

(b)(6)

**JAN 12 2010**

Dear

(b)(6)

This is to respond to your January 6, 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.

In this Office's August 4, 2005, response to your May 12, 2005, letter to the Department, this Office informed you that FERPA does not apply to individuals who were never students (see enclosed). In your recent January 2010 email you request the Department's assistance to ask American University (University) to retain documents which are not your education records. You still have not provided this Office with information which verifies that you were a student. Accordingly, documents which the University maintains about you are not protected by FERPA. Additionally, this Office does not address issues unrelated to FERPA and this Office is unable to assist you with your inquiry.

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance Office

Enclosure

(b)(6)

JAN 11 2010

Dear

(b)(6)

This is in response to your September 9, 2009, letter to this Office in which you appear to believe that the George Washington University (University) may have violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). Specifically, you state that the University disclosed the home address of a school employee to you. This Office administers FERPA which addresses issues pertaining to education records.

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

Under FERPA, a school may not generally disclose personally identifiable information from the education records of a student to a third party unless the student has provided written consent. An institution's disclosure of school employee information is not addressed under FERPA. Accordingly, FERPA does not apply in the instance which you identify. For further information regarding your rights under FERPA, you may wish to refer to the enclosed FERPA guidance.

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

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

JAN 04 2010

(b)(6)

Dear

(b)(6)

This is in response to your letter, dated December 22, 2009, addressed to Secretary Duncan, concerning the Family Educational Rights and Privacy Act (FERPA). Specifically, you state that (b)(6) University) has refused to release your granddaughter's transcript due to an outstanding tuition balance. You explain that your granddaughter, (b)(6) Underwood, has been unsuccessful in enrolling into several other institutions because the University will not release her transcript, presumably to those other institutions, and that you are asking that the University provide her with a copy of the transcript. I have been asked to respond to your letter because this Office administers FERPA. 20 U.S.C. § 1232g; 34 CFR Part 99.

FERPA protects parents and eligible students' privacy interests in "education record," which are defined as records that are directly related to a student and maintained by an educational agency or institution or a party acting for the agency or institution. 34 CFR § 99.3 ("Education records.") "Eligible student" means a student who has reached 18 years of age or is attending a postsecondary institution at any age. 34 CFR § 99.3 "Eligible student." The rights under FERPA belong to the parents of students under the age of 18 at the elementary/secondary level and transfer to the student when he or she becomes an "eligible student."

Postsecondary institutions subject to FERPA may not have a policy or practice of permitting the disclosure of "education records" without the written consent of the eligible student, unless an exception in FERPA applies. 34 CFR §§ 99.30 and 99.31. Under § 99.31(a)(2), a postsecondary institution may disclose education records, without the student's prior written consent, to officials of another school where the student seeks or intends to enroll, provided the institution complies with the requirements in § 99.34(a). Please note that FERPA does not require that a postsecondary institution disclose education records to another institution. In fact, a postsecondary institution is not required to disclose education records to anyone other than the eligible student. Thus, a school may refuse to transfer education records in general to another school due to money owed. There may be State or local guidelines or regulations relevant to the transfer of education records in each State.

With regard to your granddaughter's request for a copy of her transcript, FERPA requires that postsecondary institutions provide eligible students the opportunity to inspect and review their education records within 45 days after receipt of a request. 34 CFR § 99.10(b). FERPA requires that educational agencies and institutions give students a copy of the records if failure to do so would effectively prevent the student from exercising the right to inspect and review the records. 34 CFR § 99.10(d). Thus, for example, if a student does not live in commuting distance of the school, an educational institution must give the student a copy of his or her records or make other arrangements in accordance with FERPA to provide access to the records.

I trust this is responsive to your concerns and adequately explains the scope and limitations of FERPA with regard to these issues. Enclosed is a guidance document on FERPA for eligible students.

Sincerely,

Paul Gammill  
Director  
Family Policy Compliance

Enclosure



(b)(6)

**MAY 27 2010**

Dear

(b)(6)

This is in response to your letter, dated April 29, 2010, addressed to Secretary Duncan, concerning the Family Educational Rights and Privacy Act (FERPA). Specifically, you are seeking access to the comment sheets that students made about the (b)(6) Government class you taught at (b)(6) (College) in 2006. I have been asked to respond to your correspondence because this office administers FERPA.

Under FERPA, 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). 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 are "education records" under FERPA. 34 CFR § 99.3 ("Education records.")

One of the exceptions to FERPA's general consent requirement permits a school to disclose personally identifiable information from a student's education record to a "school official" who has been determined to have "legitimate educational interest" in the student's records. 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 previously advised 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. Thus, an instructor's supervisor would be able to access students' evaluations of an instructor because part of the legitimate educational interest that the supervisor has in order to carry out his job function would be to evaluate the instructor and whether the

instructor is fulfilling his responsibilities as a teacher. We have not advised, however, that an instructor would generally have a legitimate educational interest in reviewing evaluations that students have written about the instructor absent consent. Nevertheless, even if FERPA permitted a school to disclose student evaluations to an instructor, the disclosure is not required under FERPA but rather permissive and, as such, the determination to disclose the student evaluations to the instructor would be made at the school's discretion. Accordingly, we are unable to assist you with your concern.

