

When an individual alleges that a violation of FERPA has occurred, the burden of proof rests with that individual. In this case, the District has refuted that a FERPA violation occurred and the Parent did not provide evidence to support her allegation. Additionally, the District provided written assurance that it understands and complies with the requirements of FERPA. 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

Dr. James Ponce  
Superintendent  
McAllen Independent School District  
2000 N. 23<sup>rd</sup> Street  
McAllen, Texas 78501

SEP 14 2009

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

Dear Dr. Ponce:

This is in regard to the complaint filed by (b)(6) (Parent) against the (b)(6) (b)(6) (District) under the Family Educational Rights and Privacy Act (FERPA). By letter dated January 17, 2007, we informed the former superintendent, (b)(6) of the Parent's allegation that the District violated FERPA when it improperly disclosed information from her child (b)(6) (Student) education records. Specifically, we informed the District of the Parent's allegation as follows:

On September 7, 2006, I went to discuss my daughter[']s in-school suspension with (b)(6) z [8<sup>th</sup> grade assistant principal at (b)(6). She conducted the meeting in the lobby of the office. Several teachers and employees of the school heard the conversation. We talked about my daughter's [Special Education] (b)(6) IEP, and items that are in my daughter's file. All of those people now know that my daughter is in Special Ed and that she takes medicine. They all know she has an IEP.

By letter dated February 15, 2007, (b)(6) responded by explaining that the Principal of (b)(6) investigated the actions of the Assistant Principal and the Counselor of (b)(6) and concluded that at no time did these two school officials reveal any confidential information regarding the Student. In support of its position, the District provided two signed statements from each school official to that effect.

When an individual alleges that a violation of FERPA has occurred, the burden of proof rests with that individual. Because the District has refuted that the alleged improper disclosure occurred, and provided witness statements from the school officials involved indicating that no disclosure of the Student's education records occurred, this Office finds that the District did not violate FERPA as alleged. As such, we are closing this complaint and will so notify the Parent by copy of this letter.

Page 2 - Dr. James Ponce

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

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance Office

Enclosure

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

SEP 9 2009

Dear Senator Cornyn:

This is in response to your August 26, 2009, correspondence to the Office of Legislation and Congressional Affairs on behalf of your constituent, (b)(6). It appears that (b)(6) has contacted you to assist her in obtaining a response from this Office regarding issues she believes concern the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C §1232g; 34 CFR Part 99. Your correspondence 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 generally protects student privacy interests with respect to education 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. FERPA 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.

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



Page 2—Honorable John Cornyn

This Office received (b)(6) complaint on August 18, 2009, and it has been assigned to Ms. Jo Elaine Smith of my staff for response. Once we have had the opportunity to review her concerns, to determine their applicability to FERPA, we will take any appropriate action.

I trust that the above is responsive to your inquiry. Please do not hesitate to contact this Office directly should you have any additional questions. The name, address, and telephone number are as follows:

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

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance Office

Honorable Kay R. Hagan  
United States Senator  
701 Green Valley Road  
Suite 201  
Greensboro, North Carolina 27408

SEP 8 2009

Dear Mrs. Hagan:

This is in response to your August 13, 2009, letter addressed to the Office of Legislation and Congressional Affairs regarding concerns raised by your constituent, (b)(6). (b)(6) alleges that the (b)(6) (Institute) denies that he graduated from the Institute. This inquiry was forwarded to this Office for response because we administer the Family Educational Rights and Privacy Act (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 maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a copy of the FERPA guidance document.

Based on the information received, it appears that (b)(6) was a student at the Institute registered as (b)(6) on or about 1976. (b)(6) alleges that the Institute denies that he graduated and further denied him a diploma. As a courtesy, Mr. Bernard Cieplak of my Office first contacted (b)(6), registrar, at the Institute on August 18, 2009. Since that date, (b)(6) has reviewed (b)(6) education records and determined that he did not complete the Institution's requirements necessary for graduation and thus could not receive a diploma. (b)(6) states that the Institute has responded to (b)(6) on several occasions and has stated that without receiving any additional information or evidence to the contrary from (b)(6) the Institute would not reconsider (b)(6) graduation status. Accordingly, while FERPA addresses issues pertaining to education records, it does not address issues pertaining to local policies or matters relating to an institution's graduation requirements. Accordingly, this Office is unable to further assist (b)(6) in this regard.

Page 2—Honorable Kay R. Hagan

Should you or your staff have any further questions in regard to this matter or FERPA, we may be contacted as follows:

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

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance Office

Enclosure

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

**AUG 24 2009**

Dear Mr. Steinberg:

This responds to your letter in which you asked for guidance about the conduct of research with education records of students at (b)(6) (College) under the Family Educational Rights and Privacy Act (FERPA). This Office investigates, processes, and reviews complaints and violations under FERPA and provides technical assistance to ensure compliance with the statute and regulations. See 20 U.S.C. § 1232g and 34 CFR part 99.

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

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



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

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

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

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

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

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

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

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(b)(6)

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

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance Office

Enclosure



(b)(6)

AUG 18 2009

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

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

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

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

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

(b)(6)

FERPA regulations for hearings on amendment of education records. The hearing panel's substantive decision was that the District provide the Student with credit for the courses he took at (b)(6), but no credit for the courses he took through the (b)(6) School.

As indicated above, the focus of the FERPA amendment procedure is to provide a parent the opportunity to seek to amend inaccurately recorded information in his or her child's education record. The hearing at issue was held to determine whether the District was going to provide credits for certain courses the Student had taken, i.e., whether these credits were earned "in accordance with (b)(6) School Board Policies and Regulations." This hearing was not held to determine whether the Student's transcript was inaccurately recorded. Thus, the hearing held by the District was not a FERPA hearing, even though it appears FERPA amendment-like hearing procedures were used.

As you stated, the hearing panel provided the Student with credit for the courses taken at (b)(6) High School. If the District failed to add these credits to the Student's transcript, if that is the general procedure in such instances, you could seek to amend the Student's transcript under FERPA because the transcript would be inaccurately recorded. If the school failed to amend the transcript or offer you the opportunity for a hearing on the matter, you may write to this Office again.

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

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

(b)(6)

**AUG 06 2009**

Dear

(b)(6)

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

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

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

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

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



Page 2 -

(b)(6)

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

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

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

(b)(6)

AUG 06 2009

Dear (b)(6):

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

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

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

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

Page 2 - (b)(6)

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

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosure



(b)(6)

FEB 23 2010

Dear (b)(6)

This is to respond to your December 28, 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 did not provide you access to certain of the education records of your son, (b)(6) (Student), in response to your written request to the District. Specifically, you state that you requested beginning July 1, 2008, that various District officials provide you access to the Student's education records. In a July 18, 2008, response from (b)(6) dean of students at Student's school in the District, (b)(6) stated that "all of [the Student's education records] that were in [the District's] possession have been forwarded to you" and that no additional education records exist. You also provided this Office with a copy of an October 2, 2008, unsigned letter from (b)(6), assistant superintendent of the District, in which he states that the Student's education records were either provided to the Student or no longer exist. This Office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. When a student reaches the age of 18 or attends an institution of postsecondary education, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the student. The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of a FERPA fact sheet.

Under FERPA, a school must provide a parent or eligible student 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 or eligible student with copies of education records or make other arrangements when a failure to do so would effectively prevent the parent or the student from obtaining access to the education records. A case in point would be a situation in which the parent does not live within commuting distance of the school. 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. Under the circumstance that you describe, it appears that the District complied with FERPA when it provided the Student with a copy of certain of his education records.

