

(b)(6)

(b)(6)

APR 8 2011

Dear

(b)(6)

This is in response to your February 8, 2011, letter in which you allege that the Assistant Superintendent of Student Services for (b)(6) (District), (b)(6) (b)(6) has on numerous occasions corresponded with a member of the National Institute of Health, (b)(6) regarding disabled children in the county. This Office administers the Family Educational Rights and Privacy Act (FERPA). Enclosed is a guidance document for your reference.

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

FERPA vests the rights it affords with the parent or eligible student. The statute does not provide for these rights to be vested in a third party that has not suffered an alleged violation. Thus, an individual must have "standing," that is, have suffered an alleged violation, in order to file a complaint under FERPA. Additionally, the FERPA regulations provide that a person may file a written complaint with the Family Policy Compliance Office regarding an alleged violation of the law. If such complaints contain specific, timely allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred, that office will initiate an investigation of the alleged violation by notifying the school of the allegation and providing the school an opportunity to submit a written response. The complaint is filed with the superintendent of schools, not individual employees, and the complaint is closed once voluntary compliance is achieved. A complaint 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.

In order to further consider your allegation, you may complete the enclosed complaint form and return it to this Office. At that time, we need to receive the date on which your child's education records were disclosed by (b)(6) and the specific nature of the records that

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(b)(6)

were disclosed. You should provide any supporting documentation you have to support your allegation. Also, please provide the name and address of the Superintendent of the District.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

Ms. Rachel B. Hitch
Schwartz & Shaw, P.L.L.C.
Attorneys at Law
Commerce Building, Suite 1000
19 West Hargett Street
P.O. Box 2350
Raleigh, North Carolina 27602

APR 8 2011

Dear Ms. Hitch:

This is in response to your August 26, 2010, letter in which you inquire about the Family Educational Rights and Privacy Act (FERPA) as it relates to the records of "prospective" students. This Office is responsible for administration of 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.

In your letter, you ask for confirmation of whether: 1) college applications submitted by prospective students who do not enroll at the institution are "education records" under FERPA; 2) FERPA prevents the disclosure of these applications that are not considered education records; 3) unadmitted applicants have no right of access to the applications under FERPA, and; 4) state law would govern the confidentiality of that information.

Postsecondary institutions subject to FERPA may not have a policy or practice of permitting the disclosure of "education records, or personally identifiable information contained therein" without the written consent of eligible students. 20 U.S.C. § 1232g(b)(1) and (b)(2); 34 CFR § 99.30(a). (An "eligible student" is one who is at least 18 years of age or attends a postsecondary institution. See 34 CFR § 99.3.) Under FERPA, "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."

"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." See 34 CFR § 99.3.

It is also important to understand the definition of “student” in this context of your questions. In the statute, the term “student”

includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

20 U.S.C. § 1232g(a)(6). The FERPA regulations define the term “student” in this manner:

“Student,” except as otherwise specifically provided in this part, means any individual who is or has been *in attendance* at an educational agency or institution and regarding whom the agency or institution maintains education records.”

34 CFR § 99.3 (“Student”). Emphasis added.

Neither the statute nor the regulations offer guidance which would provide further clarification as to when a student would be considered “in attendance” for the purposes of FERPA.

Historically, the Department has left it to each institution to determine when a student is considered to be “in attendance” at that particular institution. However, such a determination should be justified by some reasonable basis of fact, and the Department reserves the right ultimately to conclude whether, as a matter of Federal law, the facts on which the determination is based are relevant and reasonable and that such determination is applied consistently. Generally, a student should be considered “in attendance” no later than the first day of class.

Accordingly, applications of individuals who are not attending an educational agency or institution are generally not “education records” because the individuals are not “students” at the educational agency or institution. However, please note that an institution that receives information (such as a transcript) on an applicant from a high school or from another postsecondary institution is required to protect that information and may not redisclose the information except in accordance with § 99.33 of the FERPA regulations.

Moreover, you are correct that, with respect to FERPA, an unadmitted applicant has no right to access his or her application materials maintained by the prospective college. In that regard, State law would govern the confidentiality of that information.

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

APR 6 2011

(b)(6)

Dear

(b)(6)

This is to respond to your June 20, 2010, letter to this office in which you allege that (b)(6) (College) has violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). You appear to allege that officials of the College's ROTC program disclosed your education records to other students, who are third parties, without your prior consent. This Office administers FERPA, which addresses issues pertaining to education records.

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

Under FERPA, a school may not generally disclose personally identifiable information from the education records of a student to a third party unless the student has provided written consent. Based on information in your letter to this office, it appears that you gave written consent for (b) ROTC officials to access your education records. In such an instance, FERPA would permit the College to nonconsensually disclose your education records to your school's ROTC program officials. Accordingly, while it appears that the College may be permitted to disclose your education records to ROTC representatives, you have not provided sufficient information for this office to determine whether the scope of the consent was sufficient for the ROTC officials to redisclose your education records to third parties. Furthermore, it is not entirely clear that the information disclosed by the ROTC representative came from your education records.

Please note that FERPA does not protect the confidentiality of information in general; rather FERPA prohibits the improper disclosure of information derived from education records. Therefore, if a school official disclosed information about a student of the official's personal knowledge, observation, or hearsay, then that information would not be protected under FERPA.

In order for this office to further consider any allegation, you need to provide this office with the following: a completed copy of the enclosed complaint form, which is signed and dated; your specific allegation; the name(s) of the school officials whom you allege made any disclosure

from your education records; the specific information disclosed from your education records and dates of the alleged disclosure(s); a copy of a signed consent form which you signed which permits the school to consent to access your records; and names of the third parties to whom your information was improperly disclosed.

You may wish to obtain a signed and dated statement from any or all of the students to whom any disclosure was made which describes the specific education records disclosed. Please provide the required information within 2 weeks after receiving this letter. Once this Office receives the required information, we will consider the information you provide and take any appropriate action.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

APR 5 2011

Dear

(b)(6)

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

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

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

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

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

- ☐ **FERPA's access provision.** The school did not provide you access to your child's or your education records within 45 days of your request.
- ☒ **FERPA's disclosure provision.** The school improperly disclosed information from your child's or your education records.
- ☐ **FERPA's amendment provision.** The school has refused to amend your child's or your education records per your request and not provided you with an opportunity for a hearing on the disputed education records.

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

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

APR 7 2011

(b)(6)

Dear

(b)(6)

This is to respond to your May 17, 2010, letter to this office in which you allege that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when (b)(6) principal at (b)(6) Elementary School in the District, disclosed an email regarding a disciplinary concern of your son to a third party without your prior written consent. This office administers FERPA, which addresses issues pertaining to education records.

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

Under FERPA, a school may not generally disclose personally identifiable information from the education records of a student to a third party unless the student has provided written consent. FERPA specifically exempts from the prior written consent requirement those disclosures of education records that are made to other school officials within the educational agency or institution whom the agency or institution has determined to have a legitimate educational interest. A school official is a person employed by the school or institution such as an administrator, supervisor, teacher, support staff, departmental supervisor, legal counsel, or school board member. A school official generally has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

In your letter to this office, you have not provided sufficient information for this office to determine that a violation of FERPA occurred. In order for this office to further consider your allegation, you need to provide this office with the following: a completed copy of the enclosed complaint form; the title of each of the recipients of (b)(6) May 10, 2010, email and general description of their duties within the District; whether these individuals were school officials in the District. Without receiving such information from you, this office is unable to investigate your allegation. Please provide the needed information within 2 weeks after you receive this response. Once we receive this information, we will take any appropriate action.

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(b)(6)

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

APR 8 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 April 1, 2010. In that complaint, you are alleging that the (b)(6) (District) and (b)(6) (Academy) both violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. Specifically, you are alleging that the District and the Academy failed to comply with your requests for access to your children's education records. At the time of your original allegations, your sons, (b)(6) (Students), attended school in the District, and your son, (b)(6) (Student) attended school at the Academy.