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

(b)(6)

MAY 25 2010

Dear

(b)(6)

This is to respond to your December 28, 2009, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6) High School violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. FPCO administers FERPA, which affords parents and eligible students certain rights pertaining to education records.

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

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

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

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

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

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

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

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

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure



(b)(6)

**MAY 25 2010**

Dear

(b)(6)

This is to respond to your August 29, 2007, letter to this Office, on behalf of your client, (b)(6) (Parent), in which you allege that the (b)(6) (District) College (College) violated rights afforded the Parent under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99.

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

- ☐ FERPA's access provision.
- ☒ FERPA's disclosure provision.
- ☐ FERPA's amendment provision.

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

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

The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a FERPA Guidance Document.

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

- ☐ Your complaint is untimely. A complaint must be received by this Office within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation. (See highlighted portion of the enclosed guidance.)



\_\_\_\_\_ While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist. (See highlighted portion of the enclosed guidance.)

  X   FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See highlighted portion of the enclosed guidance.)

\_\_\_\_\_ You have not provided sufficient information for this Office to determine that a violation of FERPA may have occurred. (See enclosed guidance.)

\_\_\_\_\_ Requests to modify a grade, opinions included in education records, and other substantive decisions are not subject to FERPA's amendment provision. (See highlighted portion of the enclosed guidance.)

The District may disclose information from the student's education records to the bus driver if the District has defined the terms "school official" and "legitimate educational interest" in the District's annual notification to permit such disclosures. 34 CFR § 99.31(a)(1). The District is also required to provide all school officials, including bus drivers who are designated as school officials, with details about FERPA's general written consent requirement for disclosure of student information from education records.

As you know, there are some additional requirements that apply to the education records of students who receive special education services under Part B of the Individuals with Disabilities Education Act (Part B). If you haven't already, you may want to contact the organization responsible for administering Part B in your State. Also, if you believe any of your concerns are related to civil rights, you may want to contact the Department's Office for Civil Rights (OCR) in your region. Enclosed for your information is contact information regarding Part B and OCR.

I trust that this information adequately explains the scope and limitations of FERPA as it pertains to your client's concerns.

Sincerely,

Ricky Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures

(b)(6)

**MAY 25 2010**

Dear

(b)(6)

This is to respond to your August 21, 2008, letter to this Office in which you allege that the (b)(6) (College) violated rights afforded your daughter, (b)(6) (Student), under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99.

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

- ☐ FERPA's access provision.
- ☒ FERPA's disclosure provision.
- ☐ FERPA's amendment provision.

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

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

The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a FERPA Guidance Document.

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

- ☐ Your complaint is untimely. A complaint must be received by this Office within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation. (See highlighted portion of the enclosed guidance.)

\_\_\_\_ While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist. (See highlighted portion of the enclosed guidance.)

\_\_X\_\_ FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See highlighted portion of the enclosed guidance.)

\_\_X\_\_ You have not provided sufficient information for this Office to determine that a violation of FERPA may have occurred. (See enclosed guidance.)

\_\_\_\_ Requests to modify a grade, opinions included in education records, and other substantive decisions are not subject to FERPA's amendment provision. (See highlighted portion of the enclosed guidance.)

If the Student wishes this Office to further consider this allegation, she needs to provide us with a completed copy of the enclosed complaint form and include the following information for each alleged improper disclosure: the date or the approximate date of the alleged disclosure or the date she learned of the alleged disclosure; the name of the official who made the disclosure, if that is known; the third party or parties to whom the disclosure was made; the specific nature of the information disclosed; and any evidence that such disclosure occurred. We will review the information the Student provides and take any appropriate action.

The other issues raised in your letter, such as a school awarding grades and credit for work performed in the classroom or during an internship, are not addressed by FERPA.

I trust this information adequately explains the scope and limitations of FERPA as it pertains to your concerns.

Sincerely,

Ricky Norment  
Program Analyst  
Family Policy Compliance Office

Enclosures



(b)(6)

MAY 24 2010

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (Office) is not initiating an investigation with regard to a complaint you filed with us on November 19, 2009. In that complaint, you alleged that (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

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

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

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

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

The provisions of 34 CFR Part 99, Subpart D specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written signed consent for the disclosure. FERPA allows for limited disclosure of such records without consent under limited circumstances, to specific persons, and under specific conditions as detailed at 34 CFR § 99.31. However, given the facts alleged, the disclosure you described may be authorized because the information may not be information from a student's education 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. Please note that FERPA does not protect the confidentiality of information in general and, therefore, does not apply to disclosure of information derived from a source

other than education records, even if education records exist which contain that information. Rather, FERPA protects information derived from education records from improper disclosure. As a general rule, information obtained through personal knowledge, personal observation, or hearsay, and not from an education record, is not protected from disclosure under FERPA.

