of the same date to all District staff regarding the right of parents and eligible students to inspect and review all audio and/or video recordings of meetings concerning a student (e.g., IEP meetings, parent meetings, etc.) regardless of the District's ability to make a copy of the record, and regardless of whether the parent or eligible student provides the District with a copy of their own record of the meeting. This memo addresses our concerns and allows us to close this investigation.

Thank you for your continued cooperation in resolving this matter.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc: Parent

Brent Bacon
Director of Special Services

Jennifer Sheehy, Director
Office of Special Education Programs

Peg Brown-Clark
State Director of Special Education
Wyoming Department of Education

(b)(6)

MAR 25 2010

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (Office) is not initiating an investigation with regard to the complaint you filed with us on November 28, 2009. You also provided additional information to us during a January 2010 phone conversation with Ms. Kathleen Wolan of my staff. In your complaint you alleged that California State Polytechnic University at Pomona (University) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

This Office investigates certain complaints under authority of Subpart E of the FERPA regulation (34 CFR Part 99) if it:

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

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

In this case, we will not open an investigation into your allegations concerning the University's actions between 1989 through 2003 because they do not meet the FERPA timeliness requirement described in (b) above. The complaint clearly indicates that the alleged violations occurred several years before the Office received your complaint in November 2009. We do not investigate untimely complaints (34 CFR § 99.64).

While some of your allegations that the University failed to provide your rights concerning the amendment of education records are timely, your complaint does not provide specific allegations of fact which give the Office reasonable cause to believe that

a FERPA violation occurred. In order for the Office to initiate an investigation, a complaint must contain such specific allegations.

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

A school is not required to follow the requirements of the FERPA amendment process when the item is not amendable under FERPA. For example, a university is not required to afford you a hearing to modify decisions on the manner in which it grants credits, assigns grades, or applies graduation requirements. Additionally, Ms. Wolan explained during your telephone conversation that a university is not required to adhere to the FERPA amendment hearing process if it chooses to hold a hearing for an amendment request that is not subject to FERPA.

With respect to the facts alleged, amendment of the education record is not required by FERPA. The FERPA amendment procedure may be used to challenge facts that are inaccurately recorded. However, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about a student. FERPA requires only that schools conform to fair recordkeeping practices. It does not provide a means to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. The FERPA right to seek amendment of education records which contain inaccurate information cannot be used to challenge a grade or an individual's opinion, unless that information has been inaccurately recorded.

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

MAR 25 2010

Dea

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (Office) is not initiating an investigation with regard to a complaint you filed with us on November 20, 2009. In that complaint you alleged that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 123g).

The Office investigates certain complaints under authority of Subpart E of the FERPA regulations (34 CFR Part 99). We may investigate a complaint if it:

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

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

The FERPA regulations (34 CFR Part 99) can be accessed through the Office website at <http://www.ed.gov/policy/gen/guid/fpco/index.html>.

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

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

Given the facts you alleged, it is not clear that information from your child's education records is being improperly disclosed. A reading progress chart has long been an accepted pedagogical device designed to encourage student accomplishments. Information such as the number of books read in a reading class or the level of math multiplication tables mastered in a math class is permitted to be posted for review within a student's classroom. While student grades should not be included on such displays, FERPA does not prohibit the use of these pedagogical tools, and the decision to allow the use of these charts is left to the individual school or district. You should discuss your concerns with officials of your school or district.

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

MAR 22 2010

Dear

(b)(6)

This is to respond to your May 19 and May 26, 2009, letters and September 24, 2009, complaint form to this Office in which you allege that rights afforded you under the Protection of Pupil Rights Amendment (PPRA) were violated by the Cobb County School District (District) when it failed to notify you prior administering a survey to your daughter, (b)(6) (Student). Specifically, you allege that the District violated PPRA when it did not notify you or offer you an opportunity to opt your daughter in advance of the administration of an anti-bullying survey administered on April 16, 2008. This Office administers PPRA, a Federal law that addresses issues pertaining to surveys.

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).

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 and that reveals information concerning any of the eight protected areas noted above. 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 the a survey that asks questions from one or more of the eight protected areas listed above. This notification must provide parents with reasonable notification of the planned survey, and provide parents an opportunity to opt their child out, as well as an opportunity to review any pertinent surveys.

After reviewing a copy of the survey that you provided, PPRA requires the District to provide you with prior notice and opportunity to opt out your child from participating in the survey because it asks questions from one or more of PPRA's eight sensitive areas (see item 5. Critical appraisals of other individuals with whom the student has close family relationships).

This Office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of PPRA has occurred. It is the policy of this Office that a complaint under PPRA is timely if it is submitted to this Office within 180 days of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation. As such, any allegations that your rights under PPRA were violated under circumstances about which you were aware over 180 days prior to the date you contacted this Office are not timely. This Office received your May 19, 2009, letter which included your allegation that rights afforded you under PPRA were violated by the District on April 16, 2008. Based on the May 27, 2009, date when this Office received your May 19, 2009, letter which included your original allegation that the District violated rights afforded you under PPRA on April 16, 2008, your letter is untimely.

Notwithstanding the fact that your complaint to this Office is untimely, this Office is providing technical assistance to the District in order to inform its officials of PPRA's requirements and ensure future compliance (see enclosed).

I trust this addresses your concern as it relates to scope and limitations of PPRA as it relates to your concern.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

Dr. Fred Sanderson
Superintendent
Cobb County School District
514 Glover Street
Marietta, Georgia 30060

MAR 22 2010

Dear Dr. Sanderson:

(b)(6) (Parents) have written to the U. S. Department of Education alleging that the Cobb County School District (District) violated rights afforded them under the Protection of Pupil Rights Amendment (PPRA). The Parents allege 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 and failed to offer them an opportunity to opt-out their child, (b)(6) (Student), from participating in an anti-bullying survey that was administered on April 16, 2008. This Office has reviewed a copy of the anti-bullying survey which the Parents provided to this Office and has determined that it asks questions from PPRA's eight sensitive areas. Although the Parents' complaint was untimely received by this Office, we are writing to the District to inform it of PPRA's requirements as a matter of technical assistance. This Office administers PPRA, which addresses issues pertaining to surveys.

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).

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 and that reveals information concerning any of the eight protected areas 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 the a survey that asks questions from one or more of the eight protected areas listed above. This notification must provide parents with reasonable notification of the planned survey, and provide parents an opportunity to opt their child out, as well as an opportunity to review any pertinent surveys. The September 2009 letter to superintendents containing additional information concerning responsibilities under both PPRA and the Family Educational Rights and Privacy Act (FERPA), which this Office also administers, is enclosed. (This letter is also available on our website: <http://www.ed.gov/policy/gen/guid/fpco/hottopics/index.html>.) Please review the attached guidance for further information relating to this matter.

It is the District's responsibility to comply with PPRA as an entity that receives funding from this Department. You may wish to share this correspondence with school officials in your jurisdiction in order they may be informed of PPRA's provisions, including its requirement to annually notify parents of their rights and directly notify parents prior to the administration of surveys protected under this statute. Also enclosed are model notices and consent forms that should be helpful to you as you ensure that your school district and its schools comply with PPRA.

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,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures
cc: Parents

(b)(6)

MAR 16 2010

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (Office) is not initiating an investigation with regard to a complaint you filed with us on March 12, 2009. In that complaint you alleged that (b)(6) District violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

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

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

The FERPA regulations (34 CFR Part 99) can be found on our website at:

<http://www.ed.gov/policy/gen/reg/ferpa/index.html>.

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

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

Given the facts alleged, the disclosure you described would not be subject to FERPA's protections because the statements expressed by your child's teacher are not contained in your child's education records. Information based on opinion or personal observation and not specifically contained in education records would not be protected under FERPA. Accordingly, this Office will not take any further action in regard to your allegation.