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 two complaint forms.

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 you do not provide specific allegations of fact which give this Office reasonable cause to believe that a FERPA violation occurred. In order for this Office to initiate an investigation, a complaint must contain such specific allegations.

The provisions of 34 CFR Part 99, Subpart B detail the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request. A school is required to provide a parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from obtaining access to the records.

(b)(6)

Public Schools

Originally, you alleged that the District violated your rights under FERPA when it failed to provide you access to the education records of the Students in response to your February 9 and April 20, 2009, requests. As you know, this Office sent a March 9, 2010, letter of technical assistance to the District asking it to look into this matter. We stated that if your allegation was found to be factual, the District should provide you with the education records requested in your February 9 and April 20, 2009, letters. Enclosed for your review are copies of your February 9 and April 20, 2009, letters to the District and our March 9, 2010, letter to the District.

If you want this Office to further consider this allegation, we need to receive additional information from you. Please inform us whether the District provided you with any of the requested education records after receiving our March 9, 2010, letter. If so, inform us which education records the District maintained, after receipt of our March 9, 2010, letter, to which you believe it failed to provide you access and evidence that such education records existed at that time. Also please inform us whether the District made contact with you regarding our request in the March 9, 2010, letter. If so, please inform us of the contact method (letter, telephone, e-mail, etc.) and of any relevant discussion that took place between the District and you regarding access to the requested education records.

(b)(6)

In order to serve you best at this point, however, you should write again to the appropriate official in the District in order to obtain access to the Students' education records. You should send a letter to the District requesting access to the specific education records of the Students to which you are seeking access. It would be helpful if your letter only discussed obtaining access to the Students' education records and not address any other issue you may be having with the District.

If the District fails to provide you access to the requested education records or fails to contact you within 45 days, you may write to this Office. At such time, please provide us with a dated copy of your letter to the District requesting access to education records, any response from the District, and a completed copy of one of the enclosed complaint forms. We will review the information you submit and take any appropriate action.

(b)(6)

Academy

Originally, you alleged that the Academy violated your rights under FERPA when it failed to provide you access to a psychiatrist's "psychological evaluation" report regarding you that you believed the Academy maintained at the time of your November 4, 2008, request for that document. As it turned out, the Academy only maintained a cover letter regarding the report which it had destroyed prior to our March 9, 2010, letter of technical assistance to the District. Thus, we did not advise the Academy to contact you or to provide you with access to any education records in our March 9, 2010, letter to the Academy. Enclosed for your information is a copy of our March 9, 2010, letter to the Academy.

In order to exercise your right to obtain access to any of the Student's education records maintained at the Academy, I suggest you write to the appropriate official at the Academy requesting access to the specific education records to which you are seeking access. It would be helpful if your letter only discussed obtaining access to the Students' education records and not address any other issue you may be having with the Academy.

If the Academy fails to provide you access to the requested education records or fails to contact you within 45 days, you may write to this Office. At such time, please provide us with a dated copy of your letter to the Academy, any response from the Academy, and a completed copy of one of the enclosed complaint forms. We will review the information you submit and take any appropriate action.

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(b)(6)

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

(b)(6)

APR 8 2011

Dear (b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on February 18, 2011. In that complaint, you are alleging that the Yuma School District One (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA). Your son, whom you identify as (b)(6) attends or attended (b)(6) School in the District and received special education services there.

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

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;

- (a) 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
- (b) 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 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.

In your letter to this Office you state:

... This complaint is for release of special education information related to the Office of administrative hearing decision by the school and its attorney to the court without parental or court order. ...

Specifically, it appears you are alleging that the District violated your rights when it disclosed personally identifiable information from your son's education records in a brief submitted to the Superior Court of the State of (b)(6) by (b)(6) and (b)(6), attorneys for the District. The specific statement that you highlight in the brief as a violation of FERPA is as follows:

... [Plaintiff's suggestion that the defendants have failed to defend is] absurd in light of their success in achieving dismissal of the Administrative Review Act claim (in this Court), all constitutional due process claims (in the U.S. District Court), and all special education issues (in the Office of Administrative Hearings).

Based on the information provided in your letter and attachment, it appears the District's brief, at issue, was submitted to the Court in connection with litigation initiated by you against the District.

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. 34 CFR § 99.3 "Education records." Please note that at the elementary and secondary school levels, FERPA does not distinguish between different types of education records, such as academic records, disciplinary records, attendance records, or health or medical records. Rather, if any of these types of records are directly related to a student and maintained by a school, they meet the definition of education records.

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

Regarding such non-consensual disclosures, FERPA specifically provides that if a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself. 34 CFR § 99.31(a)(9)(iii)(B). Please note that there is no requirement for a school to notify a parent of its intention to disclose education records under this exception.

Based on the information provided by you, it appears that the District disclosed its brief to the court in compliance with FERPA. As such, there is no basis for this Office to assist you regarding your concern. 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

(b)(6)

APR 8 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 October 12, 2010. In that complaint, you are alleging that the (b)(6) (School) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. Your son, (b)(6) (Student), attends the School.

In your letter you state that the Student was searched by officials at the School and subsequently expelled from the School. These concerns, as you have raised them, are not addressed by FERPA and will not be discussed in this letter.

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

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

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

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

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

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

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

It appears you are alleging that the School disclosed information from the Student's education records to a third party without your prior written consent. Specifically, it appears you are alleging that the School sent correspondence to your neighbor which included information from the Student's education records.

If you wish this Office to further consider your allegation we need to receive additional information from you. Please complete the enclosed complaint form and include: the date of the alleged disclosure or the date you learned of the alleged disclosure; the specific nature of the information disclosed to your neighbor in the correspondence from the School; and the name or address of your neighbor. If possible, please include a copy of the information that was in the correspondence at issue which is directly related to the Student. We will review the information you submit and take any appropriate action.

The provisions of 34 CFR Part 99, Subpart B detail the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request. A school is not required to provide a parent with copies of education records unless a failure to do so would effectively prevent the parent from obtaining access to the requested records. A case in point would be a situation in which the parent does not

live within commuting distance of the school. Based on the information in your letter, it appears that you live within commuting distance of the School. Therefore, the School is required by FERPA to provide you with an opportunity to inspect and review education records in response to a request. The School would not be required to provide you with copies of education records, though it would be permitted to do so.

In your letter to this Office, you state that you "never received a written statement concerning [the Student's] expulsion." In order to exercise your right to inspect and review information from education records regarding the Student's expulsion, you should write to the appropriate official at the School and request an opportunity to inspect and review records regarding the Student's expulsion. Although it is not required, you may want to send a copy of this letter along with your request.

If the School does not provide you with an opportunity to inspect and review the requested education records, or fails to contact you within 45 days, you may write to this Office. At such time, please provide us with a dated copy of your letter to the School requesting access to the Student's education records, any response from the School, and a completed copy of the enclosed complaint form. 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

Enclosures

(b)(6)

APR 8 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 28, 2010. In that complaint, you are alleging that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. Your son (b)(6) (student) attends school in the District.

You raise a number of concerns that are not addressed by FERPA, as you have raised them, including: the District testing the Student for Autism; placing the Student in a "Develop Mentally Delayed Category"; providing the Student with special education services; and collecting funds under an educational program after the Student has been removed from the program.

With regard to the first three concerns listed above, I have enclosed contact information for the organization responsible for administering Part B in your State. If you have specific evidence regarding your allegation concerning possible fraud and theft, you may want to contact the Department's Office of the Inspector General (OIG). I have enclosed contact information for OIG as well.

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 review is a FERPA guidance document.

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 you do 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 B detail the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request. A school is permitted by FERPA to provide a parent with copies of education records in response to a request by a parent to inspect and review education records. However, if a school selects to provide a parent with copies of education records, the school is required to provide the parent with true and accurate copies of the records. In order for this Office to consider an allegation that a school did not provide a parent with a true and accurate copy of an education record maintained by the school, the parent would have to provide this Office with specific evidence that a record is not a true and accurate copy of the other record -- not simply provide us with conjecture or hearsay.

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

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.

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. A school is not required to respond to a parent's request for amendment of information that is not amendable under FERPA. For example, a school is not required by FERPA to respond to a request by a parent seeking to amend a grade, an opinion, a placement decision, or other substantive decision made by the school about a student.

If you believe there is inaccurately recorded information in the Student's education records, you should send a dated letter to the appropriate official in the District requesting amendment of the specific information in the Student's education records that you believe is inaccurately recorded and provide the school with specific evidence to support your assertion that such information is inaccurate. If the school does not amend the information 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 letter to the District along with your evidence, and any response from the District. We will review the information you submit and take any appropriate action.

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

(b)(6)

APR 8 2011

Dear (b)(6)

This is in response to your October 4, 2009, letter to this Office in which you allege that (b)(6) (District) violated the Family Educational Rights and Privacy Act (FERPA) when it disclosed personally identifiable information from the education records of your son, (b)(6) (Student), to third parties without your prior written consent. This Office administers FERPA which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to have access to their 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 a party acting for the agency or institution.

Under FERPA, a school may not generally disclose personally identifiable information from a minor student's education records to a third party unless the parent has provided written consent. "Personally identifiable information" includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides educational agencies and institutions with technical assistance to help ensure they comply with or come into compliance with FERPA. Enclosed for your information is a copy of our letter of technical assistance to the District.

Page 2

(b)(6)

I apologize for the amount of time it has take us to address your concerns. If you have any questions or concerns regarding our letter to the District, you may contact Mr. Ricky Norment of my staff at 202-260-3887.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

Mrs. June Doe
Superintendent
Dedham Public Schools
100 Whiting Avenue
Dedham, Massachusetts 02026

APR 8 2011

Dear Mrs. Doe:

This is in regard to allegations made to this Office by (b)(6) (Parents) regarding violation of the Family Educational Rights and Privacy Act (FERPA) by (b)(6) (District). Specifically, the Parents allege that the District violated their rights when it disclosed information from the education records of their son (b)(6) (Student), to third parties without their prior written consent.

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 which appear at 34 CFR Part 99 and at our Website as follows: www.ed.gov/policy/gen/guid/fpco/index.html

Under FERPA, the term "education records" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR 99.3 "Education records." A school 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.

"Personally identifiable information" includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. 34 CFR § 99.3 "Personally identifiable information."

There are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records. 34 CFR § 99.31. However, none of FERPA's exceptions appear to apply to the disclosures alleged by the Parents.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides educational agencies and institutions with technical assistance to help ensure they comply with or come into compliance with FERPA. Due to the passage of time since we received the Parents' allegations, we are providing this letter of technical assistance on FERPA in lieu of investigating the parents' concerns.

Allegation A

The Parents allege that on February 9, 2009, a school official in the District improperly disclosed personally identifiable information from the Student's education records to (b)(6).com," a blog run locally by (b)(6). The individual who entered the information in the blog is known as (b)(6). In (b)(6) blog entry, he or she writes in relevant part:

... Recently I've found that one of my nephew's teachers[s], a 6th grade special educator, has been reassigned to home tutor an elected official's child ... during the time at which she was supposed to be in the middle school. This official's child certainly deserves any accommodations ...

The Parents believe that (b)(6) is a school official because the information disclosed in the post is information from the Student's education records, including information from his Individualized Education Plan (IEP). The Parents state that (b)(6) disclosed the fact that the Student received special education services and that he was receiving such services from a middle school official in his home. The Parents allege that even though the Student's name is not disclosed in the blog entry, the information disclosed by (b)(6) is personally identifiable information from the Student's education records because it is linkable to the Student by members of the community. As evidence to support this assertion, the Parents provided this Office with February 10 and March 23, 2009, e-mails from (b)(6) to the Parents regarding the blog entry. Enclosed for your review is a copy of the February 9 blog entry and (b)(6) February 10 and March 23 e-mails.

Allegation B

The Parents allege that (b)(6), a middle school teacher in the District and co-chairman of the Faculty Council, improperly disclosed personally identifiable information from the Student's education records to (b)(6), a

correspondent for (b)(6) newspaper. In (b)(6) March 29, 2009, article, she writes:

... And then "it came to the attention of the Faculty Council in late January that the special-ed teacher was directed to leave the building to provide in-home services to a student," (b)(6) said. "It was brought to my attention that the directive came directly from Superintendent June Doe."

The Parents state that (b)(6) disclosed the fact that the Student received special education services and that he received such services from a middle school official in his home. The Parents state that (b)(6) said she was told the Student's name but did not use it in the article. The Parents allege that even though the Student's name does not appear in the article, the information disclosed by (b)(6) Bolton is personally identifiable information from the Student's education records because it is information that is linkable to the Student by members of the community. As evidence to support their assertion, the Parents state that (b)(6) contacted them "at home for quotes and information" with regard to the article. Enclosed for your information is a copy of (b)(6) March 29 article.

Allegation C

The Parents allege that you improperly disclosed personally identifiable information from the Student's education records in a 40-minute public interview you gave on March 30, 2009. As evidence to support their allegation, they provided us with April 1 and 2, 2009, articles by (b)(6) a staff writer for the (b)(6), in which (b)(6) recounts information from your interview.

... "All education services were in place for all students while the tutoring occurred," Doe said ...

Doe said she supported the decision by (b)(6), interim special education director, that home tutoring was appropriate for an unnamed student during the week before Christmas vacation, and in January until about January 22.

Doe said one special education teacher tutored for about nine days, before a second teacher took over. The tutoring took place between 9 and 11 a.m. most days per week ...

Doe replied: "I would say that through the information that seems to be in the community, that the identity of the child and the family is pretty widely known, and that is really extremely saddening to me as a professional person because their confidentiality has been violated. ..."

The Parents state that you disclosed the fact that the Student received special education services and that he received such services from a middle school official in his home, in addition to other details such as the dates and times of the tutoring. The Parents allege that even though you did not disclose the Student's name during your interview, you disclosed personally identifiable information from the Student's education records because it is information that is linkable to the Student by members of the community. As evidence to support their assertion, the Parents point to your comment at the March 30 interview (as recounted in the April 1 article) which is our fourth and last quote above.

If the information in these allegations is accurate, we suggest you take this opportunity to review the FERPA definition of "personally identifiable information" and the general FERPA requirement regarding written consent for disclosure of personally identifiable information from student education records as it relates to the matters in the Parent's allegations, and share this information with (b)(6) and other appropriate officials in the District. If you or your staff have any question regarding the information in this letter or wish to discuss this matter further, you may contact Mr. Ricky Norment of my staff at 202-260-3887.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

cc: Parents

JUN 27 2012

(b)(6)

Dear (b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this office) is not initiating an investigation with regard to a complaint you filed by letter dated April 11, 2012. In that complaint, you are alleging that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; CFR Part 99. Your son, (b)(6) (Student), attends school at (b)(6) School (School) in the District.

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

- (a) Is filed by the “parent” of a 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.

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

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

Specifically, you allege officials at the School are improperly disclosing information from the Student's education records to a front office worker at the School who is also the parent (Parent) of a student (Other Student) at the School. The Other Student is in the same third grade class as the Student. As evidence to support your allegation, you provided us with a February 13, 2012, e-mail sent by the Other Parent to (b)(6) principal at the School, and (b)(6) (b)(6) interim executive director at the District. With regard to the e-mail, you state:

1. The content contains nearly verbatim information that is currently under discussion in [the Student's] supposedly confidential IEP team process. For instance the [Other Parent] uses the term "meaningful consequences" . . . to address [the Student's] behaviors. This is a hot button topic for the school staff members who are part of the

[the Student's] IEP team. From [December] 2011 through March 2012 our IEP team has had a series of meetings to address [the Student's] behavioral intervention plan. "Meaningful consequences" refers to a conversation within the IEP team about the system of positive behavioral supports which is part of [the Student's] IEP. The school principal believes these do not hold [the Student] accountable for his behavior. In [paragraph] #5 the [Other Parent] states that teachers and specialists are "powerless to hold [the Student] accountable even within the limitations of his disability." This is nearly verbatim the conversation in the IEP team.