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.

As stated above, the District is not required to provide you with copies of the Student's education records nor is it required to re-create education records that it does not maintain. You have not provided sufficient information for this Office to determine whether or not certain education records existed at the time you made your July 2008 request. Without such information, this Office is unable to investigate your allegation that the District failed to provide you access to the Student's education records. Accordingly, no basis exists for this Office to investigate your allegation that the District failed to provide you with access to the Student's education records.

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:

Ms. Marcia Mittnacht  
State Director of Special Education  
Massachusetts State Department of Education  
350 Main Street  
Malden, Massachusetts 02148-5023  
Telephone: (781) 338-3375

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures

(b)(6)

(b)(6)

FEB 17 2010

(b)(6)

Dear

This is in response to your November 13, 2009, faxed correspondence to the Department's Office of Inspector General. Your correspondence has been referred to this Office for response because it appears that you believe that the (b)(6) (District) has violated 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 custodial and noncustodial parents alike the right to have access to their child's education records, unless the school has evidence there is a court order or State law that specifically revokes parental rights. A school may ask for legal certification denoting parenthood, such as a court order or birth certificate, from the parent requesting access to 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 for your information is a FERPA guidance document for parents.

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 a parent with copies of education records when a failure to do so would effectively prevent the parent from obtaining access to the child's records. Based on the information in your letter and the District's letter to (b)(6) (Parent), he is the parent of (b)(6) (Student) who is a student in the District, and holds the rights under FERPA. As discussed above, the school would be required only to provide the Parent with access to the Student's education records, even if he provided written consent for the school to provide you, the stepparent, with access to the education records. We also note that the District's letter to the Parent recognizes its responsibility to provide him with access to the Student's education records. Based on the information contained in your November 13, 2009, letter, no basis exists for this Office to investigate an allegation that the District failed to provide the Parent with access to the Student's education records.

In response to your concern about the District's campus visitor policy, FERPA addresses issues that pertain to education records. The District's visitor policy is a local matter and this Office has no authority to address local policies that do not pertain to FERPA. Accordingly, you may wish to address this matter with appropriate officials at the District.



Page 2

(b)(6)

Please also note this Office has been unable to reach you by telephone in response to your recent telephone call to this Office. Despite this Office's numerous attempts to contact you at the telephone number you provided this Office, (b)(6) a phone message states that the voicemail of (b)(6) is full. Thus, this Office has been unable to respond to your telephone inquiry. This Office has twice attempted on February 4, 2010, to reach you again with the same result. If you wish this Office to respond to you via telephone in the future, you should provide this Office with an operating contact telephone number at such time.

I trust this responds to your inquiry as it relates to your concerns regarding FERPA.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure

(b)(6)

FEB 12 2010

Dear

(b)(6)

This is in response to your October 3 and November 14, 2009, letters to this Office in which you express concerns regarding certain actions taken by the (b)(6) (College) relative to the Family Educational Rights and Privacy Act (FERPA). You raise concerns regarding an official in the admissions and records office at the College obtaining access to your transcript and changing your name on your transcript from John to Jack. You also raise concern because the College could not readily locate your 1972 degree. This Office administers FERPA which addresses issues that pertain to education records. The other issues raised in your letter do not appear to be addressed by FERPA and will not be discussed in this letter.

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 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 general prohibition against nonconsensual disclosure of education records.

Once such exception permits nonconsensual disclosure of information from education records to "school officials" when such officials have a "legitimate educational interest." Please see page two of the guidance document for a discussion of the school official exception. Based on the information in your letter, it appears that (b)(6) dean of matriculation, admissions and records for the College, asked a member of the admissions staff to change the name on your transcript from (b)(6) to (b)(6). It appears that (b)(6) and the member of the admissions staff would be school officials with a legitimate educational interest in obtaining access to your transcript.

Please see page two of the guidance document for a discussion of the FERPA amendment procedure. As you know, the reason (b)(6) directed the member of the admissions staff to change the name on your transcript from (b)(6) to (b)(6) is because you recently registered in the



(b)(6)

College's automated system as (b)(6) instead of (b)(6). It is not unreasonable for (b)(6) to have concluded that you now want your records to include the name (b)(6) instead of (b)(6). You may seek to amend the name on your transcript under FERPA's amendment procedure. However, I suggest another course of action in the last paragraph below.

Under FERPA, a school is not generally required to maintain particular education records or education records that contain specific information. Rather, FERPA requires that a school apply certain privacy protections to those records that it selects to maintain. Thus, the school would not be required by FERPA to maintain your 1972 degree.

In a September 18, 2009, letter to you (b)(6) an official at the school states:

... According to my conversation with (b)(6) when she originally did the research on you she used the wrong name of (b)(6) and didn't find that you were a previous student. I shared with her the date of your degree and then she found your 1988 degree. She couldn't find your 1972 degree because of a conversion from one computer system to another computer system. She said that she would go back in the records and find that information. So at this point if you would please contact me at ... or (b)(6) (b)(6) at ... we should be able to reach a solution to this problem.

I suggest you contact (b)(6) or (b)(6) at one of the e-mail addresses or phone numbers provided by (b)(6) to discuss your concerns regarding the name change and the 1972 degree. Then you may subsequently want to submit a dated written request to the College for an opportunity to inspect and review your transcript and your degrees.

I trust that the above information is helpful in explaining the scope and limitation of FERPA as it relates to your concern. If you have any questions you may contact me at 202-260-3887.

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures

(b)(6)

**FEB 12 2010**

Dear (b)(6)

This is in response to your May 27, 2008, letter to this Office in which you allege that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it failed to provide you access to all of the education records of your daughter (b)(6) (Student), in response to your requests, and when it failed to amend the Student's education records in response to your request or offer you the opportunity for a hearing on the matter. This Office administers FERPA which addresses issues that pertain to education records.

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

Under FERPA, a school is required to provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is not, however, required to provide a parent with copies of education record 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.

Under FERPA, a school is not required to comply with a request for access to records that do not exist or to create education records in response to a parent's request. Accordingly, a school is not required to comply with a request for access to a test that it does not maintain at the time of the request. Also, a school is not required to comply with a standing request for access to education records. Rather, the school must comply with each individual request for such access.

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.

As stated above, the District would not be required by FERPA to provide you access to the Student's "test scores" or any other education records that it did not maintain at the time of your request. Based on the information in your letter, it is not clear that the District maintained the Student's test scores at the time of your original requests on February 6 and 7, 2008. If that is true, February 6 would not be the date from which the 45 days would be calculated regarding your request for the test scores. Are the test scores the only education record to which you are alleging you were not provided access within 45 days? If not, what are the other education records to which you believe you were not provided access by the District?

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

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.

Also, please note that FERPA does not generally require a school to maintain particular education records or education records that contain specific information. Rather, the school is required to provide FERPA's privacy protections to those education records that the school selects to maintain. From the information in your letter, it is not clear whether you are seeking to amend certain of the student's grades -- the test scores. As stated above, you may not seek to amend a student's grades under FERPA. Also, a school is not required by FERPA to respond to a request by a parent seeking to amend a student's grade under FERPA.



Page 3

(b)(6)

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

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

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures

(b)(6)

**FEB 13 2010**

Dear (b)(6)

This is in response to your March 3, 2009, letter to this Office in which you ask for our assistance in helping you to obtain access to your special education records from the (b)(6) (District). Specifically, you state in your letter:

. . . On January 21, 2009, I filed an application for Student Records Services. A few weeks later that agency responded with an incomplete record. The principal (b)(6) here at the (b)(6) Correctional Center then contacted the (b)(6) Student Records Office himself. The agency told him that they would not look for my special education records because their files do not go back that far. . . .

This Office administers the Family Educational Rights and Privacy Act (FERPA) which addresses issues that pertain to education records.

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

Under FERPA, a school is required to provide a student with access to his or her education records within 45 days of the receipt of a request. However, a school is not generally required by FERPA to maintain particular education records or education records that contain specific information. Rather, if a school selects to maintain education records, those records are subject to the privacy protections of FERPA.

Also, a school is not required by FERPA to provide information that is not maintained or to create education records in response to a student's request. For example, a school is not required to provide a student with updates on his or her progress in school, unless such information already exists in the form of an education record.

Based on the information in your letter, it appears that the District does not maintain the special education records to which you are seeking access. Unless you have some evidence that the District does maintain such education records, there is no basis for this Office to assist you.

There are some additional requirements for the education records of students who receive special education services under the Individuals with Disabilities Education Act (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 Illinois, the address and telephone phone number is as follows:

Director of Special Education  
Illinois State Board of Education  
100 N First Street, Room S-493  
Springfield, Illinois 62777-001  
Telephone 217-782-4870

While Part B was not enacted until 1972, it may be that officials at the office of the Director of Special Education may be able to provide you with some guidance regarding your concern of moving forward with your education.

I hope 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)

FEB 12 2010

Dear (b)(6)

This is in response to your December 12, 2009, letter to this Office in which you allege that (b)(6) (Institute) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it failed to provide you access to your education records in response to your requests and when it disclose information from your education records to third parties without your prior written consent. This Office administers FERPA which addresses issues that pertain to education records.

FERPA is a Federal law that gives eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information are a FEERPA 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 required to provide a student with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the student from obtaining access to the records. A case in point would be a situation in which the student does not live within commuting distance of the student's school. Based on the information in your letter, it appears that you live outside commuting distance of the Institute. Therefore, the Institute is required by FERPA to provide you with copies of the requested education records or make other arrangements for you to inspect and review them.

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. Please see page two of the guidance document for additional information on the "school official" exception.

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 knew about the alleged improper disclosure of your education records during the

time of your attendance at the Institute – September 2004 to April 2005. As such, your allegation regarding improper disclosure does not meet FERPA's threshold requirement for timeliness. Thus, there is no basis for us to further consider this allegation.

If you wish us to further consider your allegation concerning access to education records, we need to receive additional information from you. Please provide us with the name and address of the president of the Institute and the specific date or dates you requested access to your education records. Please include a copy of any dated letter you may have to the Institute requesting access to your education records. We will review the information you submit and take any appropriate action.

However, in order to exercise your rights under FERPA, I suggest you send another request to the institute for your transcripts. You should include a copy of this letter along with your request. If the institute does not comply with your request, or does not contact you within 45 days, you may write to us again. At such time, please provide us with a dated copy of your request to the Institute, any response from the Institute, and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures

(b)(6)

FEB 12 2010

Dear

(b)(6)

This is in response to your March 25, 2009, letter to this Office in which you allege that your rights under the Family Educational Rights and Privacy Act (FERPA) were violated when (b)(6) (School) disclosed information from the education records of your daughter, (b)(6) (Student), without your prior written consent. Specifically, you allege that the School disclosed from the Student's education records information regarding an alleged incident that occurred between the Student and another student on the school grounds. This Office administers FERPA which addresses issues that pertain to education records.

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

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

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 form

you. Please provide us the name and address of the superintendent of the school district in which the School is located. Also, please provide us with the specific information that you believe was disclosed by a school official from the Student's education records and evidence to support the assertion that such information was obtained from tangible education records and not from personal knowledge or hearsay. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures



(b)(6)

**FEB 12 2010**

Dear

(b)(6)

This is in response to your May 27, 2008, letter to this Office in which you allege that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it failed to provide you access to all of the education records of your daughter, (b)(6) Student), in response to your requests, and when it failed to amend the Student's education records in response to your request or offer you the opportunity for a hearing on the matter. This Office administers FERPA which addresses issues that pertain to education records.

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

Under FERPA, a school is required to provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is not, however, required to provide a parent with copies of education record 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.

Under FERPA, a school is not required to comply with a request for access to records that do not exist or to create education records in response to a parent's request. Accordingly, a school is not required to comply with a request for access to a test that it does not maintain at the time of the request. Also, a school is not required to comply with a standing request for access to education records. Rather, the school must comply with each individual request for such access.

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.

As stated above, the District would not be required by FERPA to provide you access to the Student's "test scores" or any other education records that it did not maintain at the time of your request. Based on the information in your letter, it is not clear that the District maintained the Student's test scores at the time of your original requests on February 6 and 7, 2008. If that is true, February 6 would not be the date from which the 45 days would be calculated regarding your request for the test scores. Are the test scores the only education record to which you are alleging you were not provided access within 45 days? If not, what are the other education records to which you believe you were not provided access by the District?

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

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.

Also, please note that FERPA does not generally require a school to maintain particular education records or education records that contain specific information. Rather, the school is required to provide FERPA's privacy protections to those education records that the school selects to maintain. From the information in your letter, it is not clear whether you are seeking to amend certain of the student's grades -- the test scores. As stated above, you may not seek to amend a student's grades under FERPA. Also, a school is not required by FERPA to respond to a request by a parent seeking to amend a student's grade under FERPA.



(b)(6)

**FEB 12 2010**

Dear

(b)(6)

This is in response to your March 18, 2009, correspondence 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 son, (b)(6) (Student), in response to your request or to offer you the opportunity for a hearing on the matter. This Office administers FERPA which addresses issues that pertain to education records.

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

Under FERPA, a 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 and other assessments.

It appears you believe there is inaccurately recorded information on the District's "Parental Acknowledgement of Same-day Emergency Suicide Referral" form. In order to exercise your rights under FERPA, I suggest you write to the appropriate official in the District and request amendment of the information on the form which you believe is inaccurately recorded, and provide the District with evidence to support your assertion that such information is inaccurately recorded.

If the District does not amend the information as requested or offer you the opportunity for a hearing on the matter, you may contact this Office again. At such time, please provide us with a dated copy of your letter to the District requesting amendment of the inaccurately recorded information in the Student's education records, the response of the District (if any), and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action. However, please note that a school is not required to respond to a request for amendment of information in an education record that is not amendable under FERPA.

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)

**FEB 12 2010**

This is in response to your March 2, 2009, letter to this Office in which you allege that the (b)(6) (School) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed information from the education records of your son to a third party without your prior written consent. Specifically, it appears you are alleging that the School violated FERPA when (b)(6) assistant principal at the School, disclosed information regarding the Student's "grades, office referrals, and his behavior problems" to (b)(6) a volunteer with an after school wrestling program. This Office administers FERPA which addresses issues that pertain to education records. Issues regarding the Student's Individualized Education Program (IEP), as you have raised them, are not addressed by FERPA and will not be discussed in this letter.

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

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

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

A school may disclose education records without consent to a "school official" under this exception only if the school has first determined that the official has a "legitimate educational interest" in obtaining access to the information for the school. A school that allows school

officials to obtain access to education records under this exception must include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interests." A school official generally has a legitimate educational interest if the official needs access to information in education records to fulfill his or her professional responsibility.

If you wish this Office to further consider your allegation, we need to receive additional information from you. Please note that, as stated above, a school may designate a "volunteer" as a school official and nonconsensually disclose information from education records to the volunteer when he or she has a legitimate educational interest. Please inform us whether the after school wrestling program is an officially recognized sport or activity sponsored by the School or school district, and please provide us with a copy of the school district's annual notification where the terms "school official" and "legitimate educational interest" are defined. We will review the information you submit and take any appropriate action.

With regard to your issues concerning the Student's IEP, you may want to contact the Office responsible for administering Part B of the Individuals with Disabilities Education Act (Part B) in your State as follows:

Stephanie Petska  
P.O. Box 7841  
Madison, WI 53707-7841  
Telephone: 608-267-3746

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

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures



(b)(6)

FEB - 4 2010

Dear (b)(6)

This is in response to your January 8, 2010, letter to this Office in which you allege that (b)(6) Center) violated the Family Educational Rights and Privacy Act (FERPA) when it failed to provide you access to the education records of your daughter, (b)(6) (Student), in response to your requests. This Office administers FERPA which addresses issues that pertain to education records.

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

Under FERPA, a school is required to provide a parent with access to his or her child's education records within 45 days of the receipt of a request. A school is required to provide a parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from inspecting and reviewing education records. A case in point would be a situation in which the parent does not live within commuting distance of the student's school.

Mr Ricky Norment, of my staff, spoke to (b)(6) principal of the high school at the Center, and (b)(6), a licensed clinical psychologist with the Center. (b)(6) and (b)(6) informed this Office that the Center understands its responsibilities under FERPA for providing parents with access to their children's education records and would comply with all your future requests for such access.

(b)(6) and (b)(6) informed Mr. Norment that they believed your specific concern regarded obtaining access to test protocols regarding psychological tests administered to the Student by the Center. Mr. Norment explained that a test protocol would be an education record if it is directly related to a specific student, i.e., contains information such as the student's name and the student's responses to questions and/or the student's test scores. If the test protocol does not include such information, it would not be an education record subject to FERPA.

(b)(6) gave Mr. Norment assurance that she would review the test protocols at issue and determine whether they meet the definition of education records based on the above standard and provide you with access to any of the test protocols that are education records.

(b)(6)

Please note that a school is required by FERPA to respond to reasonable requests by a parent for explanations and interpretations of education records. A school may meet this requirement by various means other than sharing with a parent a test protocol that is not a student's education record. If you are seeking explanations and interpretations of information related to the Student's psychological tests or other education records, you may want to write to the appropriate school official at the Center and set up a telephone or in-person meeting to inquire about information contained in the Student's education records.

In the future, if you want access to the Student's education records, I suggest you send a dated letter to the appropriate official at the Center and request the specific education records to which you are seeking access. In order for this Office to assist parents and eligible students in a timely manner, it is best if such a letter is only a request for access to education records, not a sizable, multi-purpose letter which contains a request for access to education records somewhere in its pages. If the Center fails to provide you with access to the requested education records within 45 days, you may write to this Office again. At such time, you should provide us with a copy of your dated letter to the Center requesting access to the Student's education records, any response from the Center, and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure

cc: (b)(6)



Dr. Nancy Kleniewski  
President  
College at Oneonta  
Netzer Administration Building  
State University of New York (SUNY)  
Oneonta, New York 13820-4015

**FEB - 2 2010**

Dear Dr. Kleniewski:

This Office is responsible for administration of the Family Educational Rights and Privacy Act (FERPA), which protects the privacy interests of parents and eligible students in students' education records. See 20 U.S.C. §1232g and 34 CFR part 99. Under that authority we investigate, process, and review complaints and violations and provide technical assistance to ensure compliance with all FERPA requirements. We are responding to a letter dated December 8, 2009, from Maureen P. Artale, College Registrar, in which she explained that a disclosure of a student's education record occurred when the Vice President for Community Relations at SUNY Oneonta stated to a reporter for (b)(6) that the student had not applied to graduate in May. (b)(6) also informed this of the steps taken by the College since the breach occurred.

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

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

The FERPA Safeguarding Recommendations recognize that no system for maintaining and transmitting education records, whether in paper or electronic form, can be guaranteed safe from every hacker and thief, technological failure, violation of administrative rules, and other causes of unauthorized access and disclosure. Although FERPA does not dictate requirements for

safeguarding education records, the Department encourages the holders of personally identifiable information to consider actions that mitigate the risk and are reasonably calculated to protect such information. Of course, an educational agency or institution may use any reasonable method, combination of methods, or technologies, taking into consideration the size, complexity, and resources available to the institution; the context of the information; the type of information to be protected (such as SSNs or directory information); and methods used by other institutions in similar circumstances. The greater the harm that would result from unauthorized access or disclosure and the greater the likelihood that unauthorized access or disclosure will be attempted, the more protections an agency or institution should consider using to ensure that its methods are reasonable.

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

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

- Report the incident to law enforcement authorities.
- Determine exactly what information was compromised, i.e., names, addresses, SSNs, ID numbers, credit card numbers, grades, and the like.
- Take steps immediately to retrieve data and prevent any further disclosures.
- Identify all affected records and students.
- Determine how the incident occurred, including which school officials had control of and responsibility for the information that was compromised.
- Determine whether institutional policies and procedures were breached, including organizational requirements governing access (user names, passwords, PINS, etc.); storage; transmission; and destruction of information from education records.
- Determine whether the incident occurred because of a lack of monitoring and oversight.
- Conduct a risk assessment and identify appropriate physical, technological, and administrative measures to prevent similar incidents in the future.
- Notify students that the Department’s Office of Inspector General maintains a website describing steps students may take if they suspect they are a victim of identity theft at

<http://www.ed.gov/about/offices/list/oig/misused/idtheft.html>; and  
<http://www.ed.gov/about/offices/list/oig/misused/victim.html>.

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

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

Finally, we are enclosing a letter for your reference on FERPA's directory information exception. If you have any questions, please contact this Office at (202) 260-3887.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

cc:

(b)(6)

Dr. Steven T. Webb  
Superintendent  
Vancouver Public Schools  
Jim Parsley Center  
2901 Falk Road  
Vancouver, Washington 98661

**FEB - 2 2010**

Dear Dr. Webb:

This Office is responsible for administration of the Family Educational Rights and Privacy Act (FERPA), which protects the privacy interests of parents and eligible students in students' education records. See 20 U.S.C. §1232g and 34 CFR part 99. Under that authority we investigate, process, and review complaints and violations and provide technical assistance to ensure compliance with all FERPA requirements. We are responding to a letter dated October 9, 2009, from Kathryn Wells Murdock, General Counsel, in which she explained that a disclosure of a student's education record occurred when a former hearing officer for the District disclosed in personally identifiable form the student's disciplinary Order to at least five different judicial evaluation committees and the governor's office. Ms. Murdock explained that the hearing officer made the disclosure during his campaign to fill a Superior Court Judge position in Clark County. Ms. Murdock also informed this of the steps taken by the District since the breach occurred.

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

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



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

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

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

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

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

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

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

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

cc: Kathryn Wells Murdock

(b)(6)

FEB - 2 2010

Dear

(b)(6)

This is in response to your January 20, 2010, letter, addressed to Secretary Duncan, in which you indicate that you filed a complaint with the Office for Civil Rights (OCR) and with the Family Policy Compliance Office (Office) between May 2008 and July 6, 2009. Specifically, you state that you sought relief from this Department "for the inequity and irresponsible actions of the management of (b)(6) High School, which my children were forced to endure for the entirety of the 2007-2008 school year, but none was granted." Your letter was referred to this Office for response because we administer the Family Educational Rights and Privacy Act (FERPA).

FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. 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 their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

FERPA applies to educational agencies and institutions that receive Federal funds from programs administered by the U.S. Department of Education. Because private and parochial schools at the elementary and secondary levels do not generally receive funds (grants, subgrants, or cooperative agreements) from the Department, FERPA does not apply to these schools. A private school that has students and teachers who receive services from a local or state education agency funded by a Departmental program does not bring the school under the coverage of FERPA. For example, a number of Departmental programs serve private school students and teachers (as distinct from schools). In those cases, however, the recipient of the financial assistance is not the private school (it receives no money), but the state or local public educational agency. As the FERPA regulations state, the law does not apply to a school "solely because students attending that ... institution receive non-monetary benefits under a program" administered by the Department (34 CFR § 99.1(b)). Private/independent schools that do **not** receive Federal funds from programs administered by the Department and, thus, are not subject to FERPA may set their own policies regarding student records (pursuant to any State regulations/laws).

Page 2

(b)(6)

We have searched our database and do not find that you have filed a complaint under FERPA with this Office. Possibly you discussed this matter with one of our staff members and were provided a response that FERPA did not apply to your children's school. We are enclosing a guidance document to provide you with information about FERPA and a complaint form in case your children's school is not a private or religious school. However, please note that if (b)(6) High School is a private or religious school, which appears to be the case, FERPA would not apply.

I trust that this adequately explains the scope and limitations of FERPA as it pertains to your concerns. With regard to any concerns that you have under laws administered by OCR, please note that you may contact OCR's regional office. Below is the contact information for that office:

Chicago Office  
Office for Civil Rights  
U.S. Department of Education  
Citigroup Center  
500 W. Madison Street, Suite 1475  
Chicago, Illinois 60661

Telephone: 312-730-1560  
Fax: 312-730-1576; TDD: 877-521-2172  
Email: [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures



(b)(6)

JAN 28 2010

Dear

(b)(6)

This is to respond to your May 30 and July 23, 2009, letters to this Office and January 14, 2009, email to Secretary Duncan in which you allege that the (b)(6) campus (University) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it required you to provide certain of your education records to your employer as a condition of your employment 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 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 document for students.

FERPA generally prohibits a school from disclosing a student's education records to third parties unless the student to which the records relate provides his or her prior written consent. One of the exceptions to FERPA's prior written consent requirement allows "school officials" within the agency or institution to obtain access to education records provided the educational agency or institution has determined that they have "legitimate educational interest" in the information. 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. This Office has interpreted the term broadly to include such positions as a teacher; president; chancellor; board member; trustee; registrar; counselor; admissions officer; attorney; accountant; human resources professional; information systems specialist; and support or clerical personnel. Notwithstanding the fact that you disclosed certain of your education records to your employer, your supervisors at the University where you were a student employee are considered to have a legitimate educational interest and would be permitted to have access to your education records without your prior written consent. Based on the information you provided to this Office, no basis exists for this Office to investigate your allegation that the University violated your rights under FERPA.

Page 2—

(b)(6)

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure

JAN 28 2010

Dr. John Keller  
Director of Learning Technologies  
Indiana Department of Education  
151 West Ohio Street  
Indianapolis, Indiana 46204

Dear Dr. Keller:

This responds to your May 4, 2009, letter in which you asked for guidance under the Family Educational Rights and Privacy Act (FERPA) concerning the use of a web portal system, Learning Connection, that Indiana schools desire to use "to create curriculum, manage classroom processes, record grades and assessments of classroom progress and access student achievement records." This Office investigates, processes, and reviews complaints and violations under FERPA and provides technical assistance to ensure compliance with the statute and regulations. See 20 U.S.C. § 1232g and 34 CFR part 99.

Your letter explains that the web portal system incorporates various software methodologies and policies designed to protect the improper use and disclosure of personally identifiable information from education records. In particular, "the design of the system uses the concept of 'roles' to determine the . . . access to student data that a user has," and requires users to provide a username and password to authenticate authorized users of the system. You state that the system "provides secure access to authorized users through industry standard encryption technologies." Where the system permits teachers and other professionals to "communicate and collaborate" through system messages and online forums, security is provided through several means. These include the acceptance of an agreement explaining the terms of use, an automatic reminder that personally identifiable information about students should not be used, and a required review before publication of user created content is permitted. Student records within the system will be available to school officials responsible for the education of the student within the limit of the "role" assigned to that individual that may permit access to information concerning the student's past performance "in order to support customized instruction."



In your telephone call on October 15, 2009, with Paul Gammill, former director of this Office, Mr. Gammill discussed with you the application of FERPA to the web portal system. He explained that this Office does not certify that any particular software package, design, or policy is compliant with FERPA. Rather, we will advise educational authorities of the requirements of FERPA concerning the protection of education records from unauthorized disclosure. In particular, this Office provides guidance about recommended actions and appropriate precautions that may assist in meeting this goal, particularly as related to the protection of education records in electronic format.

You may wish to review the most recent (December 2008) regulatory amendments to FERPA that address several areas relevant to use of the web portal system. The Final Regulations are available on our web site: <http://www.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>. For example, the requirement that educational institutions use “reasonable methods” to ensure that school officials obtain access only to those education records in which the official has a legitimate educational interest and what kinds of methods may be deemed “reasonable” is discussed in the preamble of the Final Regulations at p. 74816-74818. The Final Regulations also contain recommendations for safeguarding education records on pp. 74843-74844. The Final Regulations require a school district or postsecondary institution to use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom they disclose education records. A discussion of the types of authentication methods that school districts may consider using is at p. 74840-74841.

In particular, you requested that we advise you concerning two questions:

- **Should the responsibility for appropriate access to student data rest with the school corporations and schools that elect to use the Learning Connection?**

Under FERPA, the responsibility for ensuring that school officials are permitted access only to education records in which the official has a legitimate educational interest rests with the disclosing entity. Accordingly, it is the responsibility of the disclosing entity, whether it is a school corporation or a school district or a school, to take appropriate measures to protect education records from improper access or disclosure.

- **Are there measures for protecting student information, beyond those described [in your letter], that should be considered?**

Your letter contains many of the frequently used measures designed to appropriately protect education records. Available methods, particularly those related to the protection of electronic records, remain an evolving field. Due to the rapid change this area

continues to experience, we believe that schools and districts are best able to determine the combination of physical, technological, and administrative controls needed to provide appropriate protections to its own education records.

I trust this is responsive to your inquiries. Please do not hesitate to contact us again should you need further assistance.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Mrs. Carol S. Hay  
Superintendent  
Panama Central School District  
41 North Street  
Panama, New York 14767

**JAN 27 2010**

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

Dear Mrs. Hay:

This is to inform you of the finding in the complaint filed by (b)(6) (Parent) against the (b)(6) (District) under the Family Educational Rights and Privacy Act (FERPA). By letter dated September 16, 2009, we informed you of the Parent's allegation that the District violated § 99.30 of the FERPA regulations when it improperly disclosed information from her daughter, (b)(6) (Student) education records. Specifically, the Parent alleged that on February 2, 2009, you disclosed information regarding the Student's diabetes and 504 plan in an email to (b)(6) grandfather of the Student.

By letter dated October 6, 2009, you responded indicating that you did email (b)(6) regarding the student's diabetes and 504 plan. You provided a copy of the Student's Diabetes Medical Plan for the current school year and you stated that the Parent signed a release in the diabetes medical plan that authorized the disclosure. That consent reads, in part, as follows:

I also consent to the release of the information contained in this Diabetes Medical Management Plan to all staff members and other adults who have custodial care of my child and who may need to know this information to maintain my child's health and safety.

In your letter to this Office you state that you are aware that (b)(6) has been actively involved in the education of his granddaughter including the management of her diabetes. You state that he has attended her 504 meetings, is permitted to attend fieldtrips with his granddaughter, and is the emergency contact for her. In this regard you state:

Given the fact that (b)(6) has been involved in his granddaughter's health care management and 504 Plan, I did not believe the information I provided to him would be deemed a violation under the FERPA regulations. The alleged disclosure was not to an agency or other entity or even an unrelated third party, but was instead provided to the child's grandparent who was previously involved with matters related to her diabetes



management. At no time was this disclosure with any intent other than to assist with the management of the child's medical condition and health plan. The alleged disclosure was made solely in the best interests of the child and consistent with prior involvement by the grandfather.

As you are aware, 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. ("Eligible student.") 20 U.S.C. § 1232g(b)(1) and (d). 34 CFR § 99.30.

"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. The signed consent provided that the Parent signed contains the above required elements.

Your response indicates that you interpreted the consent that the Parent signed broadly to include (b)(6) You explain that you took into consideration the fact that his granddaughter is sometimes under his care, that he may need to know information from her 504 plan to ensure her health and safety, and that he has been involved in her education. The consent form that the Parent signed is very broad and can be read to include an individual such as (b)(6) Based on this fact and your response to the allegation, we find that no violation of FERPA occurred in this instance and as such no further action is required by the District. We will inform the Parent of our finding by copy of this letter.

However, it remains unclear to what extent (b)(6) is currently involved with the Student because in your response you mention his "previous" or "prior" involvement with the child. Moreover, the fact that the Parent filed a FERPA complaint with this Office indicates that she did not intend for the consent to be read to include (b)(6) and, in fact, may have wished that the consent specifically excluded him. Therefore, we are suggesting to you that, in the future, the consent be clarified as appropriate to avoid any future misunderstandings.

We also acknowledge the statement that you made in your letter that in light of this complaint, the District will make every attempt to adhere to the requirements under FERPA regarding the disclosure of education records. Accordingly, we are closing this complaint.

Page 3 – Mrs. Carol S. Hay

Thank you for your cooperation with regard to this matter.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

cc: Parent

Mr. Daniel T. Connor  
Superintendent  
Goshen Central School District  
227 Main Street  
Goshen, New York 10924

**JAN 27 2010**

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

Dear Mr. Connor:

This is to inform you of the findings in the complaint filed with this Office by (b)(6) (Student), alleging that Goshen Central School District (District) violated rights afforded him under the Family Educational Rights and Privacy Act (FERPA) by failing to provide him access to his education records. By letter dated September 30, 2009, this Office informed you of the Student's allegations. The District provided a written response to this Office on November 2, 2009.

Specifically, the Student alleges that on October 30, 2008, he submitted a request to (b)(6) High School principal (b)(6) to view his class rank. He further alleges that this information exists, is available to be sent to postsecondary schools, and is available to the National Honor Society advisor. In addition, the Student alleges that (b)(6) informed him during the second week of January 2009 that the District had changed its class rank policy, and because of the change the District could not allow the Student to view his class rank.

In response to the Student's allegations, the District asserts that on or about October 30, 2008, the Student, a senior, asked (b)(6) High School principal, (b)(6) to view his class rank. Class rank is calculated at the beginning of the senior year. The District's policy on class rank, Policy No. (b)(6), was in the process to being reviewed and revised by the Policy Committee in the Fall of 2008, with the final version being adopted by the Board of Education at its January 5, 2009 meeting. The review and revision to Policy No. (b)(6) was undertaken to address the issue of students doing things that were not educationally sound in order to enhance their class rank. Regarding the Student's complaint, the District acknowledges that the Student was not permitted to inspect and review his class rank in October 2008. The District also asserts that at that time, the Student was not an "eligible student" under FERPA because he was 17 years old, and did not turn 18 until June 1, 2009. The District further relates that the Student's parents did not make a request to inspect and review his class rank, and the Student did not request access to his class rank after he reached age 18.



The rights under FERPA that pertain to a student's education records are afforded to the parents of a student, and transfer to the student when he or she reaches age 18 or begins attendance at a postsecondary school. 34 CFR §§ 99.4 and 99.5. Given (1) these provisions of FERPA, (2) the District's assertion that the Student was 17 when he requested access to his class rank, (3) the District's assertion that the Student's parents did not request to inspect and review the Student's class rank, (4) the District's assertion that the Student did not request to inspect and review his class rank when he reached age 18, and (5) no evidence to the contrary, this Office finds there is no basis to conclude that the District did not comply with FERPA requirements.

The Student will be so advised by copy of this letter.

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance Office

cc: Student

Dr. Wim Wiewel  
President  
Portland State University  
P.O. Box 751  
Portland, Oregon 97207

JAN 25 2010

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

Dear Dr. Wiewel:

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

This Office notified your predecessor, (b)(6) by letter dated February 21, 2006, that we were initiating an investigation into allegations by (b)(6) (Student) that (b)(6) State University (University) violated the Family Educational Rights and Privacy Act (FERPA) and asked you to provide a written response. The University responded by letter dated April 10, 2006, from (b)(6) Assistant Attorney General, Department of Justice for the State of Oregon. The Student replied to the University's response by letters dated February 23 and 28, 2007.

On July 31, 2007, we notified you that the University violated §§ 99.20-99.22 of the regulations when it refused to provide the Student with a hearing on its decision not to amend her education records (Allegation #1), and violated § 99.10(a) when it refused to allow the Student to inspect her piano proficiency class attendance records within 45 days of her request (Allegation #3). We also found that the University did not violate § 99.30, as alleged, when certain school officials disclosed an e-mail message to other school officials without the Student's prior written consent (Allegation #2).

In regard to Allegation #1, our July 31, 2007, letter directed the University to provide documentation showing that it has provided the Student with an opportunity for a hearing in accordance with §§ 99.21 and 99.22 in order to challenge the contents of her education records on the grounds that they are inaccurate or misleading and, if the University decides not to amend the records, that it has informed the Student of her right to place a statement in the record.

commenting on the contested information in accordance with § 99.21. In regard to Allegation #3, we asked the University to submit documentation showing that it has provided the Student an opportunity to inspect and review her attendance records for the piano class in question and that staff, faculty, and other school officials have been trained or otherwise informed of the FERPA requirements related to a student's right to inspect and review education records maintained by faculty members no later than 45 days of their receipt of the student request.

The University responded by letter dated October 11, 2007, in which General Counsel (b)(6) explained that the University would notify the Student of her right to a hearing on the decision not to amend her education records and the manner in which she could obtain the hearing before appropriate University personnel. (b)(6) letter also stated that the University intended to provide the Student with access to her piano class attendance records as soon as possible. This Office sent a follow up letter to you on November 7, 2007, confirming that the University's prompt execution of the plan outlined in (b)(6) letter would allow this Office to find that the University has complied voluntarily with FERPA and close this investigation. Thereafter, we followed-up with (b)(6) by e-mails in January 2008 and again December 2009 about the status of the University's response.

(b)(6) advised us on January 11, 2010, that the University provided the Student's attorney with a copy of her piano class attendance records on May 6, 2008, and that the Student's hearing on amendment of education records was held on May 20, 2008. (b)(6) also sent this Office a copy of the June 17, 2008, written decision by (b)(6), Special Assistant to the President, in which the University agreed to remove the contested information from the Student's records. Finally, (b)(6) confirmed that in April and July 2008 the University conducted the necessary training for appropriate staff regarding a student's right to inspect and review education records maintained by University teaching staff as discussed in this case.

We thank the University for its continued cooperation in the resolution of this complaint.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

cc: Student  
Henry H. Lazenby, Jr., General Counsel



JAN 22 2010

(b)(6)

Dear

(b)(6)

This is to respond to your January 20, 2010, email to Secretary Duncan that was forwarded to this Office. This Office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues pertaining to education records.

As you state in your recent January 20 email, this Office again responded to you on January 12, 2010, and provided you a copy of this Office's response of August 4, 2005. In that January 12<sup>th</sup> response, this Office again informed you that records maintained about you are not education records because you were not a "student" as defined by FERPA. You still have not provided this Office with information which verifies that you were a student. Note that we do not have the resources to continue to respond to inquiries in which we have previously responded. Accordingly, any further inquiries relating to issues you raised in your January 6 and 20, 2010, emails will not receive a response from this Office.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

JAN 13 2010

(b)(6)

Dear

(b)(6)

Thank you for your letter to President Barack Obama regarding your desire to obtain a duplicate copy of your diploma and your official grade transcripts from the police academy where you graduated. We appreciate hearing from you on this matter. The White House has referred your letter to the Department of Education for review, and I am pleased to respond. Your letter was then referred to this office for response because we administer the Family Educational Rights and Privacy Act (FERPA), which addresses issues concerning students' education records.

FERPA is a Federal law that affords 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. Under FERPA, an eligible student must also provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from a student's education records, except as authorized by law. (An "eligible student" is a student who is 18 years or older or attending a postsecondary institution at any age.)

FERPA requires that schools comply with a student's request for access to his or her education records within 45 days of receipt of the request. A school is not required by FERPA to provide copies of education records to a student unless a failure to do so would effectively prevent the student from exercising the right to inspect and review the records. For example, a school is required to provide copies, or make other arrangements for inspection and review, if the student does not live within commuting distance of the school.

Please note, however, that FERPA only applies to educational agencies and institutions that receive funds from any program administered by the Secretary of Education. It is not clear whether the police academy to which you refer is subject to FERPA, and more than likely it does not receive funds from this Department. However, nothing would prevent you from contacting the academy in writing to make a request for copies of your records.

We are providing you with the enclosed guidance document further explaining FERPA. After a review of this guidance document you still believe that you have a concern under FERPA, you may complete the enclosed complaint form and return it to this office at the address noted on the form. We will review the information you provide and take any necessary action.

Page 2 – (b)(6)

I trust that this response adequately explains the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance Office

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C., 20202- \_\_\_\_\_

JAN 13 2010

(b)(6)

(b)(6)

Dear

Thank you for your letter to President Barack Obama regarding your desire to obtain a duplicate copy of your diploma and your official grade transcripts from the police academy where you graduated. We appreciate hearing from you on this matter. The White House has referred your letter to the Department of Education for review, and I am pleased to respond. Your letter was then referred to this office for response because we administer the Family Educational Rights and Privacy Act (FERPA), which addresses issues concerning students' education records.

FERPA is a Federal law that affords 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. Under FERPA, an eligible student must also provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from a student's education records, except as authorized by law. (An "eligible student" is a student who is 18 years or older or attending a postsecondary institution at any age.)

FERPA requires that schools comply with a student's request for access to his or her education records within 45 days of receipt of the request. A school is not required by FERPA to provide copies of education records to a student unless a failure to do so would effectively prevent the student from exercising the right to inspect and review the records. For example, a school is required to provide copies, or make other arrangements for inspection and review, if the student does not live within commuting distance of the school.

Please note, however, that FERPA only applies to educational agencies and institutions that receive funds from any program administered by the Secretary of Education. It is not clear whether the police academy to which you refer is subject to FERPA, and more than likely it does not receive funds from this Department. However, nothing would prevent you from contacting the academy in writing to make a request for copies of your records.

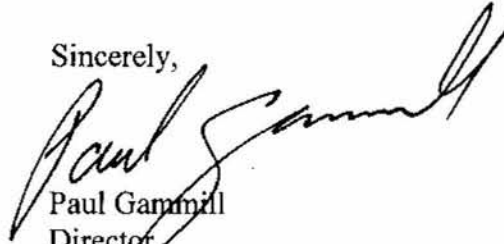
We are providing you with the enclosed guidance document further explaining FERPA. After a review of this guidance document you still believe that you have a concern under FERPA, you may complete the enclosed complaint form and return it to this office at the address noted on the form. We will review the information you provide and take any necessary action.



Page 2 - (b)(6)

I trust that this response adequately explains the scope and limitations of FERPA as it relates to your concerns.

Sincerely,



Paul Gammill  
Director  
Family Policy Compliance Office

Enclosures

JAN 13 2010

(b)(6)

Dear

(b)(6)

This is in response to your email dated January 7, 2010, regarding the Family Educational Rights and Privacy Act (FERPA), which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to inspect and review a minor student'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 is a guidance document that provides additional basic information about FERPA. If, after reading the guidance document, you need more specific information regarding a certain aspect or aspects of FERPA, you may contact this Office again at the address below. As requested, we are also enclosing a FERPA complaint form. If you wish to file a complaint regarding a school's failure to comply with FERPA, you may complete the enclosed complaint form (following the instructions in the guidance document and on the complaint form) and return it to us at this address:

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

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

However, please note that, with regard to your particular concern, 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, as long as the records are protected in compliance with FERPA.

Page 2

(b)(6)

Rather, it appears that some of the concerns you have raised may be addressed by the Individuals with Disabilities Education Act (IDEA). Although IDEA is a Federal law, it is administered by the states. For further information regarding IDEA, you may contact:

Mr. Douglas Cox  
Director  
Virginia Department of Education  
Office of Special Education  
P.O. Box 2120  
Richmond, VA 23216-2120

Thank you for your patience and understanding.

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance Office

Enclosures

(b)(6)

JAN 12 2010

Dear (b)(6):

This is to respond to your March 18, 2009, complaint form and information 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) at (b)(6) (University) when it did not amend your education records relating to your grade appeal in response to your requests. Additionally, you raise concerns that do not pertain to FERPA. Issues that do not relate to FERPA will not be addressed in this letter. 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 University failed to consider your request to amend your grade.

For your convenience, we are returning the information you provided to this Office in order that you may use it in the future. For further information regarding issues which you believe may be addressed by the U. S. Department of Education, you may contact the Department via our toll-free telephone number at 1-800-USA-LEARN (800-872-5327).

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

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosures

(b)(6)

JAN 12 2010

Dear (b)(6)

This is to respond to your September 8, 2008, complaint form to this Office in which you allege that (b)(6) (College) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it failed to provide access to certain of your education records in response to your requests. Additionally, you raise other concerns that do not pertain to FERPA. Issues that do not relate to FERPA will not be addressed in this letter. 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 a FERPA fact sheet.

Under FERPA, a school must 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 the 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 you live within commuting distance to the College. As such, it is required only to provide you with an opportunity to inspect and review your 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 student, unless there is an outstanding request from the student to inspect and review such records.

(b)(6)

Based on the information you provided this Office, it appears that the College complied with FERPA when it provided you with access to certain of your education records, as evidenced by some of the copies of records that you provided to this Office. As stated above, the College is not required to provide you with copies of your education records nor is it required to re-create education records that it does not maintain. You have not provided this Office with evidence that other records existed at the time you made a request for access. Accordingly, no basis exists for this Office to investigate your allegation that the College failed to provide you with access to your education records.

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

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure



(b)(6)

JAN 12 2010

Dear (b)(6)

This is in response to your letter, dated December 23, 2009, regarding the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g; 34 CFR Part 99. You state that you are writing on behalf of your client, (b)(6), who is a claimant in (b)(6).

(b)(6) You ask that we confirm informal advice that Ingrid Brault of my staff provided to (b)(6) in an email on December 17, 2009. Specifically, you asked that we confirm that Ms. Brault accurately stated that this Office's position is that student directories are not protected by FERPA, unless the parent/student has opted out of the disclosure of directory information.

FERPA generally prohibits the nonconsensual disclosure of information derived from education records, except in certain specified circumstances. 34 CFR §§ 99.30 and 99.31. One of these exceptions permits the nonconsensual disclosure of information derived from education records that has been appropriately designated as "directory information" by the educational agency or institution. 34 CFR §99.31(a)(11). FERPA defines directory information as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. 34 CFR § 99.3 "Directory information." Directory information could include information such as the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

FERPA provides that a school may disclose directory information if it has given public notice of the types of information which it has designated as "directory information," the student's right to restrict the disclosure of such information, and the period of time within which a student has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." 34 CFR § 99.37(a).

A school is not required to inform former students regarding directory information or to honor their request that directory information not be disclosed without consent. 34 CFR § 99.37(b). However, if a student, within the specified time period during the student's last opportunity as a student in attendance, requested that directory information not be disclosed, the school must honor that request until otherwise notified.



(b)(6)

Please note that, under FERPA, all disclosures – except to a student of his or her own education records – are permissive, not required. Therefore, a school could determine not to disclose “directory information” to a particular party.

The above discussion relates to FERPA’s directory information exception to the prior written consent requirement of FERPA. However, the statement made by Ms. Brault in her email to (b)(6) was not a statement about directory information *per se* but relative to a subpoena for education records, and to my knowledge this Office has never issued any formal guidance on this specific question. The December 17, 2009, email was simply informal advice to (b)(6) based on Ms. Brault’s understanding of his question.

If an educational agency or institution contacts this Office for technical assistance on this matter, we would provide an analysis and issue a formal opinion. Or, in some cases when a finding is made relative to an investigation of a FERPA complaint, these types of technical assistance questions are answered. Otherwise, we can only suggest that you and your client, if after a review of the information provided in this letter, believe that the (b)(6) violated FERPA, file a complaint directly with this Office. We can provide you a complaint form if you so request.

Please note, however, that if a party commences litigation in court involving the subject matter of an alleged FERPA violation, this Office would not investigate that alleged violation prior to a decision by the court. Generally, once the allegation in question is no longer the subject of such litigation, this Office will again consider the allegation upon request. The results of the litigation are considered in determining what action the Department will take. Therefore, if after a determination has been issued in (b)(6) arbitration with (b)(6) you continue to believe that the Seminary violated FERPA, you or your client may file a complaint with this Office, if a specific, timely allegation indicating that the school violated his rights under FERPA exists.

I trust this is responsive to your inquiry.

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance Office

Dr. David L. Soltz  
President  
Bloomsburg University of Pennsylvania  
400 East Second Street  
Bloomsburg, Pennsylvania 17815

JAN 19 2010

Dear Dr. Soltz:

This Office is responsible for administration of the Family Educational Rights and Privacy Act (FERPA), which protects the privacy interests of parents and eligible students in students' education records. See 20 U.S.C. §1232g and 34 CFR part 99. Under that authority we investigate, process, and review complaints and violations and provide technical assistance to ensure compliance with all FERPA requirements. We are responding to a letter dated November 11, 2009, from David E. Stover, Bloomsburg University Legal Counsel, in which he explained that a laptop computer owned by the University's psychology department was stolen and that the laptop's hard drive contained student rosters, class lists, student grades and social security numbers.

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

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

The FERPA Safeguarding Recommendations recognize that no system for maintaining and transmitting education records, whether in paper or electronic form, can be guaranteed safe from every hacker and thief, technological failure, violation of administrative rules, and other causes of unauthorized access and disclosure. Although FERPA does not dictate requirements for

safeguarding education records, the Department encourages the holders of personally identifiable information to consider actions that mitigate the risk and are reasonably calculated to protect such information. Of course, an educational agency or institution may use any reasonable method, combination of methods, or technologies, taking into consideration the size, complexity, and resources available to the institution; the context of the information; the type of information to be protected (such as SSNs or directory information); and methods used by other institutions in similar circumstances. The greater the harm that would result from unauthorized access or disclosure and the greater the likelihood that unauthorized access or disclosure will be attempted, the more protections an agency or institution should consider using to ensure that its methods are reasonable.

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

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

- Report the incident to law enforcement authorities.
- Determine exactly what information was compromised, i.e., names, addresses, SSNs, ID numbers, credit card numbers, grades, and the like.
- Take steps immediately to retrieve data and prevent any further disclosures.
- Identify all affected records and students.
- Determine how the incident occurred, including which school officials had control of and responsibility for the information that was compromised.
- Determine whether institutional policies and procedures were breached, including organizational requirements governing access (user names, passwords, PINS, etc.); storage; transmission; and destruction of information from education records.
- Determine whether the incident occurred because of a lack of monitoring and oversight.
- Conduct a risk assessment and identify appropriate physical, technological, and administrative measures to prevent similar incidents in the future.
- Notify students that the Department’s Office of Inspector General maintains a website describing steps students may take if they suspect they are a victim of identity theft at

<http://www.ed.gov/about/offices/list/oig/misused/idtheft.html>; and  
<http://www.ed.gov/about/offices/list/oig/misused/victim.html>.

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

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

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

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance Office

cc: David E. Stover



(b)(6)

JAN 12 2010

Dear (b)(6)

This is in response to your letter, dated November 2009, addressed to this Office, about your student loans. Please note that we administer the Family Educational Rights and Privacy Act (FERPA). It seems that your concerns would be addressed by the Department's Student Aid Ombudsman, not FERPA. For your information, enclosed is a fact sheet on FERPA.

The Federal Student Aid Ombudsman helps resolve disputes and solve other problems with federal student loans. You may contact the Office of Ombudsman at this address and telephone number:

U.S. Department of Education  
FSA Ombudsman  
830 First Street, NE  
Fourth Floor  
Washington, DC 20202-5144  
1-877-557-2575

You may also go to their website for information: <http://www.ombudsman.ed.gov/>

I trust this information is helpful to you.

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance Office