You state that the information improperly disclosed by the District was that your son “had been expelled [from (b)(6) East Campus] due to drug possession.” However, you state that the facts of the matter are that your son was suspended from school for a “disputed incident on 11-13-09.” If you wish this Office to further consider your allegation, this Office needs to receive clarification regarding the actual reason your son was suspended from school. Did it allegedly involve “drug possession”? Also, please provide us with any evidence you may have that (b)(6) registrar at the other high school campus in the District, obtained such information from your son’s education records, rather than through hearsay. For example, as registrar, would (b)(6) automatically have access to information regarding suspensions of students. We will review the information you submit and take any appropriate action.

Unless we hear from you within the next three weeks, this Office will close this complaint file. If you have questions regarding this matter, you may contact me at 202-260-3887. The name, address, and telephone number of the Office are:

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

Sincerely,

Ricky Norment  
Program Analyst  
Family Policy Compliance Office



(b)(6)

MAY 21 2010

This is in response to your letter dated March 8, 2010, in which you state that you are appealing the response that this office provided you in a letter dated December 23, 2009. That letter was in response to your September 1, 2009, correspondence regarding the applicability of the Family Educational Rights and Privacy Act (FERPA) to the disclosure of education records by the (b)(6)

(b)(6) (University) to the (b)(6) newspaper where you work as a reporter.

Please note that, while there is no appeal process of determinations and technical assistance made by this office, we have nevertheless reviewed the issue. As you know, this office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations. 20 U.S.C. § 1232g and 34 CFR Part 99.

In our December 23, 2009, letter, we explained that FERPA would generally permit the University to disclose properly designated "directory information" on a student, without the student's consent, unless the student has opted out of the disclosure of "directory information." Directory information may not include information on a student that would be generally considered harmful or an invasion of privacy if disclosed. Included in the type of information that may be considered "directory information" is a category for "honors or awards." 34 CFR § 99.3 "Directory information." (Section 99.37 sets forth the conditions under which an educational agency or institution may disclose "directory information.") Accordingly, an educational agency or institution may disclose the fact, as part of its disclosure of "directory information," that a student has received a scholarship from the institution if the scholarship was one that was considered an honor or award, such as a scholarship that was based on academic merit or athletic achievement. However, if disclosing the name of a student who received a scholarship would reveal any non-directory information, such as the student's need for financial aid, the name of a scholarship recipient cannot be disclosed under the "directory information" provision of FERPA and the student would have to provide consent in order for the disclosure to be made. This interpretation is consistent with the Department's historical position on this issue. Accordingly, there is no basis for us to rescind our previous guidance to you.

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office



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

Dr. Donald Parker  
Superintendent  
Chappaqua Central School District  
P.O. Box 21  
66 Roaring Brook Road  
Chappaqua, New York 10514

**MAY 19 2010**

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

Dear Dr. Parker:

This is to inform you of the finding in the complaint filed by (b)(6) (Parent) against the Chappaqua Central School District (District) under the Family Educational Rights and Privacy Act (FERPA). By letter dated May 5, 2008, this Office informed you of the Parent's allegation that the District violated § 99.10 of the FERPA regulations when it did not provide him access to his son (b)(6) (Student) education records. Specifically, on December 23, 2007, the Parent stated to this Office the following:

Our son . . . is in seventh grade at (b)(6) in (b)(6) New York, where he started in fifth grade. On July 10, 2007 our attorney wrote to the school principal requesting that we be given an opportunity to review [my son's] complete educational record. When we went to the school guidance office to review it, we saw that it contained virtually nothing but his report cards. We are interested in reviewing the minutes or notes of parent teacher meetings and other records, but have been informed, by the principal, that these are "personal notes" not subject to disclosure to us.

Our four subsequent letters to the principal and her two replies have led us to conclude that the school is using the "personal notes" exception illegitimately to deny us access to records of our son which are rightfully ours to examine.

In support of his allegation, the Parent provided a letter dated February 6, 2008, stating that the education records to which he is seeking access were any notes taken by (b)(6) (social worker), (b)(6) (guidance counselor), (b)(6) (social studies teacher), (b)(6) (English teacher), (b)(6) (math teacher) and (b)(6) (science teacher) at a meeting that took place on November 6, 2007. An additional meeting took place on December 5,



2006, with the Principal, (b)(6) present and all of the school officials listed above except for (b)(6). The Parent explains that at both meetings (b)(6) took notes on her laptop. Also, the Parent provided a copy of a November 15, 2007, letter from Principal (b)(6) (b)(6) responding to the request of the Parent's attorney for access to the Student's education records. In her letter, (b)(6) stated:

The teacher you referred to, (b)(6), uses his own laptop to take personal notes at every meeting he attends. He does this whether others take notes or not and he does in on his laptop because he prefers not to write by hand. These are his personal notes and for his use only. You can verify this with (b)(6). I recall attending one meeting with [the Parent] and members of the team in which (b)(6) and I took our own, personal notes.

Please accept my assurances that the record you will see when you visit (b)(6) again will be [the Student's] in its entirety. When you are ready, you can either contact the Guidance Office or my secretary (b)(6) to set up an appointment. I would like to know when you are coming in so I can make sure the Child Study Team notes are there since they are kept in a separate location.

Section 99.10(b) of the FERPA regulations states:

The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

"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."

Exempted from the definition of education records are those records which are kept in the sole possession of the maker of the records and are not accessible or revealed to any other person except a temporary substitute for the maker of the records. 34 CFR § 99.3 "Education records"(b)(1). Once the contents or information recorded in sole possession records is disclosed to any party other than a temporary substitute for the maker of the records, those records become education records subject to FERPA. Generally sole possession records are of the nature to serve as a "memory jogger" for the creator of the record. For example, if a school official has taken notes regarding telephone or face to face conversations, such notes could be sole possession records depending on the nature and content of the notes.

When determining whether records are "education records" or "sole possession records" under FERPA, the intent in creating and maintaining the records must be considered, as well as whether such intent has been modified since the records were created. FERPA, a privacy statute,

generally prohibits the nonconsensual disclosure of education records, or personally identifiable information contained in education records. Thus, once a teacher or other school official decides to make his or her "sole possession" records available to a party other than a temporary substitute, those records should be treated as education records for the purposes of any disclosures which may occur.

By letter dated June 5, 2008, Lisa Rusk, attorney for the District responded as follows:

It is the District's position that Section 99.10 of the FERPA Regulations was not violated and that the parents were provided access to all of the education records of their son. . . . Certain notes have been taken and maintained by guidance counselor (b)(6) and Teacher (b)(6) have been determined to be sole possession records pursuant to 20 U.S.C. 1232g(a)(4)(B)(i) and 34 CFR 99.3 and have not been shared with the parents or anyone else. Enclosed for your review are affidavits from all school personnel listed in the Complaint letter. Each affidavit indicates either that the employee did not take or maintain notes or that the notes were kept to be used only as a personal memory aid and have not been revealed to any other person.

Ms. Rusk provided signed affidavits from (b)(6) all three of whom stated that they attended a meeting with the Parent on November 6, 2006, and December 6, 2006, and that they did not take any notes at the meetings. The District provided an affidavit from (b)(6) stating that she attended the November 6, 2006, meeting and did not take any notes.

The affidavits signed by (b)(6) and (b)(6) indicate that they took notes at the meeting and that they never shared those notes with anyone and they had no intention of sharing the notes that they took. They stated that the notes they took were personal memory-refreshing notes or for memory recollection. (b)(6) stated in her signed affidavit that the purpose of her note taking was for personal memory refreshing and that when she determined that they were unhelpful she discarded them. The affidavit states that at no time did she share the notes with anyone.

The District refutes the allegation that the Parent was denied access to the Student's education records and explains that the information that the Parent wishes to gain access to from (b)(6) (b)(6) and (b)(6) meet the above outlined definition of sole possession records under FERPA and as such are exempt from the definition of education records. Under FERPA, parents have the right to access those records that meet the definition of education records. Because the information provided from the District indicates that the notes that were taken at said meeting were not disclosed to any other individual other than the maker of the record, and because the Parent did not provide evidence that indicates otherwise, we conclude that the information maintained by the three school officials are sole possession records and as such are exempted from the definition of education records. Accordingly, we find that no violation occurred in this case.

We are closing this complaint and will so notify the Parent by copy of this letter. Thank you for your cooperation with regard to this matter.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

cc: Parent

Ms. Lisa S. Rusk



(b)(6)

**MAY 19 2010**

Dear

(b)(6)

This is in response to your March 30, 2010, letter in which you allege that (b)(6) School District (the District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA) with regard to the education records of certain students in the District. Specifically, you allege that, when you received copies of your son's education records that you had requested, you "also received the schedule and names of students that would see a Title I reading specialist, schedule of those students who qualified for opportunities, a copy of which children qualified as CD, or ED." You stated that when you brought this to the attention of the school you were asked to shred the information. You therefore request that this Office investigate whether the District complies with the requirements of FERPA regard to protecting student education records.

Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent has provided specific prior written signed consent for the disclosure. FERPA allows for limited disclosure of such records without consent under limited circumstances. FERPA vests the rights it affords with the parent or eligible student. The statute does not provide for these rights to be vested in a third party that has not suffered an alleged violation. Thus, we have determined that an individual must have "standing," i.e., have suffered an alleged violation, in order to file a complaint under FERPA. Because you do not allege that your child's education records were improperly disclosed by the District, there is no basis on which to initiate an investigation into your allegation.

You may wish to share this letter with the school district and refer to our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html> which contains more specific information on the requirements of FERPA. Also, we are enclosing a guidance document that outlines parents' rights under FERPA. I regret that this Office cannot be of further assistance to you with regard to your concern.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

End.

(b)(6)

**MAY 17 2010**

Dear

(b)(6)

This is in response to your April 7, 2010, letter to this Office in which you express concerns related to a special education meeting held for your child. This Office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues that pertain to education records.

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

The concerns you raise may be more appropriately addressed by Part B of the Individuals with Disabilities Education Act (Part B). Although Part B is a Federal law, it is administered by the States. For further information regarding Part B, you may contact:

Mr. Robert L. Mitchell  
Director  
Special Education Division  
Virginia Beach City Schools  
1413 Laskin Road  
Virginia Beach VA 23451  
(757) 263-2400

I trust that the above information is helpful to you.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure

(b)(6)

**MAY 13 2010**

Dear

(b)(6)

This is to respond to your February 19, 2010, letter to this Office in which you allege that the (b)(6) School) violated rights afforded your clients, (b)(6) (b)(6) (Parents), under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99.

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

- ☐ FERPA's access provision.
- ☒ FERPA's disclosure provision.
- ☐ FERPA's amendment provision.

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

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

The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a FERPA Guidance Document.

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

- ☐ Your complaint is untimely. A complaint must be received by this Office within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation. (See highlighted portion of the enclosed guidance.)



- \_\_\_\_\_. While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist. (See highlighted portion of the enclosed guidance.)
- X   FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See highlighted portion of the enclosed guidance.)
- \_\_\_\_\_. You have not provided sufficient information for this Office to determine that a violation of FERPA may have occurred. (See enclosed guidance.)
- \_\_\_\_\_. Requests to modify a grade, opinions included in education records, and other substantive decisions are not subject to FERPA's amendment provision. (See highlighted portion of the enclosed guidance.)

Under FERPA, a school may nonconsensually disclose education records to a school official with a legitimate educational interest. Please see the highlighted portion of the guidance document for additional information on this FERPA exception to the prior written consent requirement. The guidance counselor and athletic director would generally be school officials with a legitimate educational interest.

Exhibit D does not appear to be a FERPA consent form which a parent would sign giving the school consent to disclose information from his or her child's education records to a third party. Rather, Exhibit D appears to be a consent form regarding a student's participation in extra-curricular activities. Thus, the items that FERPA requires being included on a consent form (such as identifying the parties or class of parties to whom education records may be disclosed) would not generally apply to this type of form.

Under FERPA, a school is not generally required to or prohibited from maintaining particular education records or education records that contain specific information. Thus, nothing in FERPA would prohibit the School from maintaining the police report or information from the police report. Finally, FERPA would not address a school failing to comply with its own policies and procedures regarding student disciplinary infractions as long as such policies and procedures do not directly violate provisions of FERPA.

Page 3

(b)(6)

I trust this information adequately explains the scope and limitations of FERPA as it pertains to your client's concerns.

Sincerely,

Ricky C. Norment  
Program Analyst  
Family Policy Compliance Office

Enclosure



Dr. Heath E. Morrison  
Superintendent  
Washoe County School District  
425 East Ninth Street  
Reno, Nevada 89520-3425

**MAY 11 2010**

Dear Dr. Morrison:

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 March 30, 2010, from Bryn Lapenta, Senior Director, Public Policy, Accountability and Assessment, Washoe County School District (District) in which she explained that on March 10, 2010, the principal of Hunsberger Elementary School sent notes about a student's Intervention Assistance Team in personally identifiable form to the entire faculty and she outlined the steps taken by the District to remedy the situation in light of the inadvertent disclosure.

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.

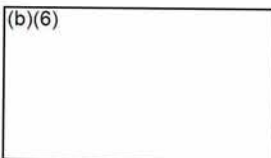
Under FERPA, no funds shall be made available to an educational agency or institution that has a policy or practice of permitting the release of personally identifiable information in education except as authorized by statute. 20 U.S.C. §1232g(b). Failure to take reasonable and appropriate steps to protect 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:





Mr. Jim Busey  
Superintendent  
Richland School District  
615 Snow Avenue  
Richland, Washington 99352

**MAY 11 2010**

Dear Mr. Busey:

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 28, 2009, from Galt Pettett, General Counsel, Richland School District (District) in which he explained that on October 9<sup>th</sup> and 10<sup>th</sup> 2009, the first name of a student who had received a suspension from school for an alcohol violation was accidentally included in two letters that the District sent home to two other parents relative to their children's related suspensions and he outlined the steps taken by the District to remedy the situation in light of the inadvertent disclosure.

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: Galt Pettett



(b)(6)

**MAY 11 2010**

Dear (b)(6)

This is to respond to your April 21, 2010, letter to Secretary Duncan who has forwarded your inquiry to this Office for response because your letter raises issues pertaining to the Family Educational Rights and Privacy Act (FERPA). You allege that the (b)(6) (District) denied you access to your children's education records in response to your written request. This Office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents, custodial and noncustodial alike, the right to inspect and review their children's education records, unless the school has evidence that there is a court order or State law which specifically provides to the contrary. "Education records" are those records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for the agency or institution. A school may ask for legal certification denoting parenthood, such as a birth certificate or court order, from the parent requesting access. Based on statements in your letter, it appears that the court may have recently created documents which affect your parental rights under FERPA. Accordingly, we are unable to determine whether you retain parental rights.

Generally 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, or make other arrangements, only if a failure to do so would effectively prevent the parent from obtaining access to the records. A case in point would be a situation in which the parent does not live within commuting distance of the school. In your circumstance, the District would be required to provide you copies or make other arrangements, unless there is a court order which specifically denies your right of access as discussed above.

While a school is required to comply within 45 days with each individual request for access, it is not required by FERPA to honor standing requests, to provide immediate access to records, or to send out grades to parents at the end of marking periods. Further, a school is not required to provide information that is not maintained or to create education records that do not exist. Additionally, FERPA would not require a school to provide parents documents such as school calendars, updates, or notices of parent/teacher conferences because such documents are generally not directly related to individual students. Also, FERPA does not address who will

attend parent/teacher conferences -- such decisions are made at the discretion of local and State officials. Enclosed for your information is a FERPA guidance document. You may also find more information regarding FERPA on our website at: <http://www2.ed.gov/policy/gen/guid/fpcg>.

I trust this information addresses your concerns as they relate to FERPA.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure

(b)(6)

**MAY 06 2010**

Dear

(b)(6)

This is to respond to your May 12, 2008, complaint to this Office and your April 19, 2010, email message to Secretary Duncan concerning your Family Educational Rights and Privacy Act (FERPA) complaint against (b)(6) (College). Your inquiry to the Secretary was referred to this Office for response because we administer FERPA. You allege that the College improperly disclosed information from your education records to a third party.

Enclosed is our letter to you explaining FERPA as it relates to your complaint. I trust this information is helpful to you. Per your request, we have also enclosed your original copies of the documents that are related to your complaint.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures



(b)(6)

MAY 06 2010

Dear

(b)(6)

This is to respond to your May 12, 2008, complaint against (b)(6) at (b)(6) (College) under the Family Educational Rights and Privacy Act (FERPA). This Office reviews complaints under FERPA and investigates them if such action is warranted.

You allege that the College improperly disclosed information from your education records without your prior written consent. Specifically, you allege that you requested that the College mail to you your official College transcript. When you received it, you noticed that the envelope flap was not sealed closed to the envelope. Based on these circumstances you "accuse the College of being responsible for not making sure [your] personal information was secured properly before mailing."

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

"Education records" means those records that are:

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

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

As noted above, you allege that the College did not make sure that the envelope was sealed. While the College should have done this, failure to do so is not specifically a violation of FERPA's prior written consent provision which is cited above. See § 99.30.

(b)(6)

In order to demonstrate that there was an improper disclosure of information from your education records, you would need to provide the following information:

1. The name of the individuals(s) who removed the record from the envelope and saw your transcript;
2. The date on which that occurred;
3. The name of the school official who prepared the envelope, and;
4. An indication that you contacted the school directly to ensure that transcripts are mailed home in envelopes that are securely sealed.

You have not provided to this Office in writing the information about your complaint that is described in items 1-4 immediately above. Under these circumstances, there is no basis under FERPA for this Office to consider your complaint. If you provide in writing all of the information described above, this Office will review it and take any appropriate action under FERPA.

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

(b)(6)

(b)(6)

Dear

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on October 30, 2009. In that complaint you alleged that (b)(6) (University) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

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

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

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

In this case, we will not open an investigation into your complaint because it does not meet the standing requirement described in (a), above. Only a parent or eligible student (as defined in 34 CFR §99.3) has rights protected by FERPA. FERPA does not vest these rights in any third party. An individual must have suffered an alleged violation of his or her own protected rights, in order to file a valid complaint under FERPA. The FERPA rights in the education records you describe belong to the individual students.



Also, the complaint does not meet the FERPA timeliness requirement described in (b), above. The complaint clearly indicates that the alleged violation(s) occurred in the summer of 2008. The Office received your complaint on November 9, 2009, which was more than a year after the alleged violation. (34 CFR § 99.64).

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

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

Sincerely,

Kathleen M. Wolan  
Program Analyst  
Family Policy Compliance Office

(b)(6)

Dear (b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you wrote to us on November 2, 2009. In that complaint you alleged that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

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

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

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

In this case, we will not open an investigation into your complaint because it does not meet the standing requirement described in (a), above. Only a parent or eligible student (as defined in 34 CFR § 99.3) has rights protected by FERPA. FERPA does not vest these rights in any third party. An individual must have suffered an alleged violation of his or her own protected rights in order to file a valid complaint under FERPA. The FERPA rights in the education records you describe belong to the students’ parents.

Additionally, your complaint does not meet the FERPA timeliness requirement described in (b), above. The complaint indicates that the alleged violation(s) occurred April 23, 2009. The Office received your complaint on November 9, 2009, which was more than 180 days after the alleged violation. (34 CFR § 99.64).

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

Sincerely,

Kathleen Wolan  
Program Analyst  
Family Policy Compliance Office



(b)(6)

(b)(5)

Dear

This is to respond to your September 21, 2009, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6) (b)(6) (College) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. FPCO administers FERPA, which affords parents and eligible students certain rights pertaining to education records.

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

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

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

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

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

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

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

\_\_\_\_\_ Your complaint is untimely. A complaint must be received by FPCO within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation. (See highlighted portion of the enclosed guidance.)

\_\_\_\_\_ While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist. (See highlighted portion of the enclosed guidance.)

\_\_\_X\_\_\_ FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See highlighted portion of the enclosed guidance.)

\_\_\_\_\_ Requests to modify a grade, opinions in education records, and other substantive decisions are not subject to FERPA's amendment provision. (See highlighted portion of the enclosed guidance.)

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

Sincerely,

Kathleen M. Wolan  
Program Analyst  
Family Policy Compliance Office

Enclosure

(b)(6)

Dear

(b)(6)

This is to respond to your October 31, 2009, letter sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO) in which you express concerns that the (b)(6) (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. FPCO administers FERPA, which affords parents and eligible students certain rights pertaining to education records.

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

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

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

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

  X   **FERPA's access provision.** The school did not provide you access to your child's or your education records within 45 days of your request.



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

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

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

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

Sincerely,

Kathleen M. Wolan  
Program Analyst  
Family Policy Compliance Office

Enclosure



(b)(6)

(b)(6)

Dear

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

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

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

The FERPA regulations (34 CFR Part 99) can be found on our website at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>. Enclosed is a copy of a guidance document about FERPA that may be useful to you.

In this case, we will not open an investigation into your complaint for several reasons. Initially, it is not clear that your complaint meets the FERPA timeliness requirement described in (b), above. We are unable to determine whether you had seen or handled the transcript at any time between the time you requested the transcript from the School (February 2008) and when you initially questioned the School concerning the information on the transcript (April 2009). As such, we are unable to determine whether your complaint is timely.

However, even if your complaint is deemed to have been timely received, Sections 99.20 – 99.22 of the FERPA regulations describe the process for requesting amendment of education records. Generally, parents or eligible students have the right to request that a school correct education records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a hearing. After the hearing, if the school decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information. As such, a school is not required to follow the requirements of the FERPA amendment process when the item is not amendable under FERPA. For example, a school is not required to afford you a hearing to seek to amend a grade or its decision on how credits will be earned.

With respect to the facts alleged, it does not appear that you have completed the School's process for consideration of amendment requests. This must be completed before FPCO will consider a submitted complaint. Additionally, it is not clear whether the information you seek to amend on your transcript from the School is protected under FERPA's amendment procedure. The FERPA amendment procedure may be used to challenge facts that are inaccurately recorded. However, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about a student. FERPA requires only that schools conform to fair recordkeeping practices. It does not provide a means to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. The FERPA right to seek amendment of education records which contain inaccurate information cannot be used to challenge a grade or a school's decision concerning degree requirements, unless that information has been inaccurately recorded.

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

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

Sincerely,

Kathleen M. Wolan  
Program Analyst  
Family Policy Compliance Office

Enclosure

(b)(6)

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on October 15, 2009. In that complaint you alleged that (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

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

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

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

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



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

Section 99.10 of the FERPA regulations provide the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after receipt of the request. Given the facts alleged, the access you requested was not unlawfully denied because a school is required to provide parents with the opportunity to inspect and review the minor child's education records. A school is required under FERPA to provide a parent with a copy of requested education records only under certain conditions, such as when a parent does not live within commuting distance of the school. Also, FERPA does not require a school to provide access to education records to anyone except the parent of the minor child or an eligible student, even when the parent or eligible student has requested that education records be provided to a third party.

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

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

Sincerely,

Kathleen M. Wolan  
Program Analyst  
Family Policy Compliance Office

Enclosures



(b)(6)

**FEB 17 2012**

(b)(6)

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

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

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

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

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

**FERPA's access provision.** The school did not provide you access to your child's or your education records within 45 days of your request.

X **FERPA's disclosure provision.** The school improperly disclosed information from your child's or your education records.

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

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

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

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

Sincerely,

Bernard Cieplak  
Program Analyst  
Family Policy Compliance Office

Enclosure

(b)(6)

**FEB 2 2012**

This is in response to your February 2, 2012, letter addressed to Secretary Duncan in which you ask for copies of your school records. Your inquiry was forwarded to this office because we administer the Family Educational Rights and Privacy Act (FERPA), a federal law that protects the privacy of education records. Enclosed is a fact sheet on FERPA.

Please note that the U. S. Department of Education does not maintain education records on students. Rather, a student's education records are typically maintained at the school(s) where the student attended. Therefore, you should write to the school where you attended to request access to your education records. While a school is generally not required to provide copies of education records to a former student, if circumstances effectively prevent the student from exercising the right to inspect and review his or her education records, the school may provide a copy of the records requested or make other arrangements for the student to inspect and review the records.

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure



(b)(6)

**FEB - 9 2012**

This is to respond to your January 23, 2012, correspondence to Secretary Duncan regarding the Family Educational Rights and Privacy Act (FERPA). Your correspondence was forwarded to this office for response because we administer FERPA.

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

You state in your letter that you sent a letter to us regarding a FERPA complaint, which you enclosed with your letter to the Secretary. You also state that you inquired in December as to the status of the complaint. However, this office does not have a record of having received the October 1, 2011, letter of complaint from you. We apologize for any inconvenience this may have caused you. In order to be responsive to the concerns you raise, we are addressing those issues below. We are also providing you with a guidance document on FERPA, as well as a complaint form. If, after a review of the explanation and the information we have provided, you still believe your rights under FERPA have been violated, you may fill out the complaint form and return it to us.

Under FERPA, parents must provide written consent before personally identifiable information is disclosed from their children's education records, unless one of the exceptions to this general consent rule applies. However, FERPA does not protect the confidentiality of information in general; rather, FERPA prohibits the improper disclosure of information derived from education records. Therefore, if a school official disclosed information about a student that is a result of the official's personal knowledge, observation, or hearsay, then that information would not be protected under FERPA. It appears that the information that you allege your child's teacher disclosed was based on personal observation and was not derived from your son's education records. Accordingly, no basis exists for this office to investigate your allegation that a teacher disclosed information from your child's education records.

Page 2

(b)(6)

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosures

(b)(6)

















FEB 15 2012

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on April 25, 2011. In that complaint you alleged that (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. Specifically, it appears that you are alleging that the District violated FERPA when, in March or April 2011, the District held an assembly and rewarded individual students who received proficient or advanced status on the (b)(6) (MAP).

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

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

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

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

against an individual as the result of a FERPA violation. This Office closes its investigation when the district has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it is not clear that it meets the standing requirement described in (a), above. Only a parent or eligible student (as defined by in 34 CFR §99.3) has rights protected by FERPA. FERPA does not vest these rights in any third party. An individual must have suffered an alleged violation of his own protected rights, in order to file a valid complaint under FERPA. You do not state whether you are the parent of a student in the District whose records you believe were improperly disclosed during the assembly.

The provisions of 34 CFR Part 99, Subpart D specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent has provided specific prior written signed consent for the disclosure.

However, FERPA allows for limited disclosure of such records without consent under certain circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31. One of these exceptions permits the nonconsensual disclosure of "directory information" that has been appropriately designated as "directory information" by the educational agency or institution. 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. 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.

A school may disclose directory information to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the parent's right to restrict the disclosure of such information, and the period of time within which a parent has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." The means of notification could include publication in various sources, including in a newsletter, in a local newspaper, or in the student handbook. A school is not required to individually notify parents regarding directory information.

Thus, FERPA permits schools to publish honor rolls, for example, as long as honor or award is appropriately designated as a directory information item. Similarly, recognizing students who pass an assessment test with an advanced status would generally meet the FERPA directory information exception. Given the facts alleged, the disclosure you described for students achieving advanced status on the assessment test could be authorized if the District designates "honors and awards" as a category of directory information. Furthermore, honoring the students who achieve advanced status does not automatically identify the scores achieved by the students who were not honored.



With regard to your allegation, it remains unclear whether honoring students who achieved a proficient rating on the test is sufficient under FERPA to meet honor or award under FERPA's directory information exception, although you do indicate that at the assembly, the District was also honoring students who received a proficient status on the MAP.

Enclosed for your reference are a FERPA guidance document and a complaint form. If you are the parent of a child whose education records were improperly disclosed, you need to make the following distinctions to this Office should you decide to pursue your complaint:

1. Are you a parent of a student in the District? If yes, please list the possible MAP status or scores that students can attain in addition to "advanced" and "proficient."
2. If your child received a proficient status, are you alleging that his or her score of proficient on the MAP was improperly disclosed at the assembly when the District awarded the students who attained both advanced and proficient? If yes, please explain how.
3. If your child did not receive an advanced or proficient status on the MAP, are you alleging that by honoring the advanced and proficient students, that in turn identified the score attained by your child? If yes, please explain how.

If you wish us to consider your allegation, please complete the complaint form, including responses to the above questions and return it to FPCO at the address shown below.

If you have questions regarding this matter, you may contact this Office at:

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure



FEB 15 2012

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on April 25, 2011. In that complaint you alleged that the (b)(6) Preparatory High School of the School District of (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. Specifically, you allege, in part, that the District violated FERPA when it provided the education records of an 18 year old student who attends the District to that student's father. The other issues you raise are not addressed by FERPA and as such will not be discussed in this letter.

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

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

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

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

In this case, we will not open an investigation into your complaint because it does not meet the standing requirement described in (a), above. Only a parent or eligible student, that is a student who has reached 18 years of age or is attending an institution of postsecondary education, has rights protected by FERPA. FERPA does not vest these rights in any third party. An individual must have suffered an alleged violation of his own protected rights, in order to file a valid complaint under FERPA.

Accordingly, the FERPA rights in the education records you describe belong to the 18 year old eligible student, and it would be the responsibility of the eligible student to file a timely complaint under FERPA with this Office. The student would need to establish that his rights under FERPA were violated when the District did not provide him access to his education records within 45 days of his request, or that the District improperly disclosed his education records to his father. Enclosed is a guidance document on FERPA that outlines exceptions under which prior written consent is not required to disclose education records. One exception that we have highlighted and that may allow for disclosure absent consent is to parents of a student who claim the child as a dependent for income tax purposes, regardless of the student's age.

If you have other questions, you may contact us at:

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure





