2. The content closely aligns with information in the principal's handwriting that is on the back of a supposedly confidential Student Discipline History Report . . . In [paragraph] #5 the [Other Parent] writes that [the Student] has been heard claiming that he can do what he wants and won't get into trouble. The principal has used these exact words repetitively in our IEP team meetings. On the back of the Discipline History Report the principal records "3 times overheard: "Tell them I did it because they can't [make] me stay in for recess" or "they won't punish me."

In her e-mail, the Other Parent claims that the information she is sharing in the e-mail came from her observations and from hearsay, such as information told to her by the Other Student. Specifically she states:

. . . As a parent of a special needs child, a volunteer and a part time staff member I have spent innumerable hours in various capacities in the classrooms, hallways, and playgrounds. This has provided me with many opportunities to witness a growing number of disturbing occurrences perpetuated by [the Student] and exacerbated by his mother . . .

Since the Other Student also receives special education services, it is reasonable to expect that the Other Parent would be familiar with and use some technical terms and phrases that are used by special education professionals. She may have very well had discussions with school officials regarding "meaningful consequences" relative to the Other Student, and discussions regarding holding the Other Student "accountable even within the limitations of his disability." The Other Parent could have overheard the Student stating: "Tell them I did it because they can't [make] me stay in for recess" or "they won't punish me." Alternatively, the Other Student could have told the Other Parent about those statements the Student had made.

Based on the evidence you have submitted, it is not clear that an improper disclosure of the Student's education records occurred. If you have any additional evidence that the Other Parent obtained or was provided information from the Student's education records -- not information

Page 4 - Ms. Anne Sheeran

that could be obtained from personal observation or hearsay -- you may provide it to this Office. 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

JUN 20 2012

(b)(6)

This is in response to your letter, dated June 8, 2012, to the U.S. Department of Education, Family Policy Compliance Office (FPCO). FPCO administers the Family Educational Rights and Privacy Act (FERPA), which affords parents and eligible students certain rights with regard to education records. We have reviewed the information you provided but are unable to determine whether there is reasonable cause to believe that FERPA has been violated. We will need you to submit more specific factual allegations regarding the alleged FERPA violation(s) in order to determine whether to investigate your allegations.

It appears that you are concerned about school officials discussing matters in public that concern your daughter. However, it is not clear that the information was obtained from your daughter's education records. In this regard, please note that FERPA prohibits the improper disclosure of information derived from education records. FERPA does not protect the confidentiality of information in general, and, therefore, does not apply to the disclosure of information derived from a source other than education records, even if education records exist which contain that information. Accordingly, information that is obtained through personal knowledge or observation, and not from an education record, is not protected from disclosure under FERPA.

If you have concerns about your daughter's IEP or IEP team, you should contact the special education director at the California Department of Education:

Mr. Fred Balcom
California Department of Education
1430 N. Street
Suite 2401
Sacramento, California 95814

Additionally, please note that matters concerning conflicts with school officials are handled at the local level, not at the federal level. Therefore, I suggest that you contact the appropriate officials at the school district regarding your concerns.

Enclosed for your reference are a FERPA guidance document and a complaint form. If, after carefully reviewing the guidance document, you believe you do have a timely allegation of a school's failure to comply with your rights under FERPA, please complete the complaint form and return it to FPCO at the following address:

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

Along with the complaint form, please also include the relevant back-up documentation, such as written correspondence received from the school in response to your concern. Please help us assist you in a more timely manner by outlining the relevant facts clearly and succinctly. Please ensure that any handwritten documentation is legible and easy to understand. We will review the information you submit and take any appropriate action. You may also find more information regarding FERPA on our website at: <http://www2.ed.gov/policy/gen/guid/fpc/index.html>.

Please note that due to the large amount of correspondence FPCO receives, we currently have a backlog we are working to resolve. However, your concerns are very important to us and, once we receive additional information, one of our caseworkers will provide you with a response as soon as possible.

Sincerely,

Dale King
Director
Family Policy Compliance Office

Enclosures

JUN 15 2012

(b)(6)

This is in response to (b)(6) May 17, 2012, facsimile correspondence that we received concerning allegations that you have with regard to your son's education records. This office administers the Family Educational Rights and Privacy Act (FERPA), a federal law that affords parents and eligible students certain rights with regard to education records.

We have reviewed the information you provided but are unable to determine whether there is reasonable cause to believe that FERPA has been violated. We will need you to submit more specific factual allegations regarding the alleged FERPA violation(s) in order to determine whether to investigate your allegations. Therefore, we are providing you with a guidance document about FERPA for parents. If, after carefully reviewing the guidance document, you believe you do have a timely allegation of a school's failure to comply with your rights under FERPA, please complete the enclosed complaint form and return it to this office at the following address:

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

Along with the complaint form, please also include the relevant back-up documentation, such as written correspondence received from the school in response to your concern. Please help us assist you in a more timely manner by outlining the relevant facts clearly and succinctly. Please ensure that any handwritten documentation is legible and easy to understand. We will review the information you submit and take any appropriate action. You may also find more information regarding FERPA on our website at: <http://www2.ed.gov/policy/gen/guid/fpco/index.html>.

It appears that you also filed a complaint with the Department of Health and Human Services (HHS) concerning an alleged violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule. Please note that records that are protected by FERPA are not subject to the HIPAA Privacy Rule. Accordingly, FERPA, not HIPAA, would address the improper disclosure of any personally identifiable information from your child's education records, including his special education or health records.

Page 2 -

(b)(6)

I trust that the enclosed information is helpful to you. Should you have any questions regarding FERPA, you may contact this office directly at the address and phone number noted above.

Sincerely,

Dale King
Director
Family Policy Compliance Office

Enclosures

Mr. Christopher Farmer
Superintendent
Triton Regional School District
112 Elm Street
Byfield, Massachusetts 01922

JUN 04 2012

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

Dear Mr. Farmer:

This is to inform you of the finding in the complaint filed against Triton Regional School District (District) by (b)(6) (Parents). The Parents alleged that the District violated the Family Educational Rights and Privacy Act (FERPA) when it failed to provide them access to a science common assessment test taken by their son, (b)(6) (Student), in response to their requests.

Specifically, the Parents allege that the Student's father sent an April 16, 2010, e-mail to (b)(6) the Student's science teacher, requesting access to the Student's science common assessment test after the Parents learned from the Student that (b)(6) planned to shred all of the students' science common assessment tests. Also, the Parents alleged that the Student's mother made an April 16 phone call to the Student's school asking that the Student's science common assessment test not be shredded until after the Parents obtained access to it.

By letter dated March 29, 2011, this office informed you of the Parents' allegation and asked that the District provide a written response. You responded by letter dated May 26, 2011. In your response, you state in relevant part:

... 3. Students are given their grade for the test and the test itself is destroyed. ...

6. The Student's grade for that specific test contributed to the calculation of a trimester grade that does become part of the student's transcript, and thus the "Student Record." ...

I do not believe that the test that was given ever became part of the student's record, and therefore, the complaint is without foundation. ...

On July 18, 2011, (b)(6) of my staff spoke to you by telephone. During that conversation, you informed Mr. Norment that to the best of your knowledge the science common assessment test at issue was destroyed on April 16, 2010, before the

Parents' April 16 telephone call and e-mail to the District requesting access to the test.

By letter dated August 4, 2011, this office invited the Parents to provide us with any evidence they might have indicating that the science common assessment test was not destroyed prior to their April 16, 2010, telephone call and e-mail. The Parents did not provide us with any additional information.

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 test protocol is not generally an education record unless it includes the student's name or other personally identifiable information and the student's answers to the questions in the test protocol. Based on your conversation with Mr. Norment, it appears the science common assessment test included the Student's name and the Student's answers to the questions in the test. As such, Mr. Norment informed you that the science common assessment test would be an education records under FERPA.

A school is required by FERPA 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. However, a school is not generally required by FERPA to maintain particular education records or education records that contain specific information. Also, a school may destroy education records without notice to a parent as long as there is no outstanding request by the parent to inspect and review such records.

Based on the evidence that we have, it appears that the School destroyed the science common assessment test before the Parents' telephone call and e-mail to the District requesting access to the test. Therefore, this office finds that the District did not violate FERPA as alleged by the Parents. The Parents will be informed of our finding by copy of this letter.

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

Sincerely,

Dale King
Director
Family Policy Compliance Office

cc: Parents

JUN 10 2012

(b)(6)

This is to respond to your February 26, 2012, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6) school district (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. FPCO administers FERPA, which affords parents and eligible students certain rights pertaining to education records.

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

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

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

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

- ☐ **FERPA's access provision.** The school did not provide you access to your child's or your education records within 45 days of your request.
- ☒ **FERPA's disclosure provision.** The school improperly disclosed information from your child's or your education records.
- ☐ **FERPA's amendment provision.** The school has refused to amend your child's or your education records per your request and not provided you with an opportunity for a hearing on the disputed education records.

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

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

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

Sincerely,

Dale P. King
Director
Family Policy Compliance Office

Enclosure

NOV 7 2012

(b)(6)

This is to respond to your November 14, 2011, complaint form and telephone inquiries to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated when the (b)(6) (District) modified records relating to your (b)(6). This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of a FERPA fact sheet. Based on information you provided this office, your daughter is an eligible student and the District is only required to provide her with access to her education records.

FERPA generally requires that a student provide written consent before a school can disclose education records to a third party, including a parent. However, a school is not required to provide any third party with access to education records, even when the student has provided prior written consent for such records to be disclosed to that third party. Therefore, although the District may do so, it is not required to provide you with access to, or copies of, your daughter's education records. Because your daughter, not you, holds the rights under FERPA, this office is unable to assist you further with regard to your inquiry.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure

JAN 30 2009

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

Dear Mr. Kosty and Mr. Alpert:

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

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

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

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

Dr. Geoffrey Gamble
President
Montana State University
P.O. Box 172420
Bozeman, Montana 59717-2420

JAN 30 2009

Dear Dr. Gamble:

This Office notified you by letter dated December 29, 2006, that we would not investigate a complaint filed by (b)(6) (Student), a former student at Montana State University (University), under the Family Educational Rights and Privacy Act (FERPA) because the Student's allegations were untimely. We were, however, concerned because the Student provided evidence that in 2001 she had retrieved a class roster for (b)(6) through an Internet search. Therefore, we asked you provide us with written assurances that the University has reasonable and appropriate safeguards in place to prevent any further unauthorized disclosures of education records as occurred with the (b)(6) class roster.

Legal Counsel Leslie C. Taylor responded on behalf of the University by letter dated January 29, 2007. Ms. Taylor confirmed that a CS120 class list, including grades, was inadvertently published to a class website in 2001 and was not protected properly. Ms. Taylor explained that this was an anomalous incident and described in detail policies and procedures that the University has in place to protect the education records of its students. We appreciate that the University has provided us with this additional information and would like to take this opportunity to advise you of recent recommendations regarding the safeguarding of education records that the Department has issued.

Under FERPA, an 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. "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. An educational agency or institution violates § 99.30 if its employees store, transmit, or dispose of education records in a manner results in the disclosure of personally identifiable information from those records to unauthorized individuals.

The preamble to the new 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. In this regard, we note that the University should take greater precautions when disposing of records that contain sensitive information, such as students' SSNs and financial information, than it does when disposing of directory information.

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 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.

We hope that you will find the FERPA Safeguarding Recommendations useful in helping to ensure that the University remains in compliance with FERPA requirements. Thank you for your cooperation in regard to the resolution of this matter.

Sincerely,

LeRoy S. Rooker
Director
Family Policy Compliance Office

cc: Student

Nancy G. Oyen
Assistant Attorney General
Office of the Attorney General
1275 W. Washington Street
Phoenix, Arizona 85007

JAN 30 2009

Dear Ms. Oyen:

In March 2005 you asked this Office for guidance regarding the disclosure of information by the Arizona Department of Education (ADE) to local school districts under the Family Educational Rights and Privacy Act (FERPA). You asked whether FERPA allows ADE to transmit a student's test scores, including scores from Statewide testing, to a district where the student has transferred since taking the test. We assume for purposes of this inquiry that the information that ADE wishes to transmit to a student's new school district is an "education record" under FERPA.

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

Section 99.31(a)(2) allows an educational agency or institution to disclose education records to a student's new school without consent (subject to the conditions in § 99.34). Under the new regulations, ADE may perform this function and redisclose education records to a student's new school on behalf of a school district. The preamble to the Final FERPA Regulations explains in detail the conditions surrounding these regulatory provisions. See 73 *Fed. Reg.* 74820-74824. This issue is also discussed at length in the preamble to the Notice of Proposed Rulemaking (NPRM), 73 *Fed. Reg.* 15574 (Mar. 24, 2008) at 15586-15587. Please let us know if you have any further questions in regard to this matter.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Georgiana Theoharis, Esq.
Assistant Legal Advisor
Illinois State Board of Education
100 W. Randolph Street, Suite 14-300
Chicago, Illinois 60601

JAN 30 2009

Dear Ms. Theoharis:

In October 2004 you presented several questions to this Office regarding the applicability of the Family Educational Rights and Privacy Act (FERPA) to the Illinois State Board of Education (ISBE) Student Information System. This Office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations, which are codified at 34 CFR Part 99.

Since your initial inquiry the Department has issued amendments to the FERPA regulations that we believe address many of the issues you raised. See 73 *Fed. Reg.* 74806 (Dec. 9, 2008). For example, the new regulations amend § 99.35(b) by allowing State educational authorities, such as ISBE, and other officials listed in § 99.31(a)(3) to make further disclosures of personally identifiable information from education records on behalf of an educational agency or institution, without parental consent, in accordance with the requirements of § 99.33(b). Under § 99.33(b), a non-consensual redisclosure must fall under one of the exceptions listed in § 99.31(a), and the State or Federal official must comply with the recordkeeping requirements in § 99.32(b). You may view the Final FERPA Regulations and related information on our website at www.ed.gov/policy/gen/guid/fpco/index.html. You may also wish to review the preamble to the Notice of Proposed Rulemaking (NPRM), 73 *Fed. Reg.* 15574 (Mar. 24, 2008), which contains detailed information about many of the new amendments that you may find useful.

One issue that you raised that is not addressed in the new regulations is whether a parent's right to inspect and review education records under FERPA applies to the ISBE's Student Information System. FERPA applies to "educational agencies and institutions" that receive funds under any program administered by the Secretary of Education. 34 CFR § 99.1. Most public schools and school districts are subject to FERPA because they receive Department funds and meet the description of an "educational agency" or "educational institution" provided in § 99.1 of the regulations. Even though a State educational agency (SEA), such as ISBE, typically receives Department funds, historically we have interpreted FERPA so that it does not apply directly to SEAs because, unlike local educational agencies (LEAs), SEAs generally do not operate schools attended by students. (The "attendance" requirement as it relates to applicability of FERPA is

derived from the definition of “education records,” which is records that contain information directly related to a “student,” which in turn is defined to exclude an individual who has not been in attendance at the educational agency or institution.)

Congress amended FERPA in 1994 to apply those provisions related to a parent’s right to inspect and review education records (subpart B of the regulations) to records maintained by SEAs on students who have attended any school subject to FERPA, regardless of whether the SEA itself is considered an “educational agency or institution” under FERPA. See 20 U.S.C. §1232g(a)(1)(B) and 34 CFR § 99.12(a)(2). In other words, all student records maintained by an SEA are considered “education records” under FERPA for purposes of subpart B of Part 99 (except for any SEA records related to students who have not attended a school subject to FERPA).

Under § 99.10(b), an SEA must comply with a parent’s request to inspect and review education records maintained by the SEA within a reasonable period of time but not more than 45 days after it has received the request. The SEA must also respond to reasonable requests for explanations and interpretations of the records, provide a copy of the records in certain circumstances, and refrain from destroying records if there is an outstanding request for inspection and review. See 34 CFR § 99.10(c) and (d).

SEAs generally are not subject directly to other FERPA provisions, including procedures for seeking amendment of education records set forth in subpart C of the regulations. A parent or eligible student who wishes to amend education records, or personally identifiable information from education records, that ISBE has received from a local school district may be instructed to contact the local school district for that purpose.

Once you have had an opportunity to review the new FERPA regulations, please feel free to contact this Office if you have any further questions.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

JAN 30 2009

Dear (b)(6)

This is in response to your January 20, 2009, letter to Secretary Duncan in which it appears you are alleging that (b)(6) (School) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when the School disclosed information from the education records of your child to a third party without your prior written consent. Your letter was forwarded to this Office for response because we administer FERPA which addresses issues that pertain to education records. Other issues raised in your letter, such as employee conduct or a school's policies and procedures for reporting suspected cases of child abuse, as you have raised them, are not addressed by FERPA and will not be discussed in this letter.

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 you information are a FERPA fact sheet, guidance document, and complaint form.

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

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

Please complete the enclosed complaint form and include the following information: the date or dates of the disclosures of information from your child's education records, or the date or dates you learned of such disclosures; the name of the official(s) who made the disclosure(s), if that is known; the specific nature of the information disclosed; and evidence that the information disclosed came from tangible education records, not through personal knowledge or observation or from hearsay. Based on the information in your letter, it appears the (b)(1) is the individual to whom you are alleging information from your child's education records was improperly disclosed. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

JAN 29 2009

(b)(6)

Dear (b)(6)

This is in response to your December 8, 2008, letter to former Secretary Spellings that was forwarded to this Office for response because we administer the Family Educational Rights and Privacy Act (FERPA). In your letter, you state that "it has been widely reported that" officials of (b)(6) (University) "turned over private student information to police without a warrant" as part of an investigation of allegations against members of the University lacrosse team. You do not claim that your own education records were involved in this disclosure. You request information concerning whether this Office "made inquiries" to the University about these alleged disclosures; what the University's response was if inquiries were made; and what action we have taken or intend to take following an investigation of these allegations. You state you are concerned that other postsecondary institutions may perceive a lack of "reprimands and sanctions" from this Office as establishing "a misleading precedent" that "a deliberate attempt to frame innocent students with crimes they did not commit . . . will not face questions" from this Office.

This Office administers FERPA, which addresses issues pertaining to education records. We are responsible for responding to a multitude of inquiries, complaints, and requests for technical assistance regarding FERPA. 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. Education records are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a party acting for the agency or institution.

This Office investigates those timely complaints containing specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. A complaint 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.

This Office's enforcement process is intended to work cooperatively with 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 institution and the complainant a notification letter about the allegation, and requesting a written response from the institution concerning the allegation. If this Office then determines that an institution is in violation of FERPA, the institution and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the institution 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 an institution take punitive or disciplinary action against an individual as the result of a FERPA violation. This Office closes its investigation when the institution has completed the required corrective actions.

Information concerning this Office's investigations and its findings of FERPA violations are protected under the Privacy Act from release to parties not directly related to the particular allegations. Because it does not appear that your own education records were part of the alleged disclosure by the University, this Office is not able to respond to your specific inquiry in this matter.

I trust the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concern. A guidance document for students about FERPA is enclosed.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

Ms. Patty J. Sturch
Dean of Enrollment Management
Jefferson Community College
4000 Sunset Boulevard
Steubenville, Ohio 43952-3598

JAN 27 2009

Dear Ms. Sturch:

This responds to your letter dated September 9, 2008, regarding the requirements of the Family Educational Rights and Privacy Act (FERPA) as they relate to Jefferson Community College (College) and its obligations regarding the disclosure of education records, specifically the disclosure of education records via facsimile. In this regard, you explain that the College may not have been in compliance with FERPA when the College's Director of Student Support Services received a voicemail message requesting that a copy of a transcript be faxed to a specific number. In response to the message, the director faxed the student's transcript to the number provided. As you are aware, this Office administers FERPA which addresses issues that pertain to education records.

FERPA provides that postsecondary institutions may disclose a student's education records, or personally identifiable information from such records, after an eligible student (a student who has reached the age of 18 or is attending an institution of postsecondary education at any age) has provided prior written consent. 34 CFR § 99.30. "Education records" are defined as 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."

As noted above, FERPA generally prohibits the nonconsensual disclosure of information derived from education records, except in certain specified circumstances. 34 CFR §§ 99.30 and 99.31. Furthermore, FERPA does not address the transmission of education records but requires that the method of transmission be secure. When information is sent via facsimile, it is not always guaranteed that the individual is physically present at the fax machine, and often times other individuals can easily gain access to the information that is being faxed. Therefore, we advise schools that prior to sending education records via facsimile to the student who has made the request, the school should have the student submit a signed request in writing asking that his or her education records be sent to the specific fax number. This will ensure that the student has

given written authorization for the education records to be sent to a place where other individuals might gain access and relieves the schools of their FERPA obligation to ensure that unauthorized individuals do not gain access to the records. In this situation, unless someone other than the student made the request to the College for the fax of his or her transcript to a specific number, the student would not have standing to file a complaint under FERPA. We suggest, however, that the College implement a policy that it will not send education records via facsimile unless the student has made their request to the College in writing.

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

JAN 21 2009

Dear (b)(6)

This is to respond to your July 8, 2008, letter that was forwarded to this Office for response by the Department's Office for Civil Rights because you raise questions that appear to relate to the Family Educational Rights and Privacy Act (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 children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. A FERPA guidance document for parents is enclosed for your information.

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 generally required to provide a parent with copies of education records when a failure to do so would effectively prevent the parent from obtaining access to their records. A case in point would be a situation in which the parent does not live within commuting distance to the school. Based on the information in your letter, it appears that you live within commuting distance to your son's school and it would be required to provide you an opportunity to inspect and review your records, though it could choose to give you copies as a means of providing you access.

In order to exercise your rights under FERPA, I suggest that you write to the school and make a request to review the specific education records that you believe the school maintains. Please refer to the enclosed FERPA guidance for further information about requesting access to education records. If the school denies or fails to provide you with access to the requested education records within 45 days of receiving your request, you may again write to this Office. At such time, please provide us with a dated copy of your request for access and evidence of the date when the school received your request, its response (if any), and a completed copy of the enclosed complaint form. At such time when this Office receives the completed form from you as discussed above, we will review the information you submit and take any appropriate action.

Page 2—

(b)(6)

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

Sincerely,

Bernard Cieplak
Program Specialist
Family Policy Compliance Office

Enclosures

(b)(6)

JAN 12 2009

Dear (b)(6)

This is in response to your October 6, 2008, letter to this Office in which you allege that the (b)(6) (District) violated the Family Educational Rights and Privacy Act (FERPA) when it nonconsensually disclosed to you information from the education records of a student who is not your child. This Office administers FERPA which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Under FERPA, a school may not generally disclose personally identifiable information from a minor student's education records to a third party unless the student's parent has provided written consent.

Please note, however, that FERPA vests the rights it affords in the parents of minor students. 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 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 your allegation that the District improperly disclosed the education records of a student (Other Student) who is not your child. The parent of the Other Student must file such a complaint. Enclosed are a copy of our FERPA fact sheet, guidance document, and complaint form. If you wish, you may forward these documents to the parent of the Other Student.

In addition to filing complaints of alleged violations of FERPA, this Office also provides technical assistance to educational agencies and institutions in an effort to ensure they are in compliance with FERPA. Based on the information you have provided, we may offer the District technical assistance concerning this matter.

Please note that the DVD you provided to us was damaged in the mail before it reached this Office. If you wish, you may provide us with the specific information regarding the Other Student that was disclosed on the DVD within three weeks of your receipt of this letter. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ricky Norment
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

JAN 12 2009

Dear (b)(6)

This is in response to your September 28, 2008, complaint form 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 personally identifiable information from the education records of your (b)(6) (Student), to a third party without your prior written consent. This Office administers FERPA which addresses issues that pertain to education records.

Specifically, you state:

My (b)(6) [the Student], told a "story" to the librarian assistant around April 21, 2008. Without our knowledge, or consent, the elementary principal called a personal friend of hers; revealed the nature of the story to get advice as to whether [Child Protective Services] should be notified. The person she called was (b)(6) with the (b)(6) Highway Patrol. He (b)(6) is also (b)(6) . . . This conversation with (b)(6) obligated him to report the incident to (b)(6) supervisor.

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

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

Also, there are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records. One such exception permits the nonconsensual disclosure of education records in connection with a health or safety emergency. More specifically, a school may disclose personally identifiable information from a student's education record, without written parental or eligible student consent, to appropriate parties in connection with a an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

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

As stated above, FERPA applies to information contained in tangible education records. If the story told by the Student was recorded by the "librarian assistant," and the Student's story was disclosed to the "elementary principal" from the librarian assistant's written record, the story would generally be protected by FERPA. However, if the story was not recorded, the information would not be protected from disclosure by FERPA. Therefore, please inform this Office whether the Student's story was recorded by the librarian assistant or other school official and such written record was disclosed to the elementary principal before he contacted ^{(b)(6)} Also please inform us of the specific nature of the Student's story. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

(b)(6)

JAN 12 2009

Dear (b)(6)

This is in response to your September 25, 2008, letter 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 failed to provide you access to the education records of your child, (b)(6) (Student), in response to your request, and when the District did not amend information in the Student's education records in response to your request or offer you the opportunity for a hearing on the matter. This Office administers FERPA which addresses issues that pertain to education records.

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

Under FERPA, a school is required to provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of a request. For additional information about a parent's right to have access to education records, please review the guidance document (beginning on page one).

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. A timely complaint is defined as one that is submitted to this Office within 180 days of the date that the complainant knew or reasonably should have known of the alleged violation. If, after reviewing the guidance document, you believe the District violated your right to have access to the Student's education records, please complete the enclosed complaint form, and include: the date you requested access to the Student's education records; the name of the official to whom your request was made; the response of that official, if any; and the specific nature of the education records requested. We will review the information you submit and take any appropriate action.

However, in order to exercise your right to access to your child's education records under FERPA, I suggest you write to the appropriate official in the District and request an opportunity to inspect and review the specific education records to which you are seeking access. Although it is not required, you may want to include a copy of this letter along with your request. If the District does not provide you access to the requested education records or fails to contact you within 45 days, you may contact this Office. At such time, please provide us with a dated copy of your request to the school, any response from the school, and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

Under FERPA, a parent has the right to request that inaccurately recorded information in his or her child's education records be amended. However, while the FERPA amendment procedure may be used to challenge facts that are misleading or inaccurately recorded, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about a student. For additional information on a parent's right to seek to amend education records, please review the guidance document (beginning on page two).

Based on the information in your letter to this Office, it is not clear whether you have written to the District to request amendment of the Student's education records or whether your concerns are eligible for amendment under FERPA. In order to seek to amend inaccurately recorded information in the Student's education records, I suggest you write to the appropriate official in the District and request amendment of the inaccurately recorded information. Although it is not required, you may want to include a copy of this letter along with your request. Also, along with your request, you should include specific evidence to support your assertion that the information at issue is inaccurately recorded.

If the District does not amend the information as requested in a reasonable period of time or offer you an 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 school (along with your evidence that the information at issue is inaccurately recorded), any response from the school, and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

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(b)(6)

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

JAN 08 2008

(b)(6)
Dear

This is in response to your November 27, 2008, complaint form and November 28, 2008, letter to this Office in which you make a number of allegations regarding (b)(6) (College) violating your rights under 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 eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a guidance document regarding FERPA.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. A timely complaint is defined as one that is submitted to this Office within 180 days of the date that the complainant knew or reasonably should have known of the alleged violation. Based on the information in your November 28 letter, it appears that you knew of these alleged violations of FERPA by the College in 2003. Notwithstanding the fact that these allegations do not appear to meet FERPA's threshold requirement for timeliness, below is additional information regarding FERPA as it would apply to the alleged violations.

In your complaint form, you state:

1. The College has reported to the [NSLDS] National Student Loan Data System that I have withdrawn myself completely from the College which I did not do.
2. The School has posted to my college statement unjustified debt for the amount of \$1750, and hired a collection agency to collect this amount plus \$588 of

collection fee. This unjustified debt has also been reported to my Credit Bureau Report.

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

One such exception permits a school to disclose education records without consent when the disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to: determine the eligibility for the aid; determine the amount of the aid; determine the conditions for the aid; and/or enforce the terms and conditions of the aid. With respect to this exception, the term "financial aid" means payment of funds provided to an individual (or payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at a school.

Based on the information provided by you regarding the two allegations above, it appears the College disclosed information from your education records in regard to determining your current eligibility for financial aid and to enforce the terms and conditions for financial aid which you had received. As such, even if these allegations were timely, it appears there is no basis for this Office to further consider them.

In your November 27 complaint form, you allege that you did not receive the grade you deserved for a speaking course taught by [REDACTED] Specifically, you state:

... The professor has graded me based on my attendance, and not based on my performance.

Therefore, I request that the College modify the grade for this course from "D" to "W" as I have withdrawn from the course ... For the same reason, I request that the College issue a refund for this course. ...

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

However, while the amendment procedure may be used to challenge facts that are inaccurately recorded, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about a student. The FERPA amendment procedure is intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments. As indicated above, you may not seek to amend your grade under the FERPA amendment procedure.

In your November 28 letter you raise concerns regarding school policies and procedures for student payment for housing, withdrawal from classes, refund of tuition, and withdrawal from school. Please note these issues, as you have raised them, are not addressed by FERPA and will not be discussed in this letter.

In your November 28 letter, you also raise a number of concerns regarding alleged inaccurate information contained in your education records maintained by the College. Please note that the focus of the FERPA amendment procedure is for consideration of "inaccurately recorded" information in education records. For example, let's say a professor required student attendance at a minimum of 17 of the 20 classes scheduled for a biology course over a semester, and the professor has marked a particular student as having attended only 16 classes. The professor has marked the student absent on November 8 and three other dates. Let's say the student has evidence that he or she was in attendance in class on November 8, such as a quiz taken on and dated November 8 which had been graded and returned to the student by the professor. The student could inform the appropriate official at the College that information regarding the student's attendance on the biology professor's attendance record is inaccurately recorded and request amendment of the record under FERPA. The student could submit a copy of the November 8 quiz as evidence to support his assertion that the information on the attendance record is inaccurately recorded.

If you believe there is inaccurately recorded information in your education records, you should write to the appropriate official at the College and request amendment of the specific information in your education records that you believe is inaccurately recorded and provide the College with evidence to support your assertion that such information is inaccurately recorded. If the College does not amend the inaccurately recorded information as you have requested or offer you the opportunity for a hearing on the matter, you may write to this Office. At such time, please provide us with a dated copy of your request to the College, including your supporting evidence, and any response from the College. We will review the information you submit and take any appropriate action.

Please note, as indicated above, that the College is not required to respond to you regarding a request to amend information in your education records that is not amendable under FERPA. Examples of information not amendable under FERPA are grades, opinions, and substantive decisions made by schools about students.

In your November 25 letter, you state:

... Therefore, on 04/08/2003 I have filed a complaint with the "Better Business Bureau" regarding this unjustified debt. ...

... The College has filed a false and unjustified statement with the Better Business Bureau in response to a complaint I have made against the College regarding the \$1750. ...

As stated above, a school is not generally permitted by FERPA to disclose personally identifiable information from a student's education records to a third party unless the student has provided written consent. However, there are occasions in which an educational agency or institution may appropriately infer an implied waiver of the right to consent, such as when a parent or eligible student has sought the involvement of a specific third party regarding a conflict he or she has with the school. Specifically, an educational agency or institution may infer an implied waiver of the parent's or eligible student's right to consent to disclosure when:

- 1) the parent or student has taken an adversarial position against the educational agency or institution;
- 2) the parent or student has initiated the involvement of the third party by contacting that third party in writing, and, in so doing:
 - a) set forth specific allegations against the educational agency or institution; and
 - b) requested that action be taken against the educational agency or institution or that the third party assist the parent or student in circumventing decisions made about the student by the educational agency or institution;
- 3) the third party's special relationship with the educational agency or institution (Examples include: an educational agency or institution's grantor/grantee relationships; an educational agency or institution's relationship with a state or

federal commission charged with looking into allegations made by a parent or student.):

- a) gives the third party authority to take specific action against the educational agency or institution; or
 - b) reasonably could be significantly adversely affected if the educational agency or institution cannot refute the allegations; and
- 4) the disclosure is as limited as is necessary for the educational agency or institution to adequately defend itself from the student's charges or complaint. The third party should follow the procedures set forth in 34 CFR § 99.33 on limitations that apply to the redisclosure of information derived from education records.

Notwithstanding the fact that this alleged disclosure does not appear to meet FERPA's threshold requirement for timeliness, it appears that it meets FERPA's criteria for an implied waiver of the right to consent. You filed a complaint against the College with the Better Business Bureau. It appears the College appropriately inferred an implied waiver of your right to consent to disclosure of certain information from your education records to the Better Business Bureau in order for the College to respond to the issues raised in your complaint.

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

(b)(6)

JAN 08 2008

Dear (b)(6)

This is in response to your September 4, 2008, 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 failed to amend the education records of your son, (b)(6) (Student), in response to your requests or offer you the opportunity for a hearing on the matter. This Office administers FERPA which addresses issues that pertain to education records.

Along with your letter to this Office, you included an August 15, 2008, letter you wrote to (b)(6) principal of (b)(6) School, where the Student attends school in the District. In your August 15 letter to (b)(6) seeking amendment of certain of the Student's education records, you state:

... I am requesting that the following changes be made to my (b)(6) student records.

1. Removal of 2007-2008 school year class work from the cumulative file as it appears misleading and irrelevant and to not belong in the cumulative file which will follow my son to middle school.
2. Inclusion in the cumulative file of tests results for district wide and standardized testing for grade levels 1-3 as this information is presently missing from the file.

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 is not generally required to maintain particular education records or education records that contain specific information. Rather, a school must provide certain privacy protections to those education records the school selects to maintain. Also, FERPA does not address the location where education records are maintained. If records are maintained by the school in a cumulative file or other location and directly related to a student, they are education records subject to FERPA. 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.

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

However, while the amendment procedure may be used to challenge facts that are inaccurately recorded, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about a student. FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. As indicated above, the FERPA amendment procedure is intended to permit a parent to seek to amend inaccurately recorded information in a student's education records. It does not permit a parent to amend information in the records the parent finds objectionable for some other reason. Based on the information in your letter, it does not appear that you are seeking to amend inaccurately recorded information in the Student's education records. Therefore, there is no basis for this Office to further consider your allegation.

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(b)(6)

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

JAN 08 2008

Dear (b)(6)

This is in response to your January 14, 2008, letter to this Office in which you allege that The (b)(6) (College) violated the Family Educational Rights and Privacy Act (FERPA) when it disclosed information from your education records to your mother, Nancy Wu. You also allege that (b)(6) dean of students, disclosed "incorrect information" to your professor for a physics course. This Office administers FERPA which addresses issues that pertain to education records. Issues concerning a school official failing to follow-up on actions stated to an eligible student or his or her parent or displaying unprofessional behavior with regard to an eligible student or his or her parent, as you have raised them, are not addressed by FERPA and will not be discussed in this letter.

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. 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. Enclosed for you information are a FERPA fact sheet and guidance document.

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. However, FERPA does not protect the confidentiality of information in general and, therefore, does not apply to disclosure of information derived from a source other than education records, even if education records exist which contain that information. Rather, FERPA protects information derived from education records from improper disclosure. As a general rule, information obtained through personal knowledge, observation, or hearsay, and not from an education record, is not protected from disclosure under FERPA. Therefore, the alleged disclosure of "incorrect information" by (b)(6) would not be addressed by FERPA since it was not a disclosure of information from education records.

Also, there are several exceptions to FERPA's general prohibition against the nonconsensual disclosure of education records. One such exception permits the nonconsensual disclosure of education records to "school officials" with a "legitimate educational interest." You should review the school official exception to FERPA's prior written consent requirement (top of page three in the guidance document) for additional information regarding this exception.

Another exception to FERPA's prior written consent requirement permits the nonconsensual disclosure of education records to the parents of a "dependent student." If either parent claims the student as a dependent on his or her most recent income tax statement, the school is permitted by FERPA to nonconsensually disclose education records to either parent. If either of your parents claims you as a dependent on his or her most recent income tax statement, the school is permitted by FERPA to disclose information from your education records (including your grades) to both of your parents.

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures

Dr. Lawrence J. Mussoline
Superintendent of Schools
Wilson School District
2601 Grandview Boulevard
West Lawn, Pennsylvania 19609

JAN 08 2009

Dear Dr. Mussoline:

This is in regard to correspondence we received from a parent whose child attends school at Lower Heidelberg Elementary School (School) in Wilson School District (District). The parent alleges that the School improperly disclosed information to her from the education records of a student who is not her child. This Office administers the Family Educational Rights and Privacy Act (FERPA) which addresses issues that pertain to education records.

As evidence to support her allegation, the parent provided this Office with a copy of the education record of the other student (enclosed) which she alleges the School provided to her. The Parent alleges that this is the second time that copies of another student's education records were mixed in with her child's education records and sent to her. She states she is concerned that if the School's procedure for providing parents with copies of education records permits her to receive another student's education records, it might also permit another parent to receive copies of her child's education records.

FERPA vests the rights it affords in parents and eligible students. 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 have "standing," i.e., have suffered an alleged violation in order to file a complaint under FERPA. The parent who made the above allegation does not have standing under FERPA regarding the alleged disclosure of information from the education records of the other student. This Office investigates those timely complaints submitted by parents and eligible student that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. This Office is not investigating the parent's allegation because the parent does not have standing. However, if the parent of the other student submitted an allegation regarding this matter, this Office would further consider initiating an investigation. In addition to investigating complaints of alleged violations of FERPA, this Office also provides technical assistance to educational agencies and institutions to help ensure they are in compliance with 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. 20 U.S.C. § 1232g; 34 CFR Part 99. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." Enclosed for your information is a copy of the FERPA regulations.

Under FERPA, a school is prohibited from disclosing 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 prohibition against nonconsensual disclosure of education records. 34 CFR § 99.31. However, none of these exceptions apply to the situation described by the parent.

In that regard, we are requesting that the District discuss this matter with the School, as appropriate. Also, we suggest you get assurance and evidence from the School that appropriate officials have been informed of FERPA's prior written consent requirement for disclosing information from education records, and that any necessary revisions have been made to the School's procedures for providing parents with copies of education records to ensure that a parent only receives copies of information from his or her child's education records.

If you have any questions or concerns regarding this matter, you may contact Mr. Ricky Norment of my staff at 202-260-3887.

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosure