

(b)(6)

JAN 08 2008

Dear (b)(6)

This is in response to your January 24, 2007, letter to this Office in which you allege that that (b)(6) (School) violated the Family Educational Rights and Privacy Act (FERPA) when it disclosed information to you 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 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. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information are a FERPA fact and guidance document.

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. While there are several exceptions to FERPA's prohibition against nonconsensual disclosure of education records, none apply to the situation you describe.

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. You do not have standing relative to the alleged disclosure of the education records of a student who is not your child. It is the other student's parent who has standing in this regard.

However, 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. In that regard, we have provided technical

Page 2 -

(b)(6)

assistance to the (b)(6) (District) regarding the alleged improper disclosure of education records you describe. Enclosed for your information is a copy of our letter to (b)(6) superintendent of the District, advising him about this matter.

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

Sincerely,

(b)(6)

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

JAN 08 2008

Dear (b)(6)

This is in response to your June 12, 2007, 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 failed to provide you access to the education record of your children (b)(6) (Students), in response to your requests. You also allege that the District violated FERPA when it failed to amend the Students' education records in response to your requests or offer you an opportunity for a hearing on the matter, and when it disclosed personally identifiable information from your children's education records to a third party without your prior written consent. This Office administers FERPA which addresses issues that pertain to education records.

FERPA is a Federal law that gives 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. Once a student turns 18 years of age or attends a postsecondary institution, he or she becomes an "eligible student," and all rights under FERPA transfer from the parent to the student. The term "education records" 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.

Please note that a school is not generally required by FERPA to provide a parent with "records regarding school policy, board policy . . . employees, and other records" to which it appears you are also seeking access. This is because those types of records are not generally directly related to an individual student and, therefore, do not meet the definition of education records under FERPA.

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

appears you live within commuting distance of the Students' school. Therefore, the District is required to provide you with the opportunity to inspect and review the Students' education records, though the school is permitted by FERPA to provide you with copies of the records instead.

Also please note that a school is not generally required to maintain particular education records or education records that contain specific information. Rather, a school is required to provide the privacy protections of FERPA to those education records that the school selects to maintain.

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 letter, it appears you have made a number of requests to the District for access to the Students' education records. While the District has provided you with access to certain education records, you do not believe it has provided you with access to all of the education records that it maintains.

In order to exercise your rights to access education records under FERPA, I suggest you write to the appropriate official in the District again and request all of the education records to which you believe the District has not provided you access. You should provide the District with any evidence you may have that it maintains such education records. 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 again. At such time, please provide us with a dated copy of your letter to the District and any response from the District. We will review the information you submit and take any appropriate action.

Under FERPA, a parent has the right to request that inaccurate or misleading information in his or her child's education records be amended. While a school is not required to amend education records in accordance with a parent's request, the school is required to consider the request. If the school decides not to amend the record in accordance with the parent's request, 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.

If you believe there is inaccurately recorded information in education records, you should write to the appropriate official in the District and request that the inaccurately recorded information be amended. Also, along with your request to the District, you should provide evidence to support your claim that information in the education records is inaccurately recorded. If the District does not amend the inaccurately recorded information or offer you the opportunity for a hearing on the matter, you may write to this Office again. At such time, please provide us with a dated copy of your request (including your evidence) to the District and any response from the District. We will review the information you submit and take any appropriate action. However, please note that the District is not required by FERPA to respond to you if you request amendment of information that is not amendable under FERPA (such as a grade, an opinion, or a substantive decision made by the District).

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

One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to education records provided the school has determined that they have a "legitimate educational interest" in the information. Although the term "school official" is not defined in the statute or regulations, this Office has interpreted the term broadly to include a teacher, administrator, board member, support or clerical staff, nurse and health staff, counselor; human resources staff, information systems specialist, and attorney. Generally, a school official has a legitimate educational interest if he or she needs access to information in education records to fulfill his or her professional responsibility.

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

FERPA does not specifically address disclosure of education records to contractors, consultants, volunteers, and service providers who are not employees at a school. However, the statutory definition of education records appears to recognize the use of outside service providers in calling for the protection of education records maintained by "a person acting for the agency or institution." Accordingly, this Office has advised that schools subject to FERPA are not precluded from disclosing education records to parties to whom they have outsourced services so long as they do so under the same conditions applicable to other school officials.

In your letter, you allege that the District disclosed information from education records to the "general counsel for no 'legitimate educational interest'." In order for this Office to further consider this request, we need to receive additional information from you. Please provide this Office with the date of the alleged disclosure of information from the Student's education records; the name of the official who made the disclosure, if that is known; and the specific nature of the information disclosed. Also, please provide us with information regarding the "general counsel" and his or her relationship to the District. Please note that if the general counsel is an employee or contractor of the District, the District may be permitted by FERPA to nonconsensually disclose to him or her information from the Students' education records. 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,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

(b)(6)

JUN - 7 2010

Dear (b)(6):

This is in response to your letter dated April 6, 2010, alleging that (b)(6) University (University) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA).

Specifically, you allege that information regarding the findings and recommendations of the Academic Integrity Council hearing in the form of a letter from (b)(6) to you was copied to faculty member (b)(6). You further allege that in August of 2008 (b)(6) shared this document with five members of a University Hearing Panel, and subsequently, all others authorized by this panel to view documentation.

FERPA generally provides that information from a student's education records may not be disclosed without prior written consent. 34 CFR § 99.30. One exception to this requirement permits disclosures of education records to school officials with a legitimate educational interest. 34 CFR § 99.31(a)(1). Generally, school faculty and students serving on a grievance committee are considered to be school officials with a legitimate interest in education records they need to carry out their job functions. It appears that the disclosure you describe was permissible under this FERPA exception to prior written consent. Therefore, there is no basis to initiate an investigation of your allegation that the University improperly disclosed your education records to the grievance committee members.

Enclosed for your information is a FERPA guidance document. Thank you for contacting us about your concern.

Sincerely,

(b)(6)

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

DEC 15 2009

Dear (b)(6)

This is in response to your allegation that the (b)(6) System (District) improperly disclosed information from the education records of your son, (b)(6) IV (Student), to a third party. This Office administers the Family Educational Rights and Privacy Act (FERPA) which addresses issues that pertain to education records.

Specifically, you allege that (b)(6) disclosed information from the Student's education records to (b)(6) (Other Parent), the parent of another student in the District, in a May 19, 2008, telephone conversation. In your complaint, you state:

... within this conversation, (b)(6) began to disclose [the Student's] personal information with [the Other Parent] ... (b)(6) discussed [the Student's] grades, his tardiness, his absences and also the fact that [the District is] retaining him [in his current grade] with all the information being verbatim. (b)(6) (b)(6) also discussed the meeting I had with her, the principal (b)(6) and (b)(6) and the outcome of that meeting as well. ...

(b)(6) then continued to ask the [Other Parent] to please not inform me that (b)(6) had discussed any of this information with her in regards to [the Student's] academics. ...

[The Other Parent] has gotten a copy of her telephone records to also verify that this telephone call took place. ...

[The Other Parent] gave me permission to disclose her name and contact telephone numbers for whomever to contact her if needed. ...

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

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

In addition to conducting investigations, this Office also provides technical assistance to educational agencies and institutions to ensure that they are in compliance or come into compliance with FERPA. Enclosed is our letter of technical assistance to (b)(6) superintendent of the District.

I trust that the above information and described action are responsive to your request.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

Mr. John Dilworth
Superintendent
East Baton Rouge School System
1050 South Foster Drive
Baton Rouge, Louisiana 70806

DEC 15 2009

Dear Mr. Dilworth:

This is in regard to a concern addressed to this Office by (b)(6) (Parent). The Parent alleged that the East Baton Rouge School System (District) improperly disclosed information from the education records of her son, (b)(6) (Student), to a third party. At the time the Parent submitted her complaint to this Office, the Student attended (b)(6) (b)(6) (School) in the District. This Office administers the Family Educational Rights and Privacy Act (FERPA) which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. Enclosed for your information is a copy of the FERPA regulations. 34 CFR Part 99.

The term "education records" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." Under FERPA, a school is not generally permitted to disclose information from a minor student's education records to a third party unless the student's parent has provided written consent. 34 CFR § 99.30. There are several exceptions to FERPA's general prohibition against nonconsensual disclosure of student education records. 34 CFR § 99.31. However, none of these exceptions appear to apply to the situation discussed below.

In her letter, the Parent alleges that (b)(6), the Student's counselor at the School, disclosed information from the Student's education records to (b)(6) the parent of another student in the District (Other Parent), in a May 19, 2008, telephone conversation. The parent states:

... within this conversation, (b)(6) began to disclose [the Student's] personal information with [the Other Parent] ... (b)(6) discussed [the Student's] grades, his tardiness, his absences and also the fact that [the District is]

retaining him [in his current grade] with all the information being verbatim. (b)(6)
(b)(6) also discussed the meeting I had with her, the principal (b)(6)
and (b)(6) and the outcome of that meeting as well. . . .

(b)(6) then continued to ask the [Other Parent] to please not inform me
that (b)(6) had discussed any of this information with her in regards to
[the Student's] academics. (b)(6) has violated . . . the Family
Educational Rights and Privacy Act.

[The Other Parent] has gotten a copy of her telephone records to also verify that this
telephone call took place. . . .

[The Other Parent] gave me permission to disclose her name and contact telephone
numbers for whomever to contact her if needed. . . .

In addition to conducting investigations of alleged violations of FERPA, this Office provides
technical assistance to educational agencies and institutions to ensure they are in compliance or
come into compliance with FERPA. This letter is meant to provide the District with technical
assistance regarding the parental consent requirement for disclosure of information from student
education records to third parties.

Enclosed for you information is a copy of the Parent's May 20, 2008, letter to (b)(6)
(b)(6) former superintendent, regarding this matter. As stated above, there are some
exceptions to FERPA's general prohibition against nonconsensual disclosure of education
records. However, based on the information in the Parent's letter to (b)(6), it appears that
the Other Parent has no connection with the District other than having one or more children who
attend school in the District. If this is true, FERPA would generally prohibit nonconsensual
disclosure of information from the Student's education records to the Other Parent by (b)(6)
or any other school official in the District.

This Office recommends that the District take this opportunity to inform all appropriate officials
in the District of the requirements of FERPA, particularly regarding FERPA's general written
consent requirement for disclosure of information from student education records. Below is a
link to our home page where the District can review additional information regarding FERPA.

Page 3 - Mr. John Dilworth

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

Page 3 - Mr. John Dilworth

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

(b)(6)

DEC 15 2009

Dear

(b)(6)

This is to respond to your April 20, 2009, and July 13, 2009, letter of complaint filed on behalf of your client, (b)(6) (Parent). The Parent alleges that rights afforded her under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (b)(6) (District) when it did not comply with requests made on her behalf by your staff to amend the education records of her son (b)(6) (Student). This Office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records 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 a FERPA fact sheet.

Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is required to provide the parent with copies of education records or make other arrangements when a failure to do so would effectively prevent the student from obtaining access to the education records. A case in point would be a situation in which the parent does not live within commuting distance of the school. Based on the information in your correspondence, it appears that the parent lives within commuting distance to the District. As such, the District is required only to provide the Parent with an opportunity to inspect and review the Student's education records, although it is permitted to provide her with copies.

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, we have determined that an individual must have "standing," i.e., have suffered an alleged violation, in order to file a complaint under FERPA. In this instance, the District would be permitted, though not required to respond to a complaint or provide information from the Student's education records to you, a third party, even when the parent provided written consent for you to act on her behalf.

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

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

Because the records you are seeking to expunge were accurately recorded by the District, FERPA's amendment provision does not apply in this instance. Accordingly, no basis exists for this Office to investigate the Parent's allegation that the District failed to consider your Office's request to amend or otherwise destroy the Student's education records related to his December 20, 2007, disciplinary matter. While not required to do so under FERPA, the District is not prevented from destroying the records you are seeking to expunge upon mutual consent between the Parent and District.

I trust this information is helpful to address the scope and limitations of FERPA as it relates to the Parent's concerns.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

cc: Parent

(b)(6)

DEC - 8 2009

(b)(6)

Dear

This is in response to your July 8, 2008, letter and documents to this Office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (District) when it did not comply with your written request to access the education records of your son (b)(6) (Student). Specifically, you requested in your May 14, 2008, email to (b)(6), special education director in the District, that she provide you with "data collected to date that supports progress" relating to the special education services received by your son. This Office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records 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 a FERPA fact sheet.

Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is required to provide the parent with copies of education records or make other arrangements when a failure to do so would effectively prevent the student from obtaining access to the education records. A case in point would be a situation in which the parent does not live within commuting distance of the school. Based on the information in your correspondence, it appears that you live within commuting distance to the District. As such, it is required only to provide you with an opportunity to inspect and review the Student's education records, although it is permitted to provide you with copies.

In accordance with FERPA, a school generally is not required to maintain particular education records or education records that contain specific information. Rather, a school is required to provide certain privacy protections relative to those records it selects to maintain. Nor does FERPA require schools to create or to re-create lost or destroyed education records. It may destroy education records without notice to the parent, unless there is an outstanding request from the parent to inspect and review such records.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has failed to comply with FERPA. 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 failure to comply with FERPA. Please note that this Office does not have the staff resources to review voluminous materials to determine whether such documents contain an alleged violation of FERPA. It is the responsibility of the complainant to clearly state his or her allegation and to provide this Office only relevant supporting documentation. For your convenience, we are returning the documents you forwarded to this Office in order that you may use them in the future.

You have not provided specific allegations of fact for this Office to initiate an investigation into your allegations that the District failed to provide you access to your son's education records. Specifically, you have not provided specific evidence for this Office to determine that the District maintained "data collected to date that supports progress" relating to your son's special services provided by the District. As stated above, the District is not required by FERPA to provide you with copies of your son's education records. Accordingly, no basis exists for this Office to investigate your allegation that the District denied you access to the Student's education records.

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

(b)(6)

DEC - 8 2009

Dear

(b)(6)

This is to respond to your October 27, 2009, letter 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) did not provide you access to the education records of your daughter (b)(6) (Student) in response to your January 22, 2009, request for access. This Office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records that 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 are a FERPA guidance document for parents, a fact sheet for non-custodial parents, and a complaint form.

Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is required to provide the parent with copies of education records or make other arrangements when a failure to do so would effectively prevent the parent from obtaining access to the education records. A case in point would be a situation in which the parent does not live within commuting distance of the school. Based on the information in your correspondence, it appears that you live within commuting distance to the District and it is required only to provide you with an opportunity to inspect and review your daughter's education records, although it is permitted to provide you with copies.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has failed to comply with FERPA. 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 failure to comply with FERPA. Based on the October 27, 2009, date when you notified this Office of an alleged violation of FERPA and your January 22, 2009, request to the District, your allegation is untimely received by this Office as discussed above. In order to exercise your rights under FERPA, this Office suggests that you again write to the District and specifically request access to your daughter's education records. If the District fails to provide you with access or fails to respond to your letter within 45 days as required by FERPA, you may write to this Office again. At such time, please provide this Office with a copy of your request along with a copy of the District's response, if any, and a completed complaint form. Once this Office receives such information, we will take any appropriate action.

The mailing address for this Office is:

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

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

(b)(6)

DEC - 8 2009

Dear (b)(6)

This is in response to your October 25, 2009, letter to this Office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (College) when it did not amend your grade in response to your May 1, 2008, request. 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 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 a FERPA guidance document.

FERPA affords students the opportunity to seek amendment of their education records which they believe contain information that is inaccurate or misleading. While a school is not required to amend a record in accordance with a student's request, it is required to consider the request for amendment of an education record, to inform the student of its decision, and if the request is denied, to advise the student of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the student has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

This right is not unlimited, however, and a school is not required by FERPA to afford a student the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student. This fact is indicated in the legislative history of FERPA. The primary source of legislative history regarding FERPA is contained in the "Joint Statement in Explanation of Buckley/Pell Amendment," Volume 120 of the Congressional Record, pages 39862-39866. The Joint Statement states that FERPA was "not intended to overturn established standards and procedures for the challenge of substantive decisions made by an educational institution." (Emphasis added.) FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement

determinations. Thus, while FERPA affords students the right to seek to amend education records which contain inaccurate information, this right cannot be used to challenge a grade or an individual's opinion. Because the records you are seeking to amend pertain to a substantive decision as discussed above, FERPA's amendment provision does not apply in this instance. Accordingly, no basis exists for this Office to investigate your allegation that the College failed to consider your request to amend your grade.

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

(b)(6)

DEC - 8 2009

Dear

(b)(6)

This is to respond to your letter to this Office in which you allege that the University of (b)(6) (b)(6) (University) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it disclosed your education records to third parties. Specifically, you state that (b)(6) registrar at the University, sent a copy of a letter to (b)(6) (b)(6) and (b)(6) legal counsel at the University. 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 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.

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, instructor, support staff, legal counsel, or 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 the instance that you identify, FERPA permitted (b)(6) to nonconsensually disclose your education records to the University's counsel as discussed above. Accordingly, no basis exists for this Office to investigate your allegation.

Page 2

(b)(6)

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

DEC - 8 2009

Ms. Catherine Robb
Sedgwick, Detert, Moran & Arnold LLP
919 Congress Avenue, Suite 1250
Austin, Texas 78701-3656

Dear Ms. Robb:

This responds to your letter of August 17, 2009, in which you asked for guidance concerning the Family Educational Rights and Privacy Act (FERPA) on behalf of (b)(6), an investigative reporter with (b)(6). This Office administers FERPA and provides technical assistance to educational agencies and institutions to help ensure compliance with the statute and regulations, which are codified at 20 U.S.C. § 1232g and 34 CFR Part 99.

You explained that on February 23, 2009, (b)(6) made a request under the (b)(6) Public Information Act (b)(6) to the University of (b)(6) (University) for information on the University Interscholastic League's State-mandated anabolic steroid testing program for student-athletes in grades 9-12. According to your letter, (b)(6) asked for the following information regarding positive steroid test results:

- Name of school and district
- Sport played by athlete who tested positive
- Substance detected
- Date of positive test

You stated that the University refused to comply with (b)(6) request on the grounds that the requested information was personally identifiable information protected from disclosure under FERPA. The University also refused to seek an opinion from the (b)(6) Attorney General on the matter based on this Office's August 1, 2006, letter to the Chief of the Open Records Division of the (b)(6) Attorney General. You explained further that on June 2, 2009, the (b)(6) Attorney General advised your client that the Office of the Attorney General was not allowed to review whether the University's decision was appropriate because FERPA prevented it from reviewing "unredacted, personally identifiable information contained in education records."

You expressed concern that the University has adopted a much too expansive view of FERPA and its restrictions and has hidden behind FERPA in order to avoid releasing public information. Accordingly, you asked this Office for guidance for your client and other interested parties, including the University and the (b)(6) Attorney General's Office, regarding the appropriate interpretation of FERPA requirements and restrictions concerning public information.

I. Release of De-Identified Information under FERPA

Under FERPA, a parent or eligible student must provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in § 99.31. 30 CFR § 99.30(a). We assume for purposes of this discussion that the information from the University Interscholastic League that (b)(6) sought from the University is derived from education records subject to FERPA.

Section 99.31(b) of the regulations provides that an educational agency or institution may release records or information without the consent required by § 99.30 after the removal of all personally identifiable information by making a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information. "Personally identifiable information" is defined in FERPA to include:

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number (SSN), student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) 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
- (g) 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. See Final Regulations, 73 Fed. Reg. 74806 (Dec. 9, 2008).

Our responsibilities are limited to enforcing FERPA, a privacy statute, and not public information laws. Nonetheless, we have attempted to interpret FERPA in a manner that balances the privacy interests of parents and students in FERPA with other considerations of public interest. In that regard, we noted in the preamble to final FERPA regulations published last year:

As explained in the preamble to the NPRM [Notice of Proposed Rulemaking], 73 FR 15584-15585, we believe that the regulatory standard for de-identifying information from

education records establishes an appropriate balance that facilitates the release of appropriate information for school accountability and educational research purposes while preserving the statutory privacy protections in FERPA....

In response to comments that educational agencies and institutions may remove too much information from education records, we note that while we have attempted to provide a balanced standard for the release of de-identified data for school accountability and other purposes, FERPA is a privacy statute, and no party has a right under FERPA to obtain information from education records except parents and eligible students.

73 Fed. Reg. at 74834.

The preamble to the final FERPA regulations published last year explains some of the considerations that must be taken into account by a party that wishes to release de-identified information from education records:

The simple removal of nominal or direct identifiers, such as name and SSN (or other ID number), does not necessarily avoid the release of personally identifiable information. Other information, such as address, date and place of birth, race, ethnicity, gender, physical description, disability, activities and accomplishments, disciplinary actions, and so forth, can indirectly identify someone depending on the combination of factors and level of detail released. Similarly, and as noted in the preamble to the NPRM, 73 FR 15584, the existing professional literature makes clear that public directories and previously released information, including local publicity and even information that has been de-identified, is sometimes linked or linkable to an otherwise de-identified record or data set and renders the information personally identifiable. *The regulations properly require parties that release information from education records to address these situations.*

73 Fed. Reg. at 74831 (emphasis added). The preamble to the NPRM also discussed problems and possible solutions regarding the release of numerical or statistical information that contains small data sets that may be personally identifiable, which may be an issue with the data your client requested from the University. See 73 Fed. Reg. 15574, 15583-15585 (March 24, 2008).

In short, while we have attempted to establish general standards for de-identification of education records that strike an appropriate balance between competing interests, we are not able to assume the disclosing party's responsibility for reviewing data sets and making a reasonable determination whether information is personally identifiable under those standards. Likewise, we are not able to prescribe a single method to apply in every circumstance to ensure that students are not personally identifiable in data once direct identifiers have been removed. See 73 Fed. Reg. at 15584; 73 Fed. Reg. at 74834-74836.

II. Review of Education Records by the (b)(6) Attorney General under (b)(6)

Your letter notes correctly that by letter dated July 25, 2006, this Office advised the (b)(6) Attorney General that there is no exception to the written consent requirement in FERPA that allows an educational agency or institution to disclose personally identifiable information from education records to obtain the Attorney General's opinion whether the disclosure or refusal to disclose a record complies with FERPA or an exception in (b)(6) (That is letter is available on our website at www.ed.gov/policy/gen/guid/fpco/ferpa/library/txago072506.html.) We note further that the (b)(6) Attorney General had previously advised in Open Records Decision No. 634 (Dec. 4, 1995), that TPIA has never required a governmental body to request an opinion whether a record was excepted from disclosure because it was protected as an education record under FERPA. Open Records Decision No. 634 also explains that if an educational agency or institution chooses to request a decision under (b)(6) Gov't Code § 552.301(a) regarding information that is protected by FERPA, before sending the record to the Attorney General the agency or institution should either obtain parental consent or edit the record to make sure that it contains no personally identifiable information. As such, while an educational agency or institution may certainly describe the specific considerations it has taken into account, there is no basis on which the (b)(6) Attorney General may review the actual information that an educational agency or institution has determined is personally identifiable under FERPA without consent.

I trust that this guidance is responsive to your request.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

cc (b)(6)

(b)(6)

DEC - 8 2009

Dear

(b)(6)

This is to respond to your September 22, 2009, letter to this Office in which you state that certain institutions to which you have applied disclosed information from your admissions applications during the admissions process. You state that the disclosure of such information included in the applications violated your rights under 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 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 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.

As stated above, FERPA affords rights to "students." FERPA generally defines a student as any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records. Since you were not a student at the time when information from your admission applications may have been disclosed to third parties, FERPA does not apply in this instance. Accordingly, no basis exists for this Office to take any further action regarding your inquiry.

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

DEC - 8 2009

(b)(6)

(b)(6)

Dear

This is to respond to your October 12 and 23, 2009, letters to this Office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by (b)(6) (College). In your letters, you allege that the College failed to comply with your written request to access your education records within 45 days after it received your request. Specifically, you state that you requested in your August 6, 2009, letter (received by the College on August 10, 2009) to (b)(6) director of admission at the College, that he provide you with access to certain of your education records. You also allege that the College violated FERPA when it did not amend certain of your education records, including staff/student opinions which relate to your disciplinary records and a substantive decision involving your transcript. As you know, 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 directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.

In response to your allegation that the College did not comply with FERPA's 45-day access provision, this Office informed you in a September 24, 2009, letter that Mr. Bernard Cieplak of my Office contacted (b)(6) on September 19, 2009, to provide him with technical assistance regarding FERPA's 45 day access requirement and to inform you that the College would soon contact you to provide you with access to your education records. (b)(6) wrote to you on September 21, 2009, (postmarked September 22, 2009) and offered you the opportunity to inspect and review your education records. You state that you received the College's September 2009 letter in which it offered you to inspect and review your education records, however, you provided this Office with no evidence to confirm the date when you received that letter. Without further evidence from you which verifies that the College's September 21, 2009, letter, was not received by you within 45 days of it receiving your August 6, 2009 request for access, this Office is unable to investigate your allegation that the College failed to comply with FERPA's 45-day access provision. Additionally, you confirmed in your letter that the College provided you with access to your education records. Based on these facts, the District complied with FERPA when it offered you the opportunity to inspect and review your education records within 45 days after it received your request. Accordingly, no basis exists for this Office to investigate your allegation that the College did not comply with FERPA's 45-day access requirement.

In response to your allegation that the College did not comply with FERPA when it failed to amend certain of your education records, FERPA affords students the opportunity to seek amendment of their education records which they believe contain information that is inaccurate or misleading. While a school is not required to amend a record in accordance with a student's request, it is required to consider the request for amendment of an education record, to inform the student of its decision, and if the request is denied, to advise the student of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the student has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

This right is not unlimited, however, and a school is not required by FERPA to afford a student the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student. This fact is indicated in the legislative history of FERPA. The primary source of legislative history regarding FERPA is contained in the "Joint Statement in Explanation of Buckley/Pell Amendment," Volume 120 of the Congressional Record, pages 39862-39866. The Joint Statement states that FERPA was "not intended to overturn established standards and procedures for the challenge of substantive decisions made by an educational institution." (Emphasis added.) FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. Thus, while FERPA affords students the right to seek to amend education records which contain inaccurate information, this right cannot be used to challenge substantive decisions or an individual's opinion. The records you are seeking to amend pertain to a substantive decision involving your transcript and opinions made about you. As discussed above, FERPA's amendment provision does not apply in this instance. Accordingly, no basis exists for this Office to investigate your allegation that the College did not amend certain of your education records.

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

Sincerely,

Mr. Paul Gammill
Director
Family Policy Compliance Office

(b)(6)

DEC - 3 2009

Dear

(b)(6)

This is to respond to your June 16, 2009, letter to this Office in which you appear to allege that College Forward, a non-profit educational program, has violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). College Forward is not an educational agency or institution subject to FERPA. 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. In the instance where a student has consented to disclosing his or her education records to a third party, a school is permitted, though not required, to provide a third party with access to his or her education records. It appears that you gave written consent for College Forward representatives to access your education records. Accordingly, your school or institution would be permitted, although not required, to disclose your education records to College Forward representatives. If you now want to withdraw your consent, you should contact the appropriate school official regarding its policy to withdraw your consent relating College Forward's access to your education records.

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

Enclosure

(b)(6)

NOV 30 2009

Dear (b)(6)

This is to respond to your July 16, 2009, complaint form that was received by this Office on October 26, 2009. You allege that the (b)(6) (University) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it did not provide you with access to and disclosed information from the education records of your daughter (b)(6) (Student). 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. Under FERPA, whenever a student becomes eighteen years of age or attends a postsecondary institution, all rights once afforded to the parents transfer to the student ("eligible student"). Based on the information you provided, your daughter is an eligible student and holds the rights under FERPA. Enclosed is a copy of a FERPA fact sheet and guidance regarding disclosure of information from education records to parents of postsecondary students.

Under FERPA, a school must provide an eligible student with an opportunity to inspect and review his or her education records within 45 days of the receipt of a request. A school is required to provide a student with copies of education records or make other arrangements when a failure to do so would effectively prevent the student from obtaining access to the records. A case in point would be a situation in which the student does not live within commuting distance of the school. Based on the information you provided this Office, it appears that the Student lives within commuting distance to the University. Under these circumstances, the University is required to provide the Student with an opportunity to inspect and review her education records, though it could choose to provide the Student with copies.

FERPA generally requires that a student provide written consent before a school can disclose education records to a third party. 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 University may do so, it is not required to provide you with access to, or copies of, your daughter's education records in response to a request from you or your daughter.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has failed to comply with FERPA. 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 failure to comply with FERPA.

Notwithstanding the fact that you have no standing to file a FERPA complaint on behalf of your daughter, your allegation is untimely based on the October 26, 2009, date when this Office received your allegation as discussed above. Accordingly, no basis exists for this Office to take further action in regard to this allegation.

In regard to any allegation that on September 15, 2009, school officials improperly disclosed your daughter's education records to other students without her prior written consent, your daughter has not provided sufficient detail for this Office to consider such an allegation. Your daughter needs to provide this Office with the following: a completed complaint form, which is signed and dated by the Student; a clearly stated allegation which specifies how the Student's FERPA rights were violated related to any September 15, 2009, disclosure; the name(s) of the school officials whom your daughter alleges made any disclosure from her education records; the specific information disclosed from her education records; and the names of the third parties to whom your daughter's information was improperly disclosed. Your daughter 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 your daughter provides and take any appropriate action.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

NOV 30 2009

Dear (b)(6)

This is in response to your September 17, 2009, letter to this Office in which you allege that the (b)(6) (District) failed to provide you access to the education records of your son, MAVE (Student), in response to your requests. This Office administers the Family Educational Rights and Privacy Act (FERPA) which addresses issues that pertain to education records.

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

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

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. In addition to conducting investigations of alleged violations of FERPA, this Office also provides schools with technical assistance to ensure they are in compliance with or come into compliance with FERPA.

Attached is a copy of a letter of technical assistance to the District. If the District does not contact you to set up an appointment for you to inspect and review the Student's education records within three weeks of your receipt of this letter, you may contact this Office again.

Page 2

(b)(6)

There are some additional requirements for the education records of student who receive special education services under Part B. Although Part B is a Federal statute, it is administered by the States. If you wish to contact the organization responsible for administering Part B in your State, the address is as follows:

Deputy Commissioner for Vocational
and Educational Services for Individuals with Disabilities
New York State Department of Education
One Commerce Plaza, room 1606
Albany, New York 12234

I trust that the above information and described action are responsive to your request.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

Mr. Gerald Dempsey
Superintendent
Plainview-Old Bethpage Central School District
106 Washington Avenue
Plainview, New York 11803

NOV 30 2009

Dear Mr. Dempsey:

This is in regard to a concern addressed to this Office by (b)(6) (Parent). The Parent alleged that the District did not provide her with an opportunity to inspect and review certain of the education record of her son (b)(6) (Student), in response to her requests. The Student attends Stratford Road School in the District. This Office administers the Family Educational Rights and Privacy Act (FERPA) which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. Enclosed for your information is a copy of the FERPA regulations. 34 CFR Part 99.

The term "education records" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." Under FERPA, a school is required to provide a parent with an opportunity to inspect and review his or her minor child's education records within 45 days of a request. 34 CFR § 99.10.

A school is not required to provide a parent with copies of education records unless a failure to do so would effectively prevent the parent from obtaining access to the records. A case in point would be a situation in which the parent lives outside commuting distance of the student's school. However, a school is required to offer the parent an opportunity to inspect and review his or her child's education records in response to a request by a parent for copies of education records. Also, if a parent failed to request access to education records from the appropriate official at a school or in a school district, the school or district is required by FERPA to either forward the request to the appropriate official or to advise the parent of who is the appropriate official to contact for access to education records.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides schools with technical assistance to ensure they are in compliance with or come into compliance with FERPA. This letter is meant to provide the District with technical assistance

regarding the definition of the term "education records" and the requirement for "providing a parent access to education records."

Also enclosed is a copy of a July 17, 2009, letter to (b)(6) assistant director of pupil personnel services for the District, in which the Parent requests access to certain of the Student's education records. Please review the highlighted paragraphs in the letter to see the specific education records to which the Parent is requesting access. With regard to the second highlighted paragraph, minutes of a meeting regarding a student's IEP would generally be directly related to the Student and, therefore, the Student's education records to which the Student's parent would have the right to inspect and review.

If one of the school officials in a meeting took memory-jogger type notes, such notes could meet the definition of "sole possession records" under certain circumstances. 34 CFR s 99.3(b)(1). Sole possession records are not education records subject to parental access. However, it does not appear that the records at issue here are sole possession records.

The District should contact the Parent within three weeks of receipt of this letter to set up an appointment for the Parent to inspect and review the education records requested in her July 17 letter. This Office recommends that the District take this opportunity to inform (b)(6) and other appropriate officials in the District of the definition of education records and a parent's right to have access to education records as it relates to the issues in this matter.

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

Mr. Gilbert Hermosillo
Dean of Admissions, Assessment, Student Aid
Miracosta Community College District
One Barnard Drive
Oceanside, California 92056

NOV 30 2009

Dear Mr. Hermosillo:

This is in response to your inquiry relative to the Family Educational Rights and Privacy Act (FERPA) and California Education Codes 76030(c) and 76032 which you state relate to "minors on campus" as follows. Education Code 76030(c) states:

Whenever a minor is suspended from a community college, the parent or guardian shall be notified in writing by the president or the president's designee.

And, Education Code 76032 states:

If the student removed by an instructor is a minor, the college president or the president's designee shall ask the parent or guardian of the student to attend a parent conference regarding the removal as soon as possible. If the instructor or the parent so requests, a college administrator shall attend the conference.

You ask this Office whether FERPA preempts state law and you cite the court case of Rim of the World Unified School District v. Superior Court of the County of San Bernardino, #No. E032252 (CAL. Ct. APP. 12/31/2002), and ask whether we agree that "this court case applies in this situation." As you know, this Office administers FERPA.

As a preliminary matter, FERPA does not address who will attend parent/teacher conferences or when a parent/teacher conference should take place-- such decisions are made at the discretion of local and State officials. Rather FERPA applies to the disclosure of education records. "Education records" means those records that are:

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

34 CFR § 99.3 "Education records." The fact that a student is suspended from the College is personally identifiable information from that student's education record and

cannot be disclosed absent the prior written consent of the student, even if the student is a “minor” under State law, unless one of the FERPA exceptions discussed below applies.

You did not explain the term “minor” in light of the California Education Codes, but FERPA 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. When a student reaches the age of 18 or attends an institution of postsecondary education, that student is deemed “eligible” and all of the rights afforded by FERPA transfer from the parents to the student. 20 U.S.C. § 1232g(d); 34 CFR § 99.3 “Eligible student.”

FERPA generally prohibits the nonconsensual disclosure of information derived from education records, except in certain specified circumstances. 20 U.S.C. § 1232g(b); 34 CFR §§ 99.30 and 99.31. One of these exceptions permits the nonconsensual disclosure of information derived from education records to that student's parent if the student is a dependent student, as defined in section 152 of the Internal Revenue Code of 1986. 20 U.S.C. § 1232g(b)(1)(H); 34 CFR § 99.31(a)(8). Thus, if a parent of a student attending the College claims the student as a dependent for income tax purposes, the College may disclose any student education records, including a notice of suspension, to the parent under FERPA.

Also, § 99.31(a)(15) permits nonconsensual disclosure of education records to a parent of a student at an institution of postsecondary education regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance if-

(A) The institution determines that the student has committed a disciplinary violation with respect to that use or possession; and

(B) The student is under the age of 21 at the time of the disclosure to the parent.

Also, paragraph (a)(15) of this section does not supersede any provision of State law that prohibits an institution of postsecondary education from disclosing information.

In sum, to the extent that § 99.31(a)(8) and § 99.31(a)(15) would apply there does not appear to be any conflict between the above cited California Education Code and FERPA. If neither of these exceptions apply and the student does not provide prior written consent allowing for the disclosure of his or her education records, then the College cannot comply with these State law requirements.

With regard to your question about the above court case and whether this Office agrees that FERPA preempts state law, educational agencies and institutions are required to comply with all FERPA requirements as a condition for receipt of funding under

Page 3 – Mr. Gilbert Hermosillo

programs administered by the Department. Thus, if an educational agency or institution wishes to continue receiving funding, it must choose to comply with FERPA.

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

NOV 23 2009

(b)(6)

Dear

(b)(6)

Thank you for your letter to President Barack Obama regarding accountability in education. We appreciate your views on this issue. The White House has referred your letter to the Department of Education for review, and I am pleased to respond.

This Office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues that pertain to education records. FERPA gives parents of minor students 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.

You write concerning a local student (b)(6) (Student), who received recognition from the President's Education Awards Program in February 2009 for "outstanding academic excellence." You are concerned that as of May 2009 the Student has been unable to proceed with his education at (b)(6) (School) due to policies of the School that do not permit students to take examinations or obtain transcript information if there are unpaid financial obligations to the School. You have initiated a local appeal to provide financial assistance to the Student so that he may satisfy the financial obligation to the School and complete his high school education. You are also working with local officials to initiate changes to the School's policy concerning these matters. You ask for assistance with your concerns.

FERPA applies to educational agencies and institutions which receive Federal funds from programs administered by the U.S. Department of Education. 34 CFR § 99.1(a). Because private and parochial schools at the elementary and secondary school levels do not generally receive funds from the Department of Education, records and information

Page 2 —

(b)(6)

from records maintained at such schools would not be subject to FERPA. Accordingly, the (b)(6) is not subject to FERPA. Additionally, issues concerning the policies of a private parochial school are not generally subject to Federal education laws. These issues must usually be addressed with the individual school administrators or other officials within its regulatory structure.

Thank you for your interest in education. We regret we are unable to assist you further with your concerns.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

(b)(6)

NOV 16 2009

Dear

(b)(6)

Thank you for your letter to President Barack Obama regarding accountability in education. We appreciate your views on this issue. The White House has referred your letter to the U.S. Department of Education, Family Policy Compliance Office (FPCO) for review and I am pleased to respond.

This Office administers the Family Educational Rights and Privacy Act (FERPA), which gives parents and eligible students the right to inspect and review the student's education records. The term "Education Records" is defined as those records that are directly related to a student and that are maintained by an educational agency or institution or by a party acting for the agency or institution.

FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records. Additionally, FERPA does not require a school to keep education records in any particular file or location, and a school official would not be prohibited by FERPA from taking education records home, so long as the records are treated consistent with FERPA.

Based on the information above, no basis exists for this Office to assist you with your concerns. However, we are providing you with a guidance document on FERPA and if you have any further questions after reviewing the guidance document, you may contact us directly at the following address:

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

Mr. Daniel F. Sullivan
President
St. Lawrence University
23 Romoda Drive
Canton, New York 13617

NOV 12 2009

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

Dear Mr. Sullivan:

This is to inform you of the finding in the complaint filed by (b)(6) on behalf of her client, (b)(6) (Student) against St. Lawrence University (University) under the Family Educational Rights and Privacy Act (FERPA). By letter dated July 24, 2008, we informed you of the Student's allegation that the University violated § 99.30 of the FERPA regulations when it improperly disclosed information from the Student's education records. Specifically, by letter dated January 3, 2007, (b)(6) alleged that after the Student filed an October 9, 2006, appeal to a September 26, 2006, disciplinary decision of the University Honor Counsel, one of her education records was disclosed to an outside doctor. The University questioned whether the complaint met FERPA's timeliness requirement of 180 days and being that (b)(6) contacted this Office on January 3, 2007, relative to the fact that the Student learned of an alleged improper disclosure of her education records on or about December 7, 2006, we conclude that the complaint meets FERPA's timeliness threshold.

By letter dated August 20, 2008, (b)(6), Associate Professor, History Department, responded on behalf of the University. (b)(6) states in part the following:

... we do not believe that the disclosure was a violation of FERPA. FERPA expressly authorizes the disclosure of educational records, without prior student consent, to school officials with a legitimate educational interest. 34 CFR § 99.31. The University's counsel has advised us that the Family Policy Compliance Office repeatedly has recognized that this exception for school officials extends to outside contractors and experts retained by an institution, provided there is a legitimate educational interest in doing so.

(b)(6) references that FERPA permits the disclosure of education records to appropriately designated school officials with legitimate educational interest and provides a copy of the University's annual notification that provides for the disclosure of education records absent

consent to school officials who are employed by or under contract to the University to perform a specific task who have a legitimate educational interest defined as a need to review education records in order to fulfill their University related responsibilities.

(b)(6)

explains that the University decided to retain an expert on learning disorders in connection with the Student's appeal for advice on the matter. Accordingly, the University retained (b)(6) for the following reason:

The University retained (b)(6) specifically to advise it with respect to disability issues [the Student] herself raised, and pursued, in the context of her AHC proceeding. In an attempt to make sure that it was not overlooking anything related to her claims, the University sought expert assistance. Clearly, there was a "legitimate educational basis" for sharing [the Student's] educational records with (b)(6). Given (b)(6) status as someone with whom the University had contracted to provide a specific task and the reason for the disclosure to her, this disclosure was expressly permitted by the University's policy and § 99.31.

FERPA provides that educational agencies or institutions may disclose a student's education records, or personally identifiable information from such records, to third parties only after obtaining the written consent of a minor student's parent, or of a student who has reached the age of 18 or is attending an institution of postsecondary education. 20 U.S.C. 1232g(b)(1) and (d).

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

Section 99.31(a)(1) states that an educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

(1)(i)(A) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

B) A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party--

- (1) Performs an institutional service or function for which the agency or institution would otherwise use employees;
- (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and
- (3) Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

It appears the disclosure that the University made from the Student's education records to (b)(6) was a permissible disclosure under FERPA because as described by the University, it met the requirements of § 99.31(a)(1). Accordingly, we find that no violation of FERPA occurred.

Lastly, the University did not keep a record of disclosure in this instance because it made a disclosure to a school official with legitimate educational interest. Under FERPA a school is not required to make a record of a disclosure that is made to a school official with legitimate educational interest. Thus in regard to (b)(6) second allegation relative to FERPA's recordkeeping requirement, because no recordkeeping requirement exists in this instance, we find that there was no violation of FERPA.

We will inform (b)(6) of our findings by copy of this letter. Accordingly, we are closing this complaint. Thank you for your cooperation with regard to this matter.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

cc: Ms. Winona Zimmerlin

(b)(6)

NOV 5 2009

Dear (b)(6)

This is in response to your July 2, 2009, letter to this Office in which you allege that (b)(6) (b)(6) (College) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed information from your education records to a school official who did not have a legitimate educational interest. Specifically, you allege that on June 29, 2009, (b)(6) director of student services at the College, and (b)(6) the security officer, improperly disclosed information from your disciplinary file to (b)(6) director of financial aid for the College. You do not believe that (b)(6) had a legitimate educational interest in having access to this information. This Office administers FERPA which addresses issues that pertain to education records.

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

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, 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 to "school officials" with a "legitimate educational interest." Please see page three of the guidance document for additional information on the school official exception. Generally, a school official has a legitimate educational interest if he or she needs access to information in education records to do his or her job.

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.

We are unable to determine from your letter whether (b)(6) has a legitimate educational interest in accessing your disciplinary file. It appears there was some conflict between you and (b)(6) regarding your financial aid award letter. (b)(6) may have reviewed your

(b)(6)

disciplinary file to determine whether you had a pattern of having conflicts with school officials. She may have planned to factor that into a decision on whether the conflict between you and her needed to be reported to another appropriate school official or office.

If you wish this Office to further consider your allegation, please complete the enclosed complaint form and provide us with additional information regarding the conflict between you and (b)(6) and a copy of the e-mail (b)(6) sent to you and (b)(6), dean of the School of Adult and Professional Studies. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosure

(b)(6)

NOV 5 2009

Dear (b)(6):

This is in response to your May 18 and July 14, 2009, correspondence to this Office in which it appears you are alleging that (b)(6) (University) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it failed to provide you access to all of your education records in response to your requests. Along with your correspondence to this Office, you provided a March 30, 2009, letter to the physical therapy department at the University in which you state:

... Please consider this a request for all my academic records – records from the registrar, PT dept., student affairs, counseling center, and any other office that may contain records of me.

The PT department has given a file to me, but I have reason to believe that it is incomplete. (b)(6) there are other e mails that were not given to me in my file. I want all of them, including all correspondence between you and me; particularly the matter in which you assumed I was asking you out on a date to a school function.

This Office administers FERPA which addresses issues that pertain to education records.

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

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

the information in your letter, it appears you live within commuting distance of the University. Therefore, the University is required to provide you with an opportunity to inspect and review your education records, though it is permitted by FERPA to provide you with copies of the records instead.

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

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. If you wish this Office to further consider your allegation, we need to receive additional information from you. Please complete the enclosed complaint form and include the date you requested access to your education records. Are you considering your March 30 letter as your request? Your March 30 letter is addressed to the physical therapy department. Based on your May 18 correspondence, it appears that the physical therapy department provided you access to certain of your education records. Did the physical therapy department advise you to contact any other office at the University (such as the registrar's office) to obtain access to additional education records? Did the University respond to your request for copies of education records by inviting you to set up an appointment to come and inspect and review the requested education records? Also, please provide this Office with any evidence you may have that the University maintained education records at the time of your request to which it did not provide you access. For example, evidence could be that the e-mails at issue were subsequently part of a disciplinary proceeding, and the University's policy in the student handbook stated that it maintains all records that are related to a disciplinary proceeding for three years. We will review the information you submit and take any appropriate action.

However, in order to exercise your rights under FERPA, I suggest you write again to the University and request the specific education records to which you are seeking access. As stated above, the University is not required by FERPA to provide you with copies of the records. I believe the University will be more likely to provide you with copies of education records (if that is what you want) if your request is more targeted. Though it is not required, you may want to include a copy of this letter along with your request. If the University fails to provide you access to the requested education records (copies of the records or an invitation to inspect and review the records) or fails to contact you within 45 days, you may write to this Office again. At such time, please provide us with a dated copy of your letter to the University, any response from the University, and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

Page 3

(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)

NOV 5 2009

Dear (b)(6)

The purpose of this letter is to notify you that this Office is not initiating an investigation in response to your correspondence of March 24, 2008. Your correspondence does not contain specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. In accordance with the FERPA regulations, this Office notifies a complainant if it does not initiate an investigation under FERPA. This Office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues that pertain to education records.

The University notified you in a January 7, 2008, letter that a computer file containing information from your education records had been "inadvertently placed on [the University's] Web server" and that it may have been possible for others to view the information. The University's letter informed you that the file had been removed from the Web server, was no longer accessible online, and that it was consulting with third party experts to improve the University's security procedures. The University's letter included an offer of free credit monitoring service from Experian for 12 months and advice on other steps you could take to minimize a risk of identity theft.

You still had concerns about the matter and contacted the University call center in January, when you spoke with a staff person and (b)(6) the call center manager. Following that conversation, on February 1 you wrote to the University president and chief information officer requesting further information about the incident, the University's response, and the University's computer and information management procedures. You had a telephone conference with the chief operating officer and the chief information officer of the University on February 21, and that was followed by a February 29 letter to you by the chief operating officer.

Your March 24 letter to this Office states that you continue to "have no trust that [your] information is secure." You feel the University employed insufficient security procedures, a "casual and incorrect notification [and] poor customer service" in its responses to you. You ask to be informed whether the FERPA regulations state "which (university/academic) personnel have the permission/need to access student's personal information;" and the location within FERPA where this information is located.

FERPA is a Federal law that gives students 18 years or older or who have attended a postsecondary institution 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 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 guidance document for eligible students about FERPA.

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

FERPA specifically exempts from the prior written consent requirement those disclosures of education records that are made to other school officials, such as teachers, within the educational agency or institution whom the agency or institution has determined to have a legitimate educational interest. 34 CFR § 99.31(a)(1). Although "school official" is not defined in the statute or regulation, this Office has interpreted the term to include positions such as an institutional president, chancellor; trustee; instructor; registrar; counselor; admissions officer; attorney; information systems specialist; and support or administrative personnel. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. Section 99.7(a)(3)(iii) of the FERPA regulations requires an educational agency or institution to include in its annual notification of rights under FERPA a statement indicating whether it has a policy of disclosing personally identifiable information under § 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest.

The Final Regulations were published in the *Federal Register* on December 9, 2008 (73 FR 74806). On pages 74806 and 74843 the preamble to the FERPA Regulations explain the necessity for 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. The "Department's Recommendations for Safeguarding Education Records" (Safeguarding Recommendations) were also published in the Final Regulations to provide institutions additional information and resources to assist them in meeting this responsibility. You can find a link to the Final Regulations on our website here: www.ed.gov/fpc.

The FERPA Safeguarding Recommendations recognize that no system for maintaining and transmitting education records, whether in paper or electronic form, can guarantee to be safe from every hacker and thief, technological failure, violation of administrative rules, and other causes of unauthorized access and disclosure. FERPA does not dictate specific requirements for safeguarding education records. An institution may use any reasonable method, combination of methods, or technologies reasonably calculated to protect such information.

The Safeguarding Recommendations specify a variety of steps to be taken when an institution that has experienced an information theft, hacking or other intrusion, equipment or program malfunction, inadvertent release of data to Internet sites, or other unauthorized release of education records. These steps include:

- Immediately retrieving the data to prevent further disclosures.
- Determine the circumstances that permitted the breach to occur
- Identify appropriate physical, technological, and administrative measures to prevent similar incidents in the future.

There is no specific requirement in FERPA to notify students that their education records may have been subject to an unauthorized release. Direct student notification may be advisable, though not required by FERPA, if the compromised data includes student SSNs and other identifying information that could lead to identity theft.

The information you provided does not provide specific evidence that information from your education records was improperly disclosed. It appears your education records were part of the information concerned in the data breach, but there is no direct evidence that your information was improperly accessed or disclosed during the time of the breach. Additionally, you have provided evidence that the University has already completed a number of the suggested steps in the Safeguarding Recommendations. The University has also exceeded its requirements under FERPA by providing direct student notification and an offer of free credit monitoring services. Accordingly, there is no basis for this Office to initiate an investigation of your allegations.

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

Sincerely,

Kathleen M. Wolan
Program Analyst
Family Policy Compliance Office

Dr. Karen Garza
Superintendent
Lubbock Independent School District
1628 19th Street
Lubbock, Texas 79401

OCT - 7 2009

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

Dear Dr. Garza:

This is in regard to the complaint filed by (b)(6) attorney, on behalf of (b)(6) (Parent) against the Lubbock Independent School District (District) under the Family Educational Rights and Privacy Act (FERPA). By letter dated July 5, 2007, this Office informed the District's former superintendent of (b)(6) allegation that the District violated § 99.30 of the FERPA regulations when it improperly disclosed information from the education records of the Parent's daughter (b)(6) (Student).

Specifically, (b)(6) explained that (b)(6), who is a teacher at (b)(6) Elementary School, improperly disclosed information from the Student's education records to (b)(6) a teacher at (b)(6) Junior High School. (b)(6) explained that (b)(6) is the stepparent of the Student's halfsister, (b)(6) but does not have any relation to the Student.

By letter dated August 3, 2007, Ms. Ann Manning, attorney, responded on behalf of the District stating that the facts as explained by (b)(6) are correct and that once the District was informed of the complaint, (b)(6) was notified and disciplined. Ms. Manning explained that (b)(6) did not intentionally violate FERPA but because (the Student) and (b)(6) are half-sisters and (the Student) spends "a great deal of time in the (b)(6) home" she was trying to help ensure that (b)(6) attended school. Finally, Ms. Manning stated that the District continues to provide training regarding FERPA to all employees and will continue to do so in the future.

Based on the above information, we conclude that a disclosure of education records occurred and thus, we find that the District violated FERPA as alleged. Because the District has provided assurance that the disclosure in this instance was unintentional and that the District and its employees understand and comply with the requirements of FERPA, we are closing this complaint and will so notify (b)(6) by copy of this letter.

Page 2 – Ms. Karen Garza

Thank you for your cooperation with regard to this matter.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

cc:

(b)(6)

A large rectangular redacted area, outlined in black, covering the majority of the 'cc:' field. The text '(b)(6)' is visible in the top-left corner of this area.

Dr. Randy Pierce
President
Georgia Highlands College
3175 Cedartown Hwy, SE
Rome, Georgia 30161

OCT 7 2009

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

Dear Dr. Pierce:

This is in regard to the complaint filed by (b)(6) (Student) against Georgia Highlands College (College) under the Family Educational Rights and Privacy Act (FERPA). By letter dated April 5, 2007, we informed the College of the Student's allegation the College violated § 99.30 of the FERPA regulations by improperly disclosing information from his education records without his prior written consent. Specifically, the Student alleged the following:

On or about March 1st, 2006 my rights regarding [FERPA] were violated. My (b)(6) 1010 instructor, (b)(6) distributed a spreadsheet to the entire class with my complete grades for the entire semester. This document also contains the grades for the entire semester for the whole class.

By letter dated April 30, 2007, you responded that (b)(6) did in fact circulate the spreadsheet as alleged and that when asked about it she thought that she was clarifying with students that she had properly recorded the laboratory grades to date. (b)(6) was then informed of the requirements of FERPA and that the College took additional steps to ensure compliance with FERPA as a result of what you describe as a regrettable matter. Those steps included the preparation of an updated version of the FERPA brochure distributed to faculty and an August 2006 In-Service Meeting for all partime faculty that included a FERPA training session.

As you know, § 99.30 states:

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

Page 2 – Dr. J Randy Pierce

In this case, the College admitted that the disclosure of the Student's education records did occur. Therefore, we find that the College violated FERPA as alleged. Based on the corrective actions taken by the College after receiving this complaint, which include FERPA training for appropriate staff, we are closing this complaint and will notify the Student by copy of this letter.

Thank you for your cooperation with regard to this matter.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

cc: Student

(b)(6)

SEP 30 2009

Dear (b)(6)

This is to follow up on the undated complaint letter regarding the Family Educational Rights and Privacy Act (FERPA) that this Office received from you on August 13, 2009. In a February 18, 2009, letter to this Office you alleged that (b)(6) (College) improperly disclosed to third parties information from your education records without your prior written consent. On July 14, 2009, this Office sent to you a 3-page guidance letter (copy enclosed) explaining FERPA as it relates to your concerns.

In summary, you allege that on February 18, 2009, a (b)(6) related that the College provided the social security numbers (SSNs) of its former students to its Alumni Office, and the Alumni Office provided the SSNs to a printer that printed the College's Alumni newsletter. You further allege that the printer sent newsletter mailings with students' addresses and SSNs to former students.

Regarding this allegation, this Office advised in our July 14, 2009, letter that if you believe that the College improperly disclosed from your education records your name and SSN to the College's printer who then included this information on a mailing to you and other former students, you need to provide this Office a copy of any such mailing that the College sent to you. If you do not have a copy of the mailing to you, you should state this in your response.

We further advised that for each improper disclosure of information from your education records that you believe occurred, you need to provide a brief, concise, statement that contains:

1. The date the records were disclosed;
2. the name and title of the school official(s) who you believe were involved in the disclosure of the records;
3. the specific nature of the records disclosed; and
4. to whom the records were disclosed.

As of the date of this letter, this Office has not received from you the information described in the paragraphs immediately above.

We also note that the president of the College has stated that it has taken steps in response to the data breach, as follows:

1. The College has engaged (b)(6), a New York-based risk consulting firm, to provide services with respect to the data breach at no cost to students;
2. Licensed investigators will help restore students' names and credit if either should be affected by the data breach;
3. Continuous credit monitoring is available to make students aware of key changes in their credit file that could indicate the kind of unauthorized activity commonly associated with identify theft and fraud.

Given that (1) you have not provided this Office in writing the information about your complaint that is described in the paragraphs above, and (2) the steps the College has taken to protect students from possible harm from the data breach, there is no basis under FERPA for this Office to consider your complaint.

I trust this information and guidance is helpful to you.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

SEP 24 2009

(b)(6)

Dear (b)(6)

This is to respond to your August 28, 2009, letter to this Office in which you raise issues which relate to the Family Educational Rights and Privacy Act (FERPA). It appears that you believe that (b)(6) (College) violated rights afforded you under FERPA when it failed to respond to your September 10, 2004, request for access to your education records. You also provided this Office with a copy of your August 6, 2009, request for access to your disciplinary file to (b)(6) director of admission, at the College. 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 maintained by an educational agency or institution or by a party acting for the agency or institution.

Under FERPA, a school is required to provide a student with an opportunity to inspect and review his or her education records within 45 days of the receipt of a request. A school is required to provide a student with copies of education records or make other arrangements for access when a failure to do so would effectively prevent the student from obtaining access to education records. A case in point would be a situation in which the student does not live within commuting distance to the school. It appears that you live within commuting distance of the institution where you were a student. Therefore, FERPA requires the institution only to provide you with an opportunity to inspect and review your education records, though it would be permitted to provide you with copies.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has failed to comply with FERPA. 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 failure to comply with FERPA. Accordingly, your September 10, 2004, request to the College is untimely and this Office will not take any further action regarding this inquiry.

Page 2—

(b)(6)

With regard to your August 2009 request for access, I contacted (b)(6) on September 19, 2009, to provide him with technical assistance regarding FERPA's 45 day access requirement. It is my understanding that the College will be in contact with you soon in compliance with FERPA. If the College fails to comply with FERPA as discussed above, you may write to this Office again.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

(b)(6)

SEP 4 5 2009

Dear (b)(6)

This is in response to your May 19, 2009, 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 amend information in the education records of your daughter, (b)(6) (Student), in response to your requests or afford you the opportunity for a hearing on the matter. This Office administers FERPA which addresses issues that pertain to education records. Other issues, as you have raised them in your letter, such as the individual classes or program of study in which the Student was placed in high school and possible violations of (b)(6) laws, 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 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 your information are a FERPA fact sheet and guidance document.

Under FERPA, a parent has the right to request that inaccurate or misleading information in his or her minor 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 the 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.

Page 2 -

(b)(6)

Based on the information in your letter, it appears you are seeking to amend the Student's grades and the way the Student's grade point average was calculated, i.e., a substantive decision made by the District. As stated above, you may not seek to amend these items under FERPA. As such, there is no basis for this Office to assist you regarding your concerns.

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

Honorable John Cornyn
United States Senator
Providence Towers, Suite 1125E
5001 Spring Valley Road
Dallas, Texas 75244

SEP 4 5 2009

Dear Senator Cornyn:

This is in response to your August 24, 2009, to the Department on behalf of your constituents, (b)(6) (Parents). Among other concerns, it appears the Parents are alleging that the (b)(6) (District) violated their rights under the Family Educational Rights and Privacy Act (FERPA) when it failed to amend information in the education records of their daughter, (b)(6) (Student), in response to their requests and when it failed to offer them an opportunity for a hearing on the matter. Your letter was forwarded to this Office for response because we administer FERPA which addresses issues that pertain to education records.

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

This Office responded to the Parents' concerns in a recent letter to them. Enclosed for your information is a copy of our letter. Should you have additional questions about this matter or FERPA in general, you may contact this Office directly at the following address:

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosures

(b)(6)

SEP 25 2009

Dear (b)(6)

The purpose of this letter is to notify you that we will not initiate an investigation of your February 2, 2008, complaint that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act.

Under § 99.64(a) and (b) of the FERPA regulations, this Office investigates a timely complaint that contains specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. A timely complaint is defined in § 99.64(c) as an allegation of a violation that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonable should have known of the alleged violation. As explained below, your allegations are either untimely or fail to contain specific allegations of fact giving reasonable cause to believe that the District violated FERPA.

Allegation #1

You alleged that a press release issued by the District on April 2, 2007, entitled "Enough is Enough" (Press Release No. 1) violated § 99.30 of the FERPA regulations, which provides that a parent must provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records. The term "education records" is defined in § 99.3 of the regulations as records that are 1) directly related to a student; and 2) maintained by an educational agency or institution or by a party acting for the agency or institution.

Among other things, Press Release No. 1 states that on February 20, 2006, you filed a due process complaint against the District under the Individuals with Disabilities Education Act (IDEA); that the (b)(6) issued a decision in the District's favor on July 24, 2006; and that you did not file an appeal of (b)(6) decision. This statement provides sufficient allegations of fact giving reasonable cause to believe that the District violated § 99.30 of the regulations when it released this information. In particular, information that you filed a due process complaint under IDEA is directly related to a student (your child) and, therefore, constitutes the student's education record under FERPA (assuming that the District maintained a record of this information.) However, you failed to file a complaint with this Office until 10 months later, which makes this allegation untimely. As explained below, you have not shown good cause for this Office to extend the time limit as provided in § 99.64(c).

Allegation #2

According to your complaint with this Office, on April 18, 2007, you filed a complaint with ISBE about the District's release of information from your child's education records in Press Release No. 1. You provided us with a copy of (b)(6) December 21, 2007, finding that the District violated State confidentiality requirements in 23 (b)(6) Administrative Code 226.740(a)(b)(c)(f) and (g) when it released Press Release No. 1. (b)(6) found that the District's statement "discloses publicly that the complainant filed for a remedy specific to [IDEA] and thus identifies his child as a student with disabilities. This constitutes a release of student specific information without parental consent.")

On January 2, 2008, the District issued a "Statement from the District 7 Board of Education regarding the recent (b)(6) finding" (Press Release No. 2). You alleged that the District's publication of Press Release No. 2 violates § 99.30 of the FERPA regulations because it re-released and discussed the confidential information contained in Press Release No. 1. In that regard, we note that Press Release No. 2 states:

In [Press Release No. 1], the District revealed to the public that (b)(6) had personal motives for his attacks against District 7 by informing the public that (b)(6) had initiated litigation against the District. The litigation was noted, but no information specific to the basis for the claim was discussed. No student records were released.

While we may disagree with the substance of the District's assertion that no student records were released in Press Release No. 1, we find that neither that statement, nor any other information contained in Press Release No. 2, provides reasonable cause to believe that a violation of FERPA has occurred.

As noted above, the term "education records" in FERPA means records that are directly related to a student (and maintained by the District). Statements that you had initiated litigation against the District, without reference to your due process complaint under IDEA (which is directly related to your child), or any other references to your child, are not "directly related" to a student and, therefore, do not constitute a disclosure of personally identifiable information from that student's education records.

Timeliness Issue

According to your complaint, on January 14, 2008, you provided the Department's Office for Civil Rights (OCR) with a copy of a letter to you dated March 26, 2006, from attorney (b)(6), outside counsel for the District. You expressed concern about the following statement in (b)(6) 2006 letter: (b)(6) [Director of Special Education for the District] has taken actions consistent with the legal advice that I have provided to her." Shortly thereafter, on January 29 you asked OCR the following question: "Since I have alleged that the district was acting on (b)(6) legal advice with regard to records when issuing these press releases, does the OCR have jurisdiction

to enforce [§ 99.33(e) of the FERPA regulations] and restrict (b)(6) and her firm from accessing District 7 records for 5 years?" OCR advised you by letter dated January 29, 2008, that it has no authority to investigate alleged violations of FERPA and referred you to this Office.

You did not file your complaint with this Office alleging that the District's statements violated FERPA until after OCR advised you that it could not provide you with the remedy you sought against the District's outside counsel under § 99.33(e) of the FERPA regulations. Section 99.33(e) provides:

If this Office determines that a third party outside the educational agency or institution improperly rediscloses personally identifiable information from education records in violation of this section ... the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years. [Emphasis added.]

(b)(6) March 16, 2006, letter appears to be concerned solely with your request to inspect and review your child's education records and contains no reference to the District's release of information from education records. Therefore, even assuming that § 99.33(e) applies to the release of information by the District relying on the advice of outside counsel (and not a third party outside the District), we find no basis for concluding that (b)(6) March 16, 2006, letter to you shows that the District was following her advice when it issued the two press releases in question.

Further, because (b)(6) has already addressed the improper disclosure of information from your child's education records in Press Release No. 1, and we do not find sufficient allegations of fact to believe that the District violated FERPA when it issued Press Release No. 2, you have not shown good cause for this Office to extend the time limit for filing your complaint.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

(b)(6)

SEP 16 2009

Dear (b)(6)

This is to respond to correspondence received from you dated February 25, 2008, and May 3, 2009, in which you allege that rights once afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated when the (b)(6) (District) failed to provide you with complete access to the education records of your son (b)(6) (Student) in response to your requests. We note that your rights under FERPA have since transferred to your son when he turned 18 years of age and became an "eligible student." Accordingly, you have provided this Office with signed consent from your son which permits this Office to respond to you. This Office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives a student the right to have access to his or her education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. When a student reaches the age of 18 or attends an institution of postsecondary education, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the student. The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Since the time of your son's 18th birthday, your son was deemed "eligible" and all FERPA rights transferred to him. Currently, the District would be required to provide only your son with an opportunity to inspect and review his education records as discussed above. Enclosed for your information is a FERPA fact sheet.

Under FERPA, a school must provide the eligible student with an opportunity to inspect and review his or her education records within 45 days of the receipt of a request. A school is required to provide the eligible student with copies of education records or make other arrangements when a failure to do so would effectively prevent the student from obtaining access to the education records. A case in point would be a situation in which the student does not live within commuting distance of the school. Based on the information in your correspondence, it appears that the student lives within commuting distance to the District and it is required only to provide him with an opportunity to inspect and review his education records, although it is permitted to provide him with copies.

In accordance with FERPA, a school generally is not required to maintain particular education records or education records that contain specific information. Rather, a school is required to provide certain privacy protections relative to those records it selects to maintain. Nor does FERPA require schools to create or to re-create lost or destroyed education records. It may destroy education records without notice to the student, unless there is an outstanding request from the student to inspect and review such records.

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. However, there are several exceptions to FERPA's prohibition against nonconsensual disclosure of education records. One of FERPA's exceptions to its disclosure provision permits but does not require schools to disclose education records to parents when the parent claims the student as a dependent for tax purposes. Accordingly, a school is not required to provide any third party with access to a student's education records, even when the student has provided prior written consent for such records to be disclosed to that third party. In this instance, although the District is permitted to do so, it is not required to provide you with access to, or copies of, your son's education records in response to a request from you.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has failed to comply with FERPA. 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 failure to comply with FERPA.

Based on information you provided this Office, including copies of the District's written responses to your requests for access to your son's education records at the time you held the rights, the District complied with your requests for access when it offered you opportunities to inspect and review your child's education records. Additionally, you have not provided sufficient evidence for this Office to determine that additional records exist to which you have not been provided access by the District. Accordingly, no basis exists for this Office to investigate your allegation that the District denied you access to your son's complete education records at the time when you held rights under FERPA.

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

Dr. Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201-2595
Telephone: (410) 767-0238

Page 3 (b)(6)

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

cc: Student

Enclosure

(b)(6)

SEP 16 2009

Dear

(b)(6)

This responds to your December 9, 2008, letter and recent follow-up emails in which you allege that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA). Specifically, you believe that the District improperly disclosed information from your son's education records to his classmates and to his physician. This Office administers the Family Educational Rights and Privacy Act (FERPA) which pertains to education records.

It is unclear from the information you provided what education records were disclosed. FERPA prohibits the improper disclosure of information derived from education records. Therefore, information that is based on opinion or hearsay and not specifically contained in education records would not be protected under FERPA.

Furthermore, from the information you provided, such a disclosure may be permissible absent your consent under FERPA's health or safety exception. An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

As for your allegation that the District "compromised the safety of my son during school," when the school nurse discussed your son's allergy to peanuts to his physician and that you had only given the District limited authorization to consult with the physician, we would need to receive a copy of the consent form that the District relies upon to discuss your son's education records with the physician before we can consider this allegation.

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Dr. Dave Allison
Superintendent
Gilbert Unified District
140 S. Gilbert Road
Gilbert, Arizona 85296

SEP 16 2009

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

Dear Dr. Allison:

This is in regard to the complaint filed by (b)(6) (Parent) against (b)(6) Unified District (District) under the Family Educational Rights and Privacy Act (FERPA). By letter dated January 17, 2007, we informed (b)(6), the former superintendent, of the Parent's allegation that the District violated § 99.10 of the FERPA regulations by denying her access to her son (b)(6) (Student) education records.

Specifically, the Parent alleges that in the end of July 2006, she telephoned (b)(6) Junior High School (School) and asked for copies of her son's immunization records. The individual with whom the Parent spoke informed her that "the school only releases information to the new school by written request and they would respond within 30 days, but would not release information to me due to their policy," and that she could not even view her son's file. The Parent further explained that when she spoke with the office manager she was informed that the School could not release the information to her even if she presented the School with an ID and that the School's policy is to "give out student information only to agencies by written request for purposes of enrollment, or to law officials."

By letter dated February 21, 2007, (b)(6) attorney, responded on behalf of the District explaining that the District is unable to confirm or deny what occurred in late July for the following reasons. First, the individual who held the attendance clerk position is no longer employed by the District and second, (b)(6) School does not have an Office manager. (b)(6) further states:

If discussion occurred as alleged by [the Parent], the District is truly sorry. It is not a policy or practice of the District or (b)(6) High School to deny a parent access to their child's educational records, or refuse to copy records for a parent. As a result of [the Parent's] complaint, the District is going to ensure that the Attendance or Records Clerk at each school are directed to review Governing

Board Policy (b)(6) and will emphasize the portion of Policy (b)(6) that pertains to a parent's right to access their child's own records.

Sections 99.10(a) and (b) state:

Except as limited under § 99.12, each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student.

* * * * *

The educational agency or institution . . . shall comply with a request for access to records within a reasonable period of time but not more than 45 days after it has received the request.

When an individual alleges that a violation of FERPA has occurred, the burden of proof rests with that individual(s). In this case, the District is unable to confirm or deny that a FERPA violation occurred. Moreover, the Parent did not provide evidence to support her allegation. Additionally, the District provided this Office written assurance that it understands and complies with the requirements of FERPA but will nonetheless, as a result of this complaint, ensure that employees are informed of FERPA's requirements relative to providing parents access to education records of their children. Given these circumstances and no evidence to the contrary, we find that the District did not violate FERPA as alleged. We are, therefore, closing this complaint and will so notify the complainant by copy of this letter.

Enclosed for your reference is a copy of the FERPA regulations that were revised in December 2008. Thank you for your cooperation with regard to this matter.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure

cc: Parent

SEP 17 2009

(b)(6)

Dear (b)(6):

This is to respond to your October 15, 2008, complaint form to this Office in which you allege that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it disclosed information from your child's education records to a third party without your prior written consent. Specifically, you allege that (b)(6) assistant superintendent at the District, disclosed information to your physician in response to an email. This Office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records that 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.

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

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has failed to comply with FERPA. It is not clear from the information you provided whether (b)(6) was acting as a school official or member of your child's IEP team at the time of the disclosure. Please verify whether (b)(6) was your child's personal physician or whether he was employed by or representing the District in June 2008. Please provide this information within 2 weeks after you receive this letter. Such information is necessary in order for this Office to further consider your allegation and proceed with any investigation.

Page 2

(b)(6)

Should you have any questions in regard to this matter, you may reach me at 202-260-3887.

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Ms. Amy Buttke
Director
Great Western Academy Charter School
310 N. Wilson Road
Columbus, Ohio 43204

SEP 14 2009

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

Dear Ms. Buttke:

This is in regard to the complaint filed by (b)(6) (Parents) against the (b)(6) (School) under the Family Educational Rights and Privacy Act (FERPA). By letter dated August 21, 2007, we asked you for additional information relative to the Parents' allegation that the School provided certain of their child (b)(6) (Student) education records to a parent of another child at the School, (b)(6). The specific education records that were disclosed are a copy of the Student's Emergency Information Card and a copy of the Student's Camp Fire Consent form. In this regard, the Parents stated the following:

I learned that my [daughter's] records [were] disclosed to (b)(6) when a court document was mailed to me with [the Student's] records attached. It is unknown to me who released the records, however (b)(6) school administrator does know who released the records and exactly when.

By letter dated September 28, 2007, (b)(6), attorney, explained on behalf of the District that he interviewed the school officials involved in the matter and that they do not know how (b)(6) came to possess the Camp Fire Consent Form and Emergency Information Card and that at no time did the School admit to any "mistake" regarding the Emergency Information Card. (b)(6) states:

Again, the School takes its privacy obligations very seriously and, although the School does not know how (b)(6) obtained the Camp Fire Consent Form or the Emergency Information Card, the School has increased security to protect the privacy of the education records it maintains.