The name, address, and telephone number of the Office are:

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Dr. Sydney L. Cousin
Superintendent
Howard County Public School System
10910 Route 108
Ellicott City, Maryland 21042

MAR 16 2010

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

Dear Dr. Cousin:

This is to inform you of the finding in the complaint filed with this Office against the Howard County Public School System (District) by (b)(6) (Parents). The Parents alleged that the District violated FERPA when it disclosed information from the education records of their daughter (b)(6) (Student), to a third party without prior written parental consent. Specifically, the Parents alleged that on March 5, 2008, (b)(6) the Student's English teacher at (b)(6) Middle School (School) in the District, improperly disclosed information from the Student's education records to (b)(6), another English teacher at the School. The Parent alleges that (b)(6) disclosed the fact that the Student received an 88% in (b)(6) class; that the Parents sought to have the grade changed; and that Dr. Perkins, the principal of the School, made the decision that the grade should be changed. The Parents assert that (b)(6) does not have a legitimate educational interest in the information disclosed to him.

In her complaint form to this Office, the Parent states:

On 3/5/08, after school dismissed, [the Student] overheard (b)(6) her English teacher, talking to another teacher, (b)(6) [The Student] was behind them in the hall and they did not know she was there. (b)(6) said "[The Student] had an 88% in my class! Her parents complained and made him (Dr. Perkins—the Principal) change 'my grade.' ('My Grade' meaning the grade (b)(6) had given [the Student] originally.) . . . On 3/6/08, after school, [the Student] again overheard (b)(6) talking to (b)(6) (b)(6) aid, 'Her parents complained about changing 'my grade.'"

By letter dated August 22, 2008, this Office informed you of the allegation and asked that the District provide a written response. Mr. Mark C. Blom, general counsel for the District, responded by letter dated September 26, 2008. In the District's response,

Mr. Blom states:

... In March 2008, (b)(6) was talking with a fellow teacher in the hallway after school. (b)(6) was informing the other teacher that the school principal had overruled her grading of a student and changed the student's grade. (b)(6) never mentioned the student's name or referred to her by name. ...

It is clear therefore that while (b)(6) was in fact speaking about [the Student], she never used the student's name or shared that information with the other teacher. [The Student] obviously recognized herself when she overheard (b)(6) description of the circumstances, but her identity as that particular student involved was known only to [the Student] and (b)(6) ...

Along with the District's response, Mr. Blom enclosed signed statements from (b)(6) and (b)(6) to the effect that (b)(6) did not mention the Student's name or otherwise reveal to (b)(6) the identity of the student about whom she was speaking.

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 educational agency or institution. 20 U.S.C. § 1232g(a)(4). 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. 34 CFR § 99.30.

Based on the information in the District's response and the signed statements by (b)(6) and (b)(6), this Office finds that the District did not violate FERPA by improperly disclosing information from the Student's education records as alleged by the Parents. The Parents will be informed of our finding by copy of this letter along with the signed statements.

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc: Parent

(b)(6)

MAR 16 2010

Dear (b)(6)

This is in response to your February 26, 2009, letter to this Office in which you allege that the (b)(6) District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed information from your son's education records to third parties without your prior written consent. Specifically, you allege that the District disclosed that your son participated in the "free and reduced lunch program." 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 and guidance document.

Under FERPA, a school may not generally disclose personally identifiable information from a minor student's education record to a third party unless the student's parent has provided written consent. However, there are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records.

As we explained to (b)(6) your mother, in our February 6, 2009, letter, one of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to education records provided the school has determined that they have 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 school official needs access to information in education records to carry out his or her responsibilities.

Mr. Ricky Norment of my staff spoke to (b)(6) an attorney for the District, by telephone regarding your concern about the disclosure of your son's participation in the free and reduced lunch program. After investigating the matter, (b)(6) followed-up with a February 23, 2009, letter to this Office. In her letter, (b)(6) explained that (b)(6) principal of (b)(6) (Middle School), disclosed a list of students who participated in the free and reduced lunch program to school officials in the Middle School in connection with the decreased performance of students in this group on two previous (b)(6) Statewide Testing for Educational Progress Plus (b)(6) tests. According to (b)(6), (b)(6) provided the list identifying the students in this group to school officials, because the officials had particular responsibilities related to helping ensure the students in this group improved their performance on the upcoming (b)(6) test. Enclosed for your information is a copy of (b)(6) February 23 letter.

You did not provide us with evidence that any of the school officials who obtained access to the information regarding your son's participation in the free and reduced lunch program improperly disclosed such information to any third party (someone other than a school official). Therefore, based on our analysis of the information provided in (b)(6) February 23 letter, the disclosure at issue would generally appear to meet the standards of the school official exception to FERPA written consent requirement.

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

cc: Ms. Cheryl Zic

Dr. Hildy J. Teegen
Darla Moore School of Business
University of South Carolina
1705 College Street
Columbia, South Carolina 29208

March 13, 2009

Dear Dr. Teegen:

This Office is responsible for administration of the Family Educational Rights and Privacy Act (FERPA), which protects the privacy interests of parents and eligible students in students' education records. See 20 U.S.C. §1232g and 34 CFR Part 99. Under that authority we investigate, process, and review complaints and violations and provide technical assistance to ensure compliance with all FERPA requirements. We are responding to a letter dated June 13, 2008, from (b)(6) (Parents) who are parents of a student, (b)(6) who attends the Darla Moore School of Business (School). The Parents do not have "standing" under FERPA because the rights under FERPA transfer from the parents to the student once he or she reaches the age of 18 or attends a postsecondary institution. They nonetheless filed a complaint with this Office alleging that information from their daughter's education records was improperly disclosed by the School. Enclosed for your review is a copy of their letter outlining the alleged disclosures from their daughter's education records. While the Parents no longer have standing to file a complaint under FERPA with this Office, we are contacting you as a matter of technical assistance to ensure compliance with the Act.

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

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

The FERPA Safeguarding Recommendations recognize that no system for maintaining and transmitting education records, whether in paper or electronic form, can be guaranteed safe from every hacker and thief, technological failure, violation of administrative rules, and other causes of unauthorized access and disclosure. Although FERPA does not dictate requirements for safeguarding education records, the Department encourages the holders of personally identifiable information to consider actions that mitigate the risk and are reasonably calculated to protect such information. Of course, an educational agency or institution may use any reasonable method, combination of methods, or technologies, taking into consideration the size, complexity, and resources available to the institution; the context of the information; the type of information to be protected (such as SSNs or directory information); and methods used by other institutions in similar circumstances. The greater the harm that would result from unauthorized access or disclosure and the greater the likelihood that unauthorized access or disclosure will be attempted, the more protections an agency or institution should consider using to ensure that its methods are reasonable.

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

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

- Report the incident to law enforcement authorities.
- Determine exactly what information was compromised, i.e., names, addresses, SSNs, ID numbers, credit card numbers, grades, and the like.
- Take steps immediately to retrieve data and prevent any further disclosures.
- Identify all affected records and students.
- Determine how the incident occurred, including which school officials had control of and responsibility for the information that was compromised.
- Determine whether institutional policies and procedures were breached, including organizational requirements governing access (user names, passwords, PINS, etc.); storage; transmission; and destruction of information from education records.
- Determine whether the incident occurred because of a lack of monitoring and oversight.

- Conduct a risk assessment and identify appropriate physical, technological, and administrative measures to prevent similar incidents in the future.
- Notify students that the Department's Office of Inspector General maintains a website describing steps students may take if they suspect they are a victim of identity theft at <http://www.ed.gov/about/offices/list/oig/misused/idtheft.html>; and <http://www.ed.gov/about/offices/list/oig/misused/victim.html>.

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

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc:

(b)(6)

Dr. Phil Hammonds
Superintendent
Jefferson County School District
2100 18th Street, South
Birmingham, Alabama 35209-1891

MAR 09 2010

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

Dear Dr. Hammonds:

This is to inform you of the finding in the complaint filed with this Office against the Jefferson County School District (District) by (b)(6) (Parent). The Parent alleged that the District violated FERPA when it disclosed information from the education records of her son, (b)(6) (Student), to a third party without her prior written consent. Specifically, the Parent alleges that (b)(6) principal of (b)(6) High School (School), violated FERPA when he disclosed information from the Student's education records to (b)(6) lodge advisor for (b)(6). In a May 15, 2007, letter to the (b)(6) County Board of Education, the Parent states:

I am writing you concerning personal information that was recently released about my child. . . to the (b)(6) by School principal (b)(6) (b)(6) [The disclosure occurred in an e-mail] in response to a request that [the Student] be excused from school due to a (b)(6) National Honors Society of Scouting Order of the (b)(6) trip that was being held out of town. . . .

(b)(6) had every right not to excuse the absence; however, I feel the information that was released to the Boy Scouts was very inappropriate, and should have been held in confidence, especially coming from someone in his position. . . .

Also, the Parent provided this Office a copy of the referenced April 26, 2007, e-mail from (b)(6) to (b)(6) in which (b)(6) states:

. . . [The Student] is a student who is failing 2 subjects and has already missed 13 days of school this semester (6-unexcused, 3- excused and 4 due to suspension) and is repeating the seventh grade . . .

By letter dated January 8, 2008, this Office informed you of the Parent's allegation and asked that the District provide a written response. You responded for the District by letter dated February 6, 2008. In your February 8 letter, you state:

Upon review of your letter and the accompanying documentation, I have determined that (b)(6) . . . did violate FERPA by disclosing [the Student's] grades and attendance information to [the Student's] Boy Scout advisor. For his part, it appears (b)(6) disclosure was inadvertent. Typically, if he is denying a parent's request to excuse a student's attendance at school in order to attend an extracurricular activity off-campus, (b)(6) provides a reason for his decision to deny the request. However, this request was not typical to the extent that it was not made directly from the parent; therefore, (b)(6) denial of the request resulted in a FERPA violation. . . . I have discussed this matter with (b)(6) and he understands that his actions, while not intentional, were in violation of FERPA.

In an effort to reinforce the importance of complying with FERPA and to remind school administrators to remain vigilant regarding the release of student information, I am distributing a memorandum regarding FERPA and its requirements to all principals in the school system. In addition, I have included a presentation and discussion of FERPA on the agenda of the next Leadership Council meeting that I will conduct in February 13, 2008. The Leadership council is made up of myself, the Deputy Superintendents, upper level administration and every principal in the school system. The principals will be instructed to review FERPA and its requirements at their next scheduled school staff meeting. . . .

Under FERPA, the term "education records" is defined as those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 20 U.S.C. § 1232g(a)(4); 34 CFR § 99.3 "Education records." 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. 34 CFR 99.30. There are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records. 34 CFR § 99.31. However, none of those exceptions would apply to this situation.

Based on the evidence provided by the Parent and the information in your response, this Office finds that the District violated FERPA when (b)(6) nonconsensually disclosed information from the Student's education records to (b)(6) as alleged by the Parent. The Parent will be informed of our finding by copy of this letter.

Page 3 - Dr. Phil Hammonds

Along with your letter, you provide this Office with assurance and evidence that appropriate officials have been informed of the requirements of FERPA as it relates to the issues in this complaint. As such, this Office is closing the investigation of this complaint.

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc: Parent

(b)(6)

MAR 09 2010

Dear (b)(6)

This is to respond to your September 11, 2008, letter to this Office in which you inquire about the Protection of Pupil Rights Amendment (PPRA). Specifically, you ask whether the school violated rights afforded you under PPRA when it screened your child for scoliosis. This Office administers PPRA, a Federal law that addresses issues pertaining to surveys and certain physical examinations of students.

PPRA generally requires schools to notify parents prior to the school's administration of "invasive physical examinations" and offer parents an opportunity to opt out their child from participation. However, PPRA specifically excepts scoliosis screening from its notification requirement (see enclosed). In addition, you state that you provided your child's school with consent to perform the scoliosis screening. Based on this information, no basis exists for this Office to investigate your allegation.

For further information on the administration of scoliosis screening, you may wish to contact the appropriate officials at your State health department.

I trust this addresses your concern as it relates to the administration of PPRA.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

Dr. Carl E. Harris
Superintendent
Durham Public Schools
Fuller Administration Building
511 Cleveland Street
P.O. Box 30002
Durham, North Carolina 27702

MAR 09 2010

Dear Dr. Harris:

This is in regard to a concern addressed to this Office by (b)(6) Parent). The Parent alleged that the (b)(6) (District) did not provide him access to all of the education record of his sons, (b)(6) (Students), in response to his requests. At the time of the Parent's complaint to this Office, the older student was in sixth grade at (b)(6) Middle School and the younger student was in second grade at (b)(6) Elementary School. 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 have access to their minor children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. Enclosed for your information is a copy of the FERPA regulations. 34 CFR Part 99. The term "education records" is broadly defined as those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records."

Under FERPA, a school is required to provide a parent with an opportunity to inspect and review his or her children's education records within 45 days of the receipt of a request. 34 CFR § 99.10. Also, a school is required to provide a parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from obtaining access to the records. Based on information from the Parent, it appears the District may have barred the Parent from coming onto school campuses. In such a situation, the District would be required by FERPA to provide the Parent with copies of requested education records or make arrangements for the parent to inspect and review the records at an alternative site, such as at the office of the District's attorney.

FERPA does not address the location where an education record is maintained by a school, e.g., in a cumulative records file, in a counselor's file, in the principal's office, or in a disciplinary file. Rather, as stated above, if the record is directly related to a student and maintained by the educational agency or institution, it is an education record subject to FERPA.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides schools with technical assistance to ensure they are in compliance with or come into compliance with FERPA. This letter is meant to provide the Academy with technical assistance regarding the definition of the term “education records” and the requirement for providing a parent with access to education records.

The Parent provided this Office with copies of February 9 and April 20, 2009, letters to you requesting access to the Students’ education records. Enclosed for your review are copies of these letters. If the Parent’s allegation is accurate, the District should come into compliance with FERPA by providing the Parent access to all of the Students’ education records that it maintains within three weeks of its receipt of this letter. As indicated above, the District may meet this requirement by providing the Parent with an opportunity to inspect and review the requested education records or by providing the Parent with copies of the records.

In addition, I recommend that the District take this opportunity to inform appropriate officials in the District of the broad definition of education records and the requirement for providing parents (including noncustodial parents whose rights have not been revoked) access to their children education records within 45 days of the receipt of a request as it relates to the facts in this matter. If you have any questions regarding this letter, the definition of education records, the requirement for providing parents access to education records, or FERPA in general, you may contact Mr. Ricky Norment of my staff at 202-260-3887, and you may visit our Website as follows:

www.ed.gov/policy/gen/guid/fpco/index.html

Thank you for your cooperation with regard to this matter.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

cc: Parent

Mr. Donald Draughon
Chairman, Board of Directors
Voyager Academy
101 Hock Prac
Durham, North Carolina 27704

MAR 09 2010

Dear Mr. Draughon:

This is in regard to concerns addressed to this Office by ^{(b)(6)} (Parent). The Parent alleged that Voyager Academy (Academy) did not provide him access to a particular education record of his son ^{(b)(6)} (Student), in response to his requests. At the time of the Parent's complaint to this Office, the Student attended school at the Academy. This Office administers FERPA which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to have access to their minor children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. Enclosed for your information is a copy of the FERPA regulations. 34 CFR Part 99. The term "education records" is broadly defined as those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records."

Under FERPA, a school is required to provide a parent with an opportunity to inspect and review his or her children's education records within 45 days of the receipt of a request. 34 CFR § 99.10. Also, a school is required to provide a parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from obtaining access to the records. Based on information from the Parent, it appears the Academy may have barred the Parent from coming on campus. In such a situation, the Academy would be required by FERPA to provide the Parent with copies of requested education records or make arrangements for the parent to inspect and review the records at an alternative site, such as at the office of the Academy's attorney.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides schools with technical assistance to ensure they are in compliance with or come into compliance with FERPA. This letter is meant to provide the Academy with technical assistance regarding the definition of the term "education records" and the requirement for a parent to be provided with access to education records.

Specifically, the Parent alleged that the Academy failed to provide him access to a psychiatrist's "psychological evaluation" report regarding the Parent that was maintained by the Academy around the time of a November 4, 2008, meeting between the Parent and (b)(6) principal of the Academy. In May 2009, Mr. Ricky Norment of my staff spoke to Mr. Forsyth and Mr. Philip Adkins, an attorney for the Academy, regarding the Parent's request for the psychological evaluation report. Mr. Norment was informed that the Student's mother (the Parent's ex-wife) provided the Academy with a cover letter from a psychiatrist (regarding an attempted psychological evaluation of the Parent) to the judge overseeing the Parent's divorce proceeding. Mr. Forsyth and Mr. Adkins informed Mr. Norment that the Student's mother provided the Academy with other court documents along with the cover letter. However, she did not provide, nor did the Academy ever maintain, any psychological evaluation report. During the November 4 meeting between Mr. Forsyth and the Parent, it appears that Mr. Forsyth read to the Parent from the cover letter, and the Parent believed Mr. Forsyth was reading from the psychological evaluation report, and the Parent requested access to this document. The Parent was not provided access to the cover letter, and sometime thereafter on the recommendation of Mr. Adkins, the Academy returned the cover letter along with the other court documents to the Student's mother.

FERPA does not address the location where an education record is maintained by a school, e.g. in a cumulative records file, in a counselor's file, in the principal's office, or in a disciplinary file. Rather, as stated above, if the record is directly related to a student and maintained by an educational agency or institution, it is an education record subject to FERPA.

This Office was not provided with a copy of the cover letter to the psychological evaluation report. However, in a May 11, 2009, e-mail to the Parent, Mr. Adkins states that the cover letter referenced the Parent and his "behavior during the attempted psychological testing." Based on our judgment, given these circumstances, the cover letter is directly related to the Student who attended Voyager Academy at the time and is, therefore, an education record under FERPA. As such, the District should have provided the Parent an opportunity to inspect and review the document.

In Mr. Adkins' May 11 e-mail to the Parent, he states that after his conversation with Mr. Norment, Voyager Academy provided a "notice to teachers reminding them of their obligations under FERPA." We recommend that the Academy take this opportunity to inform all appropriate officials at the Academy, through memorandum and/or training sessions, about the requirements regarding education records under FERPA as it relates to the facts in this matter. In particular, the Academy should ensure that officials understand the broad FERPA definition of education records and the requirement for providing custodial parents and noncustodial parents (whose rights have not been revoked) with access to their children's education records within 45 days of a request.

Page 3 - Mr. Donald Draughon

If you have any questions regarding this letter, the definition of education records, the requirement for providing parents access to education records, or FERPA in general, you may contact Mr. Norment at 202-260-3887, and you may visit our Website as follows:

www.ed.gov/policy/gen/guid/fpco/index.html

Thank you for your cooperation with regard to this matter.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

cc: Parent

Mr. Carl Forsyth

Mr. Philip A. Adkins

(b)(6)

MAR 09 2010

Dear

(b)(6)

This is in response to your November 30, 2008, complaint form to this Office in which you allege that the (b)(6) (District) and Voyager Academy (Academy) failed to provide you access to the education records of your sons (b)(6) (Students), in response to your requests. 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 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 is required to provide a parent with access to his or her child's education records within 45 days of the receipt of a request.

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

In addition to conducting investigations of alleged violations of FERPA, this Office also provides schools with technical assistance to ensure they are in compliance with or ensure they come into compliance with FERPA. Enclosed for your information are copies of letters to the District and the Academy providing them with technical assistance regarding the FERPA requirement for providing parents access to their children's education records.

As you know, the Academy no longer maintains the psychiatrist's psychological evaluation report (i.e., cover letter from the psychiatrist) or regarding you. Thus, it cannot provide you with access to it. If the District does not provide you access to all of the requested education records or does not contact you within three weeks of your receipt of this letter, you may contact us again regarding this matter.

I trust that the above information and enclosed letters are responsive to your concerns.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

(b)(6)

MAR 06 2010

Dear (b)(6)

This letter is sent in regard to your correspondence that this Office received on February 10, 2009, wherein you allege that the (b)(6) (District) violated § 99.30 of the Family Educational Rights and Privacy Act (FERPA) when it improperly disclosed information from your son (b)(6) education records. Specifically, you allege that on November 17, 2008, (b)(6) Director of Maintenance at Forest Hills Elementary School (Elementary School) where your son attended school, obtained attendance information about your son for that specific day. In support of this allegation, you provided a copy of a letter from the District's Director of Human Resources to an unidentified individual, stating that on November 17, (b)(6) learned that your son was in attendance that day at the Elementary School. You also allege that on January 16, 2009, when you contacted the Elementary School to explain that your son would be absent due to illness, the individual you spoke with, (b)(6), said that she would be notifying (b)(6) of your child's absence from school that day. This Office administers the Family Educational Rights and Privacy Act (FERPA), a law that pertains to 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." A student's attendance record meets the definition of an education record.

Additionally, § 99.30 of the FERPA regulations states:

[A]n educational agency or institution shall obtain a signed and dated written consent...before it discloses personally identifiable information from the student's education records.

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. 34 CFR § 99.31(a)(1). A school official is a person employed by the school such as an administrator, supervisor, instructor, or support staff member. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Section 99.7(a)(3)(iii) of the FERPA regulations requires an educational agency or institution to include in its annual notification of rights under FERPA a statement indicating whether it has a policy of disclosing personally identifiable information under § 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest.

While you explained that (b)(6) is an employee of the District, you stated that she did not have legitimate educational interest in your son's attendance information. However, you did not provide the reason for which the Elementary School provided your son's attendance information to (b)(6). Accordingly, it is not clear from the information you provided, whether the District disclosed education records in a manner that is not permissible by FERPA. However, due to the amount of time that has passed since we received your complaint, we will provide a copy of this letter to the District as a matter of technical assistance to the District to ensure that it complies with the requirements of FERPA. Should you have additional questions, you may contact this Office at the following:

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc:

(b)(6)

Because answer sheets are usually directly related to a student, they generally fall within the definition of education records to which a parent has the right to inspect and review. Therefore, a parent has the right to have access to her child's answer sheet and an explanation or interpretation of that answer sheet which, in some cases, could require access to the question booklet. However, because FERPA requires a parent be given access and not copies, except in specific instances, the school district is not required to provide the parent a copy of the answer sheet or the question booklet.

I trust that the above information is helpful in responding to your concerns. Please do not hesitate to contact us if you have further questions.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Mr. Jeffrey R. Spiegel
Superintendent
Ferguson-Florissant School District
1005 Waterford Drive
Florissant, Missouri 63033-3649

MAR 03 2010

Dear Mr. Spiegel:

This is in regard to a concern addressed to this Office by (b)(6) (Parent). By letter dated September 28, 2009, the Parent alleged that the Ferguson-Florissant School District (District) did not provide her access to all of the education records maintained by the District regarding her son, (b)(6) (Student), in response to her requests. The Student attends school at the (b)(6) Middle School (School) in the District. 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 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. Enclosed for your information is a copy of the FERPA regulations. 34 CFR Part 99. The term "education records" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." Under FERPA, a school is required to provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. 34 CFR § 99.10.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides educational agencies and institutions with technical assistance to ensure they are in compliance with or come into compliance with FERPA. This letter is meant to provide the District with technical assistance regarding the definition of the terms "education records" and "sole possession records" and the requirement for providing a parent access to education records.

Enclosed for your review are copies of August 3 and 14, 2009, letters from the Parent to Mr. David Watkins, principal of the School, requesting an opportunity to inspect and review the Student's education records. Also enclosed is a copy of a August 25, 2009, letter to the Parent from Stephanie Clarkin, a guidance counselor at the School. As of the date of the Parent's September 28 letter to this Office, she did not believe the District had provided her access to all of the Student's education records that it maintains.

Please note that FERPA does not address the location where education records are maintained. Thus, no distinction is made between a student's permanent file and other categories of files a school may maintain, such as a counselor's file, a disciplinary file, a health file, an administrative file, a teacher's classroom file, the principal's file, etc. Rather, if a record is

directly related to a student and maintained by an educational agency or institution, it is a part of the student's education records to which the parent has the right to inspect and review.

Under FERPA, the term "education records" does not include records that are kept in the sole possession of the maker of the record, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. 34 CFR § 99.3. However, please note that this exception to the definition of education records is strictly construed to mean "memory jogger" type information. For example, this exception includes information that a school official uses as a personal reference tool and, thus, is generally maintained by the school official unbeknownst to other individuals. This exception does not include records that are created in conjunction with a student.

While a school is not generally required by FERPA to maintain particular education records, it is required to provide FERPA's privacy protections to those education records that it selects to maintain. This includes permitting parents to inspect and review their children's education records. A school may destroy education records without notice to the parent unless there is an outstanding request by the parent to inspect and review such education records.

Within two weeks of your receipt of this letter, the District should contact the Parent and appropriate school officials to determine whether it maintains education records to which the Parent has not been provided the opportunity to inspect and review, and set up an appointment for the Parent to inspect and review any such education records. The District should also take this opportunity to inform appropriate officials in the District of the FERPA definitions of education records and sole possession records, and the requirement for providing parents with access to their children's education records within 45 days of receipt a request.

I trust that the above information is helpful in explaining the requirements of FERPA as it relates to the Parent's concern. If you have any questions regarding the issues in this matter, you may contact Mr. Ricky Norment of my staff at 202-260-3887.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

(b)(6)

MAR 03 2010

Dear (b)(6)

This is in response to your September 28, 2009, letter to this Office in which you express concern about the (b)(6) (District) complying with your requests for access to all of the education records it maintains regarding your son, (b)(6) (Student), as required by the Family Educational Rights and Privacy Act (FERPA). This Office administers FERPA which addresses issues that pertain to education records.

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

Under FERPA, a school is required to provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. However, a school is not generally required to maintain particular education records or education records that contain specific information. Also, a school may destroy education records without notice to the parent unless there is an outstanding request by the parent to inspect and review such education records. A school is required to provide certain privacy protections to the education records that the school selects to maintain.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides schools with technical assistance to ensure they are in compliance with or come into compliance with FERPA. Enclosed for your information is a copy of our letter of technical assistance to the District.

There are some additional requirements with regard to the education records of students who receive special education services under Part B of the Individuals with Disabilities Education Act (Part B). Although Part B is a Federal law, it is administered by the States. Enclosed is a copy of information regarding the organization responsible for administering Part B in your State should you wish to contact them.

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,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

Dr. Joseph C. Rallo
President
Angelo State University
ASU Station #1107
San Angelo, Texas 76909

MAR 03 2010

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

Dear Dr. Rallo:

This is to inform you of the finding in the complaint filed against Angelo State University (University) by (b)(6) (Student). The Student alleged that the University violated the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from his education record to a third party without his prior written consent. Specifically, the Student alleged that the University violated FERPA when (b)(6) an instructor at the University, disclosed information from his education records to (b)(6), whom the Student stated is not an official with the University. The Student had provided the University with consent for the University to communicate with his mother, (b)(6). In an August 4, 2007, letter to this Office, the Student states:

... On May 15, 2007, my mother opened her e-mail inbox and noticed an e-mail that had erroneously been sent to her by one (b)(6) (b)(6) e-mail was a reply to [an e-mail to him from] (b)(6) my spring 2007 instructor for Radio-Television News Journalism 3363-010 ... It was obvious that the e-mail response was intended for (b)(6) because it was addressed to her. It was attached to an e-mail sent by (b)(6) to (b)(6) in which (b)(6) disclosed my full name ... the fact that I was a student in her class, and that I was failing her class [,] as well as information regarding a private meeting between myself, my parents, and the head of the Communications, Drama, and Journalism department. The wording of the e-mail also indicated that (b)(6) had discussed me previously with (b)(6)

... Neither I nor my mother knows who (b)(6) is, but we are confident that he is not associated with [the University] in any way.

In (b)(6) e-mail to (b)(6), she states:

Remember my student [Student] -- the one who is no longer on the radio and who is failing my class? His mother came up to the University and cried and his Dad came too? I received this email this morning.

In addition to disclosing that the Student was in her class, was failing the class, that a meeting with the parents had been held, and that the Student is no longer on the radio program, the Student alleges that (b)(6) disclosed all of the information in his mother's e-mail to (b)(6).

By letter dated May 29, 2008, this Office informed you of the Student's allegation and asked that the University provide a written response. Mr. Joe Munoz, assistant to the president of the University, responded by letter dated June 27, 2008. In the University's response, Mr. Munoz states:

... A meeting was held with (b)(6) to discuss allegations made by [the Student]. (b)(6) agreed she shared the correspondence with (b)(6) who is not an official with the University. (b)(6) expressed sincere regret, embarrassment and stated that this was an isolated incident she would never repeat.

(b)(6) was counseled as to the implications, importance and ramifications of any FERPA violations and insisted she completely understood the reasoning and magnitude of the FERPA regulation.

In addition: The University, recognizing the purpose and importance of complying with FERPA guidelines, will add FERPA awareness to the scheduled employee training which is set to begin September 2008.

The training will include discussions pertaining to the FERPA regulations and copies of these guidelines will be made available to each employee attending. The specific presentation for the training is currently being developed by the Department of Human Resources with the strong support and endorsement of Dr. Joseph C. Rallo . . . with emphasis that FERPA violations are not the usual practice of this University. . . .

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." 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. There are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records. However, none of these exceptions apply to this situation.

Based on the University's response confirming the accuracy of the Student's allegation, this Office finds that the University violated FERPA. Also, based on assurances in the University's response, that appropriate officials will be apprised of the requirements of FERPA through in-service training, this Office is closing the investigation of this complaint. The Student will be informed of our finding and closure of this investigation by copy of this letter.

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc: Student

(b)(6)

MAR 02 2010

Dear (b)(6)

This is in response to your recent letter to this Office. We administer the Family Educational Rights and Privacy Act (FERPA), which addresses issues that pertain to education records. 20 U.S.C. §1232g; 34 CFR Part 99.

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 some control over the disclosure of information from the records. When a student reaches 18 years of age or attends a postsecondary institution, he or she becomes an "eligible student" and all rights under FERPA transfer from the parent to the student. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a fact sheet on FERPA.

Based on the information in your letter, it does not appear that your concerns are addressed by FERPA. Therefore, this Office does not have the authority to assist you. However, if, after reading the enclosed information, you believe you have a concern that is addressed by FERPA, you may contact this Office again by sending a letter at the address noted on the fact sheet. We will review the information you submit and take any appropriate action.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

MAR 02 2010

Dear (b)(6)

This is in regard to your October 3, 2008, letter to this Office and recent call in which you allege that (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA). FERPA is a Federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. Education records are those records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for the agency or institution.

Specifically, you allege that on March 23, 2006, (b)(6) president of the teachers' union, gained access to your daughter (b)(6) file. You discovered that this disclosure occurred on July 2008. In order for this Office to consider this allegation please state how (b)(6) got access; describe the nature of the education records she gained access to; and explain how you learned of this alleged disclosure.

You also allege that in the school year 2005-2006 (b)(6) "shared (b)(6) services in front of (b)(6) peers." FERPA pertains to the disclosure of information from student education records. Therefore in order to consider this allegation, please first confirm that (b)(6) is the speech therapist. Additionally, state the specific education records that (b)(6) allegedly disclosed to (b)(6) peers, the names of those peers and an explanation of how the disclosures were made. You state that you learned of this alleged disclosure in July 2008. Accordingly, please explain how you learned of the alleged disclosure.

You also allege that, during the school year 2007-2008, "a record of (b)(6) date and time, of (b)(6) needing to go to guidance to see (b)(6) was left on (b)(6) homeroom desk for all of the students to see." Please confirm that (b)(6) is a social worker for the school. Additionally, who placed the record on (b)(6) desk, who is (b)(6) homeroom teacher, and when was this record placed on her desk? Additionally, how did you learn that other students could see the record? We will review the information you provide relative to the above allegations and take any necessary action.

The other issues you raise relative to records maintenance are not related to FERPA and as such cannot be addressed by this Office. As for your statement that information in your daughter's education records is misleading, please note the following: FERPA affords parents the opportunity to seek amendment of their children's education records which they believe contain information that is inaccurate or misleading. While a school is not required to amend a record in accordance with a parent's request, it is required to consider the request for amendment of an education record, to inform the parent of its decision, and if the request is denied, to advise the parent of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the parent has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

MAR 02 2010

Dear

(b)(6)

This is in regard to your February 15, 2010, letter to this Office in which you allege that the finding made by this Office of no violation in your complaint number (b)(6) against the Panama Central School District (District) under the Family Educational Rights and Privacy Act (FERPA) was based on wrong information. Your complaint related to an improper February 2, 2009, disclosure from your daughter's education records by the District, and in this regard you state:

[W]hat you didn't get is the **document referenced wasn't even in place at the time of the offence!** The document for "the current year was signed by me, and my husband, dated 10/6/09 . . . BUT the offensive email, that was my documented proof, was back in FEBRUARY!"[Emphasis provided.]

Based on the consent form provided by the District, you signed it on January 14, 2009 (copy enclosed). The alleged improper disclosure occurred the following month, on February 2, 2009, and we found that the January 14 consent that you signed permitted the District to make the February 2 disclosure. You and your husband may have signed another consent, the one you reference above, on October 6, 2009, but that is not germane to your complaint since it was signed after the February 2 disclosure took place.

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

APR 28 2011

Dear

(b)(6)

This is to respond to your October 28, 2010, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6) (b)(6) (School) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. This letter also confirms our telephone conversation of February 2, 2010. FPCO administers FERPA, which affords parents and eligible students certain rights pertaining to education records.

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

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

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

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

- _____ **FERPA's access provision.** The school did not provide you access to your child's or your education records within 45 days of your request.
- ___X___ **FERPA's disclosure provision.** The school improperly disclosed information from your child's or your education records.

_____ **FERPA's amendment provision.** The school has refused to amend your child's or your education records per your request and not provided you with an opportunity for a hearing on the disputed education records.

Based on the information you provided FPCO, we are unable to investigate your allegation because it does not provide specific allegations of fact which give the Office reasonable cause to believe that a FERPA violation occurred. In order for the Office to initiate an investigation, a complaint must contain such specific allegations.

As discussed in our telephone conversation of February 2, 2011, FERPA does not protect the *confidentiality* of information in general. Rather, FERPA prohibits the improper disclosure of information derived from education records. Therefore, information that is based on opinion or hearsay and not specifically contained in education records would not be protected under FERPA. It appears that the information disclosed in the letter to the editor was based on opinion and hearsay, not information derived from your son's education records. As such, there is no basis on which to initiate an investigation into this allegation.

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

Sincerely,

Kathleen M. Wolan
Program Analyst
Family Policy Compliance Office

(b)(6)

APR 28 2011

Dear

(b)(6)

We are writing to confirm our March 2, 2011, telephone conversation informing you that the Family Policy Compliance Office (b)(6) is not initiating an investigation with regard to a complaint you filed with us on October 13, 2009, and April 9, 2010. In those complaints you alleged that (b)(6) (School) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

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

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

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>. You may review the FERPA Guidance Document for Parents on our website at <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/parents.html>.

The Office's enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation, and requesting a written response from the district concerning the allegation. If we then

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

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

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

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

Sincerely,

Kathleen M. Wolan
Program Analyst
Family Policy Compliance Office

APR 28 2011

(b)(6)

(b)(6)

Dear

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

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

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

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

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

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

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

Sections 99.20 – 99.22 of the FERPA regulations describe the process for requesting amendment of education records. Generally, parents or eligible students have the right to request that a school correct education records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a hearing. After the hearing, if the school decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information. The school may appoint any individual to conduct the hearing that does not have a direct interest in the outcome of the hearing.

However, a school is not required to follow the requirements of the FERPA amendment process when the item is not amendable under FERPA. For example, a school is not required to afford you a hearing to seek to amend an opinion that a school official has written about you or your child or to remove documents which may contain such opinions.

With respect to the facts alleged, it is not clear that the amendment of the education record you seek is protected by FERPA. The FERPA amendment procedure may be used to challenge facts that are inaccurately recorded. However, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about a student. FERPA requires only that schools conform to fair recordkeeping practices. It does not provide a means to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. The FERPA right to seek amendment of education records which contain inaccurate information cannot be used to challenge a grade or an individual's opinion, unless that information has been inaccurately recorded.

Page 3

(b)(6)

Also, it appears that you believe there is a "conflict of interest" because the District has appointed as the hearing office a special education administrator from another district. An individual is not disqualified from appointment as a hearing office because of familiarity with officials of the District.

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

Sincerely,

Kathleen M. Wolan
Program Analyst
Family Policy Compliance Office

Enclosure

(b)(6)

APR 28 2011

Dear

(b)(6)

This is to respond to your August 10, 2010, complaint form sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that (b)(6) University (University) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. This also confirms our telephone conversation of December 8, 2010, that the Office would not initiate an investigation of your allegations. FPCO administers FERPA, which affords parents and eligible students certain rights pertaining to education records.

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

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

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

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

- ☐ **FERPA's access provision.** The school did not provide you access to your child's or your education records within 45 days of your request.
- ☒ **FERPA's disclosure provision.** The school improperly disclosed information from your child's or your education records.

- _____ **FERPA's amendment provision.** The school has refused to amend your child's or your education records per your request and not provided you with an opportunity for a hearing on the disputed education records.

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

- _____ Your complaint is untimely. A complaint must be received by FPCO within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation.
- _____ While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist.
- X FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See page 3 of the guidance document on our website.)
- _____ Requests to modify a grade, opinions in education records, and other substantive decisions are not subject to FERPA's amendment provision.

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

Sincerely,

Kathleen M. Wolan
Program Analyst
Family Policy Compliance Office

(b)(6)

APR 28 2011

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on March 7, 2011. In that complaint, you are alleging that (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. Your son, (b)(6) (Student) attends Springdale Elementary School (School) in the District.

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

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

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

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

against an individual school official as the result of a FERPA violation. We close the investigation when the district has completed the required corrective actions.

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

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

One such exception permits an institution to disclose information that has been appropriately designated as directory information. "Directory information" is defined as information included in the education records of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information includes, but is not limited to, a student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate, full-time or part-time), 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.

An school may disclose directory information to a third party without consent if it has given public notice of the types of information it has designated as directory information, a parent's right to refuse to let the school designate any or all of that information about the student as directory information, and the period of time within which a parent has to notify the school in writing that he or she does not want any or all those types of information about the student designated as directory information. A school is required to provide its notice regarding directory information annually to parents of students in attendance.

Specifically, it appears you are alleging that the District violated FERPA when it disclosed the Student's school "registration form" to the (b)(6) Police Department without your prior written consent. If you wish this Office to further consider your allegation, we need to receive additional information from you. Please inform us of the information directly related to the student on the registration form that was disclosed to the (b)(6) Police Department. Also, please inform us of the information designated by the District as directory information and whether you permitted the District to designate such information regarding the Student as

directory information. In other words, does the registration form include information directly related to the Student that is not directory information? We will review the information you submit and take any appropriate action.

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

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Dr. Jack Magruder
President
A. T. Stillwell University
5850 East Still Circle
Mesa, Arizona 85206

APR 26 2011

Dear Dr. Magruder:

This Office is responsible for administration of the Family Educational Rights and Privacy Act (FERPA), which protects the privacy interests of parents and eligible students in students' education records. See 20 U.S.C. §1232g and 34 CFR part 99. Under that authority we investigate, process, and review complaints and violations and provide technical assistance to ensure compliance with all FERPA requirements. We are responding to a January 26, 2009, letter from Ms. Stephanie DeLaney, registrar at A. T. Stilwell University (University), in which she stated that education records were improperly disclosed on January 13, 2009, by staff at the University. Specifically, she stated that an unnamed employee of the Information Technologies Services department forwarded emails directly related to students to incorrect email accounts. She stated that although the University could not determine what particular student information was disclosed, the University nonetheless treated this event as an improper disclosure of education records that appeared to have involved approximately 198 students. She also provided information regarding the specific steps that the University took to address this and future matters regarding compliance with FERPA.

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

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

The FERPA Safeguarding Recommendations recognize that no system for maintaining and transmitting education records, whether in paper or electronic form, can be guaranteed safe from every hacker and thief, technological failure, violation of administrative rules, and other causes of unauthorized access and disclosure. Although FERPA does not dictate requirements for safeguarding education records, the Department encourages the holders of personally identifiable information to consider actions that mitigate the risk and are reasonably calculated to protect such information. Of course, an educational agency or institution may use any reasonable method, combination of methods, or technologies, taking into consideration the size, complexity, and resources available to the institution; the context of the information; the type of information to be protected (such as SSNs or directory information); and methods used by other institutions in similar circumstances. The greater the harm that would result from unauthorized access or disclosure and the greater the likelihood that unauthorized access or disclosure will be attempted, the more protections an agency or institution should consider using to ensure that its methods are reasonable.

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

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

- Report the incident to law enforcement authorities.
- Determine exactly what information was compromised, i.e., names, addresses, SSNs, ID numbers, credit card numbers, grades, and the like.
- Take steps immediately to retrieve data and prevent any further disclosures.
- Identify all affected records and students.
- Determine how the incident occurred, including which school officials had control of and responsibility for the information that was compromised.

- Determine whether institutional policies and procedures were breached, including organizational requirements governing access (user names, passwords, PINS, etc.); storage; transmission; and destruction of information from education records.
- Determine whether the incident occurred because of a lack of monitoring and oversight.
- Conduct a risk assessment and identify appropriate physical, technological, and administrative measures to prevent similar incidents in the future.
- Notify students that the Department's Office of Inspector General maintains a website describing steps students may take if they suspect they are a victim of identity theft at <http://www.ed.gov/about/offices/list/oig/misused/idtheft.html>; and <http://www.ed.gov/about/offices/list/oig/misused/victim.html>.

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

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc: Ms. Stephanie DeLaney

(b)(6)

APR 26 2011

Dear (b)(6)

This is in response to your November 1, 2010, letter to this office in which you request information relating to the Family Educational Rights and Privacy Act (FERPA). Specifically, you ask whether a student's test booklet, which includes the student's answers and name, is an education record protected under FERPA. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. When a student reaches the age of 18 or attends an institution of postsecondary education, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the student. The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Accordingly, a test booklet which includes a student's name and answers is an education record subject to FERPA's protections. Enclosed is a copy of a FERPA guidance document for parents. Additionally, information regarding FERPA is available on this office's website at:

<http://www2.ed.gov/policy/gen/guid/fpco/index.html>.

Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is required to provide the parent with copies of education records or make other arrangements when a failure to do so would effectively prevent the parent or the student from obtaining access to the education records. A case in point would be a situation in which the parent does not live within commuting distance of the school. In circumstances when a parent lives within commuting distance to the school or school district, the school is required only to provide the parent with an opportunity to inspect and review their child's education records, although it is permitted to provide them with copies. If a parent does not live within commuting distance, the school may comply with FERPA by providing the parent with copies or make other arrangements for the parent to inspect and review their child's education records. For example, the school could make arrangements to allow the parent to inspect and review their child's education records at a locale that is within commuting distance to the parent.

Also, it appears that some of the issues you raise may be addressed under the Individuals With Disabilities Education Act (IDEA), Part B, which, although a Federal law, is administered by the States. The contact information for your State is as follows:

Page 2-

(b)(6)

Ms. Mary Watson
Director
Exceptional Children Division
North Carolina Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-6356
Telephone: (919) 807-3969

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

APR 21 2011

Dear

(b)(6)

This is in response to your March 3, 2011, complaint form to this Office in which it appears you are alleging that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it did not provide you access to information in the education records of your children, (b)(6) Students), in response to your request. This Office administers FERPA which addresses issues that pertain to education records.

As you know, FERPA is a Federal law that gives parents the right to have access to their children's education records unless there is a court order or State law that specifically provides to the contrary. Also, when a student turns 18 years of age or attends a postsecondary institution, the student becomes an "eligible student," and all rights under FERPA transfer from the parent to the student. 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. As a matter of note, if an elementary or secondary school maintains records that contain information regarding a minor student's mental health, such records are education records subject to the privacy protections of FERPA. Enclosed for your information is a FERPA guidance document.

Under FERPA, a school is required to provide a parent with an opportunity to inspect and review his or her minor child's education records within 45 days of the receipt of a request. A school is not required to provide a parent with copies of education records unless a failure to do so would effectively prevent the parent from obtaining access to the records. A case in point would be a situation in which the parent does not live within commuting distance of the student's school. Based on the information in your letter, it appears that you live within commuting distance of the District. Therefore, the District is not required to provide you with copies of the Students' education records. Rather, it is required to provide you with an opportunity to inspect and review the records. Although, this does not seem to currently be at issue between you and the District, it is important to be aware of this distinction.

Under FERPA, a school is not required to comply with a standing request from a parent for access to education records. In other words, FERPA would not generally require a school to automatically provide a parent with access to education records as they become available. Rather, FERPA requires a school to comply with each individual request by

a parent for access to education records. Also, a school is not required by FERPA to provide a parent with information that is not maintained or to create education records in response to a parent's request. Accordingly, a school is not required to provide a parent with information on his or she child's progress in a subject unless such information already exists in the form of an education record.

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. For example, based on the information in your complaint form, it appears that the Students are under 18 years of age, and you state that there is no court order or State law specifically restricting your rights under FERPA. However, enclosed with your complaint form to this Office are documents (copies enclosed) in which the Students have provided the District with written consent for disclosure of information from their education records to you? Under FERPA, the District would generally be required to comply with your request for access to the Student's education records. Thus, under normal circumstances, there would be no need for the Students to provide the District with written consent for disclosures of education records to you. **Therefore, to the best of your knowledge, please explain to us why the Students provided the District with written consent for disclosure of their education records to you. For example, did the District require that the Students provide their written consent?**

Along with your complaint form, you also enclosed the following:

--A November 4, 2010, letter from (b)(6) assistant superintendent for student services in the District, to you (copy enclosed) in which she states she has enclosed education records requested by you.

--A January 25, 2011, letter from you to (b)(6) (copy enclosed) requesting access to the Students' education records.

--A February 15, 2011, letter from (b)(6) to you (copy enclosed) stating that you have already been provided access to all of the Students' education records, except the education records that include information regarding the Students' mental health. She states that the Students have revoked their consent for the District to provide you access to these education records.

Thus, it appears you are alleging that the District violated FERPA when it failed to provide you access to your children's education records requested in your January 25, 2011, letter to the District. **Please verify that we have accurately stated your allegation?**

In (b)(6) February 15 letter, she states that she has not provided you with access to education records that include information regarding the Students' mental health. In addition to these mental health-related education records, are there other education records of the Students which you believe were encompassed in your January 25 request to which the District has not provided you access? **If so, please provide us with a list of some of these education records.** For example:

--Disciplinary Records. My child received three days of detention for an altercation with another student. I am seeking a copy of my child's notice of detention and any other education records associated with the school's decision to give my child detention.

Please provide us with the requested information within two weeks of your receipt of this letter. We will review the information you submit and take any appropriate action.

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

APR 13 2011

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on June 10, 2010. In that complaint, you are alleging that (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C.

§ 1232g. You allege that the District violated FERPA when it failed to provide you access to all of the education records of your son, (b)(6) Student), that it maintains in response to your requests. In addition, you express concerns regarding amending the Student's education records

You also raise concerns regarding special education services received by the Student and possible violations of the student's civil rights. Enclosed is contact information for organizations that may be able to address your concerns in these areas. Finally, you raise concerns regarding several issues that are not addressed by FERPA as you have raised them, including classroom placement for the Student and disciplinary action taken against the Student. These issues are not addressed by FERPA and will not be discussed in this letter.

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

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

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

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

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

The provisions of 34 CFR Part 99, Subpart B detail the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request. If you wish this Office to further consider your allegation regarding access to the Student's education records, we need to receive additional information from you.

Specifically it appears you are alleging that the District failed to provide you access to all of the Student's education records in response to your April 20 and June 9, 2010, requests to (b)(6) principal of (b)(6) (School), and (b)(6) superintendent of the District. You state that the District did not provide you with access to "incident reports, Student Behavior Referral documents and other teachers' notes about [the Student]." Please verify whether we have accurately stated your allegation.

Enclosed with your letter to this Office, is a copy of a handwritten note by (b)(6) in which he states, "I cannot give you [the Student's] CSE file, however, you can request it from (b)(6) (b)(6). Please inform us whether you believe that the remainder of the Student's education records to which you are seeking access could be maintained by (b)(6) and whether you contacted him as directed by (b)(6). We will review the information you submit and take any appropriate action.

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

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

As indicated above, the focus of the FERPA amendment procedure is to permit a parent to seek to amend inaccurately recorded information in a student's education records. You may not generally seek to amend information because you disagree with the information. It must be inaccurately recorded. Also, a school would not be required to respond to a request by a parent to amend information that is not amendable under FERPA, such as a grade, an individual's opinion, or a substantive decision made about a student by the school.

If you believe there is inaccurately recorded information in the Student's education records, you should write to the appropriate official in the District and request amendment of the inaccurately recorded information in the Student's education records. Along with your request, you must include evidence to support your assertion that the information is inaccurately recorded. If the District fails to amend the information as requested, or offer you the opportunity for a hearing on the matter, you may contact this Office. At such time, please provide us with a dated copy of your request to the District along with the evidence you submitted, any response from the District, and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

age 4 -

(b)(6)

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

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

Sincerely,

Ricky Norment
Program Analyst
Family Policy Compliance Office

Enclosures

Dr. J. Bernard Machen
President
University of Florida
226 Tigert Hall
P.O. Box 113150
Gainesville, Florida 32611

APR 13 2011

Dear Dr. Machen:

This is in response to an allegation against the University of Florida submitted to this Office by (b)(6) (Student), a student in the Neonatal Nurse Practitioner Program at the University. The Student alleges that the University violated the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from other students' education records to her absent those students' written consent. This Office administers FERPA, which addresses issues that pertain to education records.

Specifically, the Student alleges that (b)(6) director of the Neonatal Nurse Practitioner Program at the University, violated FERPA when (b)(6) disclosed to the Student information from other students' education records. Apparently, (b)(6) disclosed to the Student information from two other students' "clinical logs." Enclosed for your review is a copy of one of the students' clinical log.

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. 20 U.S.C. 1232g; 34 CFR Part 99. Enclosed for your information is a copy of the FERPA regulations which may also be viewed at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>.

FERPA vests the rights it affords in the parents of minor students and in eligible students (as those terms are defined in 34 CFR §99.3). The statute does not provide for these rights to be vested in a third party who has not suffered an alleged violation. Thus, we require that a parent or eligible student have "standing," i.e., have suffered an alleged violation in order to file a complaint under FERPA. The Student does not have standing relative to her allegation.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides educational agencies and institutions with technical assistance to ensure they are in compliance or come into compliance with FERPA. This letter is written as technical assistance to the University.

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. CFR § 99.3 "Education records." The information from the students' clinical logs would meet the definition of education records. 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 Student.

Based on the evidence provided by the Student, it appears that the University made the alleged disclosure. If this is accurate, the University should take this opportunity to remind all appropriate officials, including (b)(6) of FERPA's general written consent requirement for disclosure of information from student education records. The University may also want to caution appropriate officials to review procedures for verifying e-mails to ensure they do not include unintended information or attachments that would meet the definition of student education records. If you or your staff want 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.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

cc: Student

(b)(6)

APR 13 2011

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint form received in this Office on July 12, 2010. In that complaint, you are alleging that the (b)(6) (University) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

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

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

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

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

(b)(6)

requirements at issue in the complaint. There is no basis under FERPA to require that a college take punitive or disciplinary action against an individual as the result of a FERPA violation. This Office closes its investigation when the college has completed the required corrective actions.

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

Specifically, it appears you are alleging that the University violated FERPA when (b)(6) (b)(6) director of the (b)(6) Program at the University, disclosed information from your education records regarding your academic situation to (b)(6) (b)(6) a neonatal nurse practitioner (NNP) in the Division of (b)(6) University. You provided us with several e-mails from (b)(6) to you in which she discusses your academic situation. These e-mails were also sent to (b)(6)

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

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

A school may disclose education records without consent to a "school official" under this exception only if the school has first determined that the official has a "legitimate educational interest" in obtaining access to the information for the school. A school that allows school officials to obtain access to education records under this exception must include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interests." 34 CFR Sec. 99.7. Generally, a school official has a legitimate educational interest if he or she needs access to information in an education record to carry out his or her official responsibilities.

(b)(6)

Based on the information in your letter, it appears that (b)(6) is one of the neonatal nurse practitioners on the team that oversees the clinical work activities of nursing students in the neonatal nurse practitioners program at the University. Based further on the information in your letter, it appears your academic situation is related to your clinical work activities in the neonatal nurse practitioners program. While you do not specifically state the relationship between you and (b)(6), it appears that (b)(6) would generally meet the criteria for a school official with a legitimate educational interest in obtaining access to information in your education records.

You also allege that (b)(6) violated FERPA when she sent you e-mails including information regarding other students' "academic activities." However, FERPA vests the rights it affords in the parents of minor students and in eligible students (as defined in 34 CFR §99.3). The statute does not provide for these rights to be vested in a third party who has not suffered an alleged violation. Thus, we require that a parent or eligible students have "standing," i.e., have suffered an alleged violation in order to file a complaint under FERPA. You do not have standing with regard to this allegation.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides educational agencies and institutions with technical assistance to ensure they are in compliance or come into compliance with FERPA. Attached is a copy of our letter of technical assistance to the University regarding your allegations concerning disclosure of education records.

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures