



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Privacy, Information and Records Management Services

October 3, 2014

Khaliah Barnes
Director, EPIC Student Privacy Project
1718 Connecticut Avenue, NW
Suite 200
Washington, DC 20009

RE: FOIA Request No. 14-01135-F

Dear Ms. Barnes:

This is an interim response to your request dated April 15, 2014, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in the FOIA Service Center (FSC) on April 17, 2014, and was forwarded to the Family Policy Compliance Office (FPCO) to search for any responsive documents they may have.

You requested the following agency records in possession of the Department:

- All Family Educational Rights and Privacy Act (FERPA) complaints that the FPCO has received since January 8, 2009, the date the 2008 regulations went into effect;
- All records detailing the number of investigations the FPCO initiated in response to complaints since January 8, 2009, as well as investigations the FPCO has initiated on its own since January 8, 2009;
- All records related to completed investigations since January 8, 2009.

Enclosed with this letter are 30 pages of documents. However, certain information has been withheld according to the FOIA exemption specified below:

- Records or portions of records relating to personal information is exempt pursuant to 5 U.S.C. § 552 (b)(6) of the FOIA. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy.

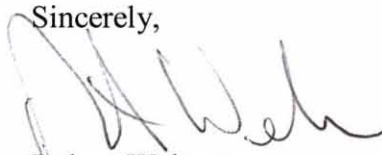
At this time, the Department is continuing to process your request and your FOIA request case file remains open. It will not close until the Department provides you with a response regarding outstanding responsive documents.

Additionally, our final release letter will contain information related to your appeal rights of the agency's decisions, and will include applicable invoices for the entire set of responsive documents.

Page 2 – Khaliah Barnes
FOIA Request No. 14-01135-F

If you have any questions, please contact the FSC at (202) 401-8365 or
EDFOIAMANAGER@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Wehausen', written over a light blue horizontal line.

Robert Wehausen
FOIA Public Liaison
FOIA Service Center

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 23, 2014

(b)(6)

FILE COPY

Dear (b)(6):

This is in response to your June 14, 2013, and September 4, 2013, letters to this office in which you allege that the (b)(6) (University) violated your rights under the Family Educational Rights and Privacy Act (FERPA). Specifically, you allege that the University has not provided you copies of your education records in response to your request. This office administers FERPA which addresses issues related to education records.

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

This office has been in contact with (b)(6) at the University regarding your complaint. (b)(6) stated that the University received four requests from you for your education records and that it fulfilled those requests on May 16, October 2 and 17, and November 12, 2013. In addition, the University informed us that you paid for the copies of those records.

Based on the above outlined information, it appears that the University has complied with your requests. If, however, this is not the case, you may contact this office again. At such time, please provide a description of the additional education records that you believe have not been provided to you. We will review the additional information you provide and take any necessary action.

Sincerely,

Dale King
Director
Family Policy Compliance Office

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www.ed.gov



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 23, 2014

FILE COPY

(b)(6)

Dear (b)(6)

This is in response to your letter and complaint, which we received on June 2, 2014, regarding the Family Educational Rights and Privacy Act (FERPA), which this office administers. We are writing to inform you that we are not initiating an investigation into your allegations. In your complaint, you appear to allege that (b)(6) (University) violated the requirements of FERPA, although you cite "FOIA," which is a different federal law and one that does not apply to schools. Specifically, it appears that your allegations are: (1) the University disclosed information about you to the (b)(6) Embassy; (2) the University disclosed information to the Immigration and Customs Enforcement (ICE) about you; and (3) the University refused to provide you with access to information about another student who asked for help from the dean's office. You also expressed concern about a stress test that was given without your consent. This allegation will not be discussed, as it is not addressed by FERPA.

FERPA is a federal law that affords students at the university level the right to have access to their education records, the right to seek to have inaccurate records amended, and the right to have some control over the disclosure of information from the records. Education records are those records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for the agency or institution.

We investigate timely complaints that contain specific allegations of fact that give reasonable cause to believe that a FERPA violation has occurred. A "timely" complaint is one that 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. Although this is not clear from your letter, it appears that the allegations occurred sometime around 2009. Notwithstanding the fact that the allegations appear to not be timely, as explained more fully below, FERPA does not prohibit the disclosures about which you express concern. Additionally, FERPA does not permit you to have access to another student's education records.

FERPA specifies the conditions under which information can be disclosed from student education records. Generally, at the university level, FERPA prohibits disclosure of personally identifiable information from a student's education records unless the student has provided specific prior written signed consent for the disclosure. However, there are exceptions to FERPA's general consent requirement that allow a school to disclose a student's education

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records even without that student's consent. It appears that some exceptions to FERPA's prior written consent requirement existed in your case. For example, one exception permits a university to disclose education records, without consent, when the disclosure is in connection with a student's application for, or receipt of, financial aid. Because the (b)(6) government provided you with a scholarship to attend the University, the University is permitted to disclose information to them in order to enforce the terms and conditions of that financial aid even without your consent.

With regard to the University's disclosure of your information to ICE, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) stated that FERPA shall not impede the proper implementation of and a university's responsibilities with regard to the Student and Exchange Visitor Information System (SEVIS). Under this federal law, postsecondary institutions are required to provide information to ICE on F and M nonimmigrant students and J nonimmigrant exchange visitors via SEVIS. Additionally, FERPA would also permit the University to disclose your education records to ICE in connection with a health or safety emergency. That is, if University officials believed that disclosure to ICE was necessary in order to protect the safety of students or other individuals, it could make that disclosure without your consent.

With regard to your request to see information on a student that issued a complaint to the dean's office, FERPA only requires that the University provide you with access to your own education records, not someone else's records. Generally, FERPA requires that a university provide a student with access to his or her own education records within a reasonable period of time, but not more than 45 days after it has received the request.

Please note that this office's enforcement process is intended to work cooperatively with universities and other institutions to achieve their voluntary compliance with FERPA's requirements. Following a review of the allegations and evidence submitted by a complainant, this office may initiate an administrative investigation by sending the university and the complainant a notification letter about the allegation, and requesting a written response from the university concerning the allegation. If we then determine that a university is in violation of FERPA, the university and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the university 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. Please note that there is no basis under FERPA to require that a university take punitive or disciplinary action against individuals as the result of a FERPA violation. This office closes its investigation when the university has completed the required corrective actions.

For the aforementioned reasons, we will not investigate your FERPA allegations. If we have misunderstood your allegations, you may write us again, providing the timely, specific allegations necessary to initiate further action.

(b)(6)

We trust this response adequately explains the scope of FERPA as it pertains to your concerns.

Sincerely,



Dale King
Director
Family Policy Compliance Office



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 23, 2014

(b)(6)

FILE COPY

Dear (b)(6):

This is in response to your January 11, 2013, letter to this office in which you allege that (b)(6) (b)(6) (School) violated your rights under the Family Educational Rights and Privacy Act (FERPA). This office administers FERPA, which addresses issues that pertain to education records.

FERPA applies to educational agencies and institutions that receive Federal funds from programs administered by the U.S. Department of Education. Because private and parochial schools at the elementary and secondary levels do not generally receive funds from the Department, FERPA does not apply to these schools. It appears that the School does not receive Department of Education funds and, as such, FERPA does not apply.

I regret that we cannot be of further assistance to you regarding your concerns.

Sincerely,

Dale King
Director
Family Policy Compliance Office



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 23, 2014

FILE COPY

(b)(6)

Dear (b)(6):

This is in response to your April 15, 2013, letter to this office in which you allege that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it disclosed information from the education records of your daughter, (b)(6) (Student), to a third party without your prior written consent. This office administers FERPA which addresses issues that pertain to education records.

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

Under FERPA, a school may not generally disclose personally identifiable information from a student's education records to a third party unless the student's parent has provided written consent. There are several exceptions to FERPA's general consent requirement. One such exception permits a school to disclose education records, without consent, to a "school official," when such official has a "legitimate educational interest." A school must inform parents and eligible students of how it defines these two terms in its annual notification of rights. This office has defined the term "school official" broadly to generally include: a teacher, administrator, board member, support or clerical staff; nurse and health staff; counselor; human resources staff; information systems specialist; and attorney. Generally, a school official has a legitimate educational interest when such official needs access to information in education records to perform his or her official responsibilities. A school official may also be a contractor, consultant, volunteer, or other party to whom a school has outsourced institutional services or functions if the outside party, if certain conditions are met.

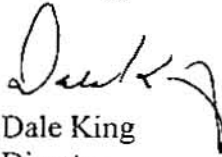
This office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. If you wish this office to further consider your allegation, we need to receive additional information from you. Based on the information you provided, it appears that only school officials had access to the Student's test

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scores. Also, it is not clear which of the school officials, if any, did not have a legitimate educational interest, including (b)(6) a member of the District's School Board's Budget and Review Committee. If you believe that one of the school officials who reviewed the Student's test scores did not have a legitimate educational interest, please provide us with the name and title of that District official, along with any evidence to support your assertion. Also, please provide us with a copy of the District's annual notification of rights as required by FERPA. Once this office receives the needed information, we will review it and take any appropriate action.

Sincerely,



Dale King
Director
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 13, 2014

FILE 0004

Dr. Steve Schwab
Chancellor
The University of Tennessee Health
Science Center
219 Hyman Administration Building
Memphis, Tennessee 38163

Dear Dr. Schwab:

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. A copy of the FERPA regulations is enclosed. 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 May 29, 2014, from Stephanie Mitchell, Interim Director of Institutional Compliance, in which she explained that a password protected laptop computer that contained student education records was stolen from one of the departments on campus. Ms. Mitchell informed us of the steps taken by the University since the theft occurred.

Under FERPA, a parent or eligible student must provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records. 34 CFR § 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 9, 2008, FERPA regulations provides recommendations to 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 Rule were 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

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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:

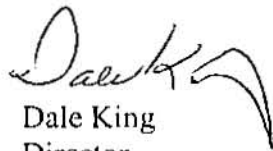
- Report the incident to law enforcement authorities.
- Determine exactly what information was compromised, i.e., names, addresses, SSNs, ID numbers, credit card numbers, grades, and the like.
- Take steps immediately to retrieve data and prevent any further disclosures.
- Identify all affected records 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.cd.gov/about/offices/list/oig/misused/idtheft.html>; and
<http://www.cd.gov/about/offices/list/oig/misused/victim.html>.

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

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

Sincerely,



Dale King
Director
Family Policy Compliance Office

Enclosure

cc: Ms. Stephanie M. Mitchell



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

FILE COPY

June 12, 2014

(b)(6)

Dear (b)(6):

This is to respond to your July 30, 2012, letter to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by (b)(6) (University) when it did not amend certain of your education records in response to your requests. This office administers FERPA, which addresses issues pertaining to education records.

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

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

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

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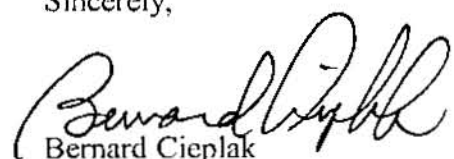
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(b)(6)

individual's opinion, or a substantive decision. Based on the information you provided this office, you are seeking to amend your grades.. Because FERPA's amendment provision does not apply to grades as discussed above, no basis exists for this office to investigate your allegation that the University failed to amend your records in response to your requests.

I trust this information addresses the scope and limitations of FERPA as they relate to your concerns.

Sincerely,



Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

FILE COPY

June 12, 2014

(b)(6)

Dear (b)(6):

This is to respond to your December 7, 2012, letter to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (District) when it disclosed certain of your son's education records to his probation officer without your prior written consent. This office administers FERPA, which addresses issues pertaining to education records.

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

Under FERPA, a school may not generally disclose personally identifiable information from the education records of a student to a third party unless a parent has provided written consent. Exempt from the definition of education records are law enforcement unit records. "Law enforcement unit" means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to (i) enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or (ii) maintain the physical security and safety of the agency or institution.

Records of law enforcement unit means those records, files, documents, and other materials that are created by a law enforcement unit; created for a law enforcement purpose; and maintained by the law enforcement unit. Please note that nothing in FERPA prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law. In your instance, it is not clear whether the information you allege was disclosed by the District was permitted to be disclosed as a law enforcement unit record.

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(b)(6)

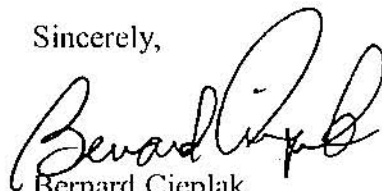
Under FERPA, a school may not generally disclose personally identifiable information from the education records of a student to a third party unless a parent has provided written consent. You have not provided this office with sufficient information to determine that a violation of FERPA occurred. Specifically, you have not provided this office with information to determine who in the District disclosed information from your son's education records or whether the court required as a condition of your son's probation the District to provide your son's probation officer access to his education records.

In order to pursue this allegation, we would need to know what information was disclosed from your son's records, whether that information came from an education record or from the District's law enforcement unit, and the name and title of the school official who made the disclosure. Additionally, we would need to know whether a court order existed that required the District to disclose the information about your son to his probation officer. Accordingly, if you still wish to file a complaint on this issue due to the passage of time, please so inform this office and provide the requested information outlined above. Once this office receives the needed information from you, we will review it and take any appropriate action.

The mailing address for this office is:

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

Sincerely,



Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 11, 2014

FILE COPY

(b)(6)

Dear (b)(6):

This is to respond to your undated letter that was received by this office on January 2, 2013, in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (University) when it did not provide you access to certain of your education records within 45 days in response to your request. Specifically, you state that you requested access to your education records in an August 27, 2012, written request to (b)(6) a school official at the University. Although you did not provide this office with a copy of your original request, you provided this office a copy of an August 30, 2012, response from (b)(6) a University records administrator, who offered you an opportunity to inspect and review your education records. You also included a copy of a September 12, 2012, response from (b)(6) business manager at the University, who offered to provide you records responsive to your request that were maintained by the University. This office administers FERPA, which addresses issues pertaining to education records.

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

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

FERPA only requires schools to provide access to education records that are maintained. It does not require a school to create or re-create education records that it no longer maintains. FERPA would not require a school to honor a request that education records not be destroyed. However, a school may not destroy education records if there is an outstanding request to inspect and review the records.

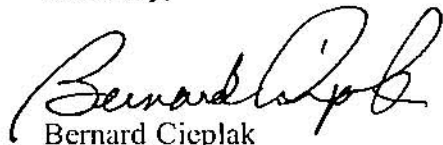
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Based on your copy of (b)(6) email response to you which you provided this office, the University did not deny you access to your education records, but offered you the opportunity to access your records. Accordingly, at this time no basis exists for this office to investigate your allegation that the University violated FERPA. If you still believe that the University has not complied with FERPA with respect to your request for access, you may contact this office again. At such time, please include a dated copy of your request(s) for access and response, if any, from the University. We will review the information you provide and take any necessary action.

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

Sincerely,



Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 11, 2014

FILE COPY

(b)(6)

Dear (b)(6)

This is to respond to your September 23, 2013, letter to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) College, (b)(6) (College) when it disclosed certain information from your education records without your consent. This office administers FERPA, which addresses issues pertaining to education records.

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

Under FERPA, a school may not generally disclose personally identifiable information from the education records of a student to a third party unless the school has received prior written consent from the student. One exception to this general prohibition permits the nonconsensual disclosure of "directory information." 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 name, address, telephone listing, electronic mail address, major field of study, dates of attendance and the most recent educational agency or institution attended, among other items.

I have reviewed the College's directory information policy on the College's website which identifies degrees received and enrollment status as directory information. You have not provided any information to verify that you have notified the school to opt out from its disclosure of your directory information. Accordingly, it appears that the College would be permitted to disclose information about your degree or enrollment status without your prior written consent, assuming you have not opted out from directory information.

Please note, however, that FERPA only protects information contained in education records and does not protect information about you after you were no longer a student, such as your current email address. As discussed above, FERPA would permit the College to disclose your enrollment status and degrees received.

Page 2 –

(b)(6)

Finally, I have reviewed the copy of the College's email which you state discloses that you, along with the other students who received it, failed to complete a certain form required by your State's Department of Education. After carefully reviewing that email, I am unable to determine that the College's request for further information reflects the failure of any student to complete a form; the College's email merely requests additional information from each graduate. Accordingly, we are unable to conclude that the College violated FERPA and no basis exists for this office to investigate your allegation that the College improperly disclosed information from your education records.

I trust that this addresses the issues you raised as they relate to FERPA.

Sincerely,



Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 12, 2014

FILE COPY

(b)(6)

Dear (b)(6):

This is to respond to your November 21, 2012, complaint form to this office in which you allege that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it did not provide you access to certain of your son's education records. Specifically, you state that you requested access to his education records in a September 14, 2012, email to (b)(6) treasurer and coordinator of requests for education records for the District. You allege that (b)(6) did not provide you those records in a format and order used by its counsel in response to a complaint you filed with this Department's Office for Civil Rights (OCR). This office administers FERPA, which addresses issues pertaining to education records.

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

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

It appears that you requested the District provide you access to certain of your child's education records, arranged in a format and order consistent with the District's response to a complaint you filed with OCR. This is not a requirement of FERPA. After reviewing (b)(6) October 15,


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2012, response that you provided to this office, we are unable to determine that she denied you access to your son's records. Accordingly, no basis exists for this office to investigate your allegation that the District denied you access to your son's education records.

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

Sincerely,



Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 6, 2014

FILE COPY

(b)(6)

Dear (b)(6)

We are writing to inform you that this office is not initiating an investigation with regard to a complaint you filed with us on March 5, 2014. In that complaint you allege that the University of (b)(6) (University) violated the requirements of the Family Educational Rights and Privacy Act (FERPA). Specifically, you allege that the University improperly disclosed information from your education record on two separate occasions, and that the University did not follow its own protocol with regard to its initiation of an Honor Code Complaint against you.

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

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

The FERPA regulations 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 universities 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 university and the complainant a notification letter about the allegation, and requesting a written response from the university concerning the allegation. If we then determine that a university is in violation of FERPA, the university and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the university 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. We close the investigation when the university has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it does not contain specific allegations of fact which give this office reasonable cause to believe that a FERPA

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violation has occurred. In order for this office to initiate an investigation, a complaint must contain such specific allegations.

First Allegation:

Specifically, you allege that (b)(6) a professor at the University, disclosed information from your education records to (b)(6) your supervisor during your Practicum in Recreation Therapy, without your prior written consent. In your allegation you assert that (b)(6) disclosed to (b)(6) your University (b)(6) Photo. You assert that the photo is maintained in the University database and therefore you believe it is information that would fall under the protection of FERPA.

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. "Education records" means those records that are directly related to a student and maintained by a school or by a party acting for the school. Please note, however, that a school may disclose personally identifiable information from an education record of a student without the consent required if the disclosure meets an exception to FERPA's prior written consent requirement.

One of the exceptions to the prior written consent requirement in FERPA allows "school officials, including teachers, within the agency or institution" to obtain access to education records provided the educational agency or institution has determined that they have "legitimate educational interests" in the information. Although "school official" is not defined in the statute or regulations, this office has interpreted the term broadly to include a teacher; school principal; president; chancellor; board member; trustee; registrar; counselor; admissions officer; attorney; accountant; human resources professional; information systems specialist; and support or clerical personnel. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

FERPA requires an educational agency or institution to include in its annual notification of rights under FERPA a statement indicating whether it has a policy of disclosing personally identifiable information under the "school official" exception and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest.

According to the University's policy, "an employee or other person ("University official") who has a "legitimate educational interest" in the education record may be provided with access. The University asserts that a University official has a "legitimate educational interest" if the official is:

- performing a task that is specified in his or her position description or by a contract agreement
- performing a task related to a student's education
- performing a task related to the discipline of a student
- providing a service or benefit relating to the student or student's family, such as advising, job placement, financial aid or housing assistance
- maintaining the safety and security of the campus

It appears that (b)(6) was at one time performing a task related to your education. Therefore, FERPA would not generally prohibit (b)(6) and (b)(6) from discussing information related to your participation in the Practicum in Recreation therapy because both would generally have a legitimate educational interest in the information. Therefore, there is no basis on which to further consider this allegation.

Second Allegation

You assert that the University did not follow its own policy in initiating an Honor Code Complaint against you. Generally, FERPA does not address the way in which universities administer their own policies so long as the school does not violate a student’s rights under FERPA. As such, it appears there is no basis for this office to further consider this allegation.

Third Allegation

You allege that during a meeting held on September 13, 2013, with (b)(6), (b)(6), a professor at the University was also present. You assert that you did not believe (b)(6) was employed by the University the summer that you participated in the practicum, and therefore that (b)(6) had nothing to do with [the meeting].” As discussed above, information from education records may be shared with school officials when such officials have a legitimate educational interest. A school official generally has a legitimate educational interest if the official needs to review an education record to fulfill his or her responsibility. According to the University website, (b)(6) is currently employed with the University and appears to have been a school official at the time of the meeting. If you would like us to consider this part of your allegation, please provide us with an explanation of why you believe (b)(6) did not have a legitimate interest. Without receiving such information from you, this office is unable to investigate your allegation. Once we receive this information, we will take any appropriate action.

Fourth Allegation

Finally, you assert that you believe that information from you education records may have been improperly disclosed to an individual named (b)(6) who is referenced in an email that contains information from your education records. You assert that you inquired as to whom (b) was, and you were told by the Dean of Students to ignore the reference and that it was “a glitch”. While the inclusion of a reference to an unidentified figure names (b)(6) may imply that the education record may have been improperly disclosed, the information is not sufficient enough to determine that a violation of FERPA has indeed occurred.

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

Sincerely,



h Dale King
Director
Family Policy Compliance Office



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 6, 2014

(b)(6)

FILE COPY

Dear (b)(6):

We are writing to inform you that the Family Policy Compliance Office is not initiating an investigation with regard to a complaint you filed with us on February 27, 2014. In that complaint you allege that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA). Specifically you allege that the District violated FERPA when an official in the Special Education Records Department at Scottsdale sent the special education records of your son to (b)(6) Unified School District (b)(6), the school district in which he enrolled at the end of the previous school year.

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

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

The FERPA regulations can be accessed through the office website at:

<http://www.ed.gov/policy/gen/reg/ferpa/index.html>. Enclosed for your information is a FERPA guidance document for parents.

This office's enforcement process is intended to work cooperatively with schools to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the school and the complainant a notification letter about the allegation, and requesting a written response from the school concerning the allegation. If we then determine that a school is in violation of FERPA, the school and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the school in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. We close the investigation when the school has completed the required corrective actions.

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

FERPA is a Federal law that affords 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. Education records are those records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for the agency or institution.

FERPA generally requires prior written consent for the disclosure of education records, except in certain limited circumstances specified by statute. One of the exceptions to the prior written consent provision permits a school to disclose education records to officials of another school where the student seeks or intends to enroll. Therefore, a school may release a portion or all of a student's education records, under this exception absent the parent's written consent. Furthermore, a parent cannot prevent the former school from transferring or from communicating information about a student to the student's new school if the conditions of this exception are met. As such, there is no basis for this office to further assist you in this matter.

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

Sincerely,



D Dale King
Director

Family Policy Compliance Office



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 6, 2014

(b)(6)

FILE COPY

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office is not initiating an investigation with regard to a complaint you filed with us on February 10, 2014. In that complaint you allege that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA). Specifically you allege that the District was not responsive to your request to amend certain information you believe was inaccurately recorded in your child's education record, and did not provide you with an opportunity for a hearing on the matter.

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

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

The FERPA regulations can be accessed through the office website at:

<http://www.ed.gov/policy/gen/reg/ferpa/index.html>. Enclosed for your information is a FERPA guidance document for parents.

This office's enforcement process is intended to work cooperatively with schools to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the school and the complainant a notification letter about the allegation, and requesting a written response from the school concerning the allegation. If we then determine that a school is in violation of FERPA, the school and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the school in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. We close the investigation when the school has completed the required corrective actions.

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In this case, we will not open an investigation into your complaint that the District was not responsive to your request to amend certain information you believed was inaccurately recorded in your child's education record, and did not provide you with an opportunity for a hearing on the matter. This is because your allegation does not contain specific allegations of fact which give this office reasonable cause to believe that a FERPA violation has occurred. In order for this office to initiate an investigation, a complaint must contain such specific allegations.

FERPA is a Federal law that affords 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. Education records are those records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for the agency or institution.

Specifically you allege that on December 22, 2013, you submitted via email a request to amend a (b)(6) a document produced by the District on December 4, 2013, and maintained as part of your son's education record. FERPA affords parents the opportunity to seek amendment of their children's education records which they believe contain information that is inaccurate or misleading. While a school is not required to amend a record in accordance with a parent's request, it is required to consider the request for amendment of an education record, to inform the parent of its decision, and if the request is denied, to advise the parent of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the parent has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

You assert that the District responded to your request on January 21, 2014, and informed you that your request for amendment would not be considered. Specifically the District informed you the following: "The [document] reflects the district's responses to the questions on the form required by (b)(6) There is no requirement that the family and district reach a consensus on the contents of the [document]." The District did, however, inform you that they would include your request in your student's file "so that your concerns, opinions and perceptions are also reflected." You assert the District did not provide you with an opportunity for a hearing on the matter.

The right to request amendment and be afforded an opportunity on the matter is not unlimited. A school is not required by FERPA to afford a parent or an eligible student the right to seek to change substantive decisions made by school officials. FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. Thus, while FERPA affords parents and eligible students the right to seek to amend education records which contain inaccurate information, as stated above, this right cannot be used to challenge a grade, an individual's opinion, or a substantive decision made by a school about a student. Also, as further stated above by the District, "there is no requirement that the family and the district reach a consensus on the contents" of a PR-01 Notice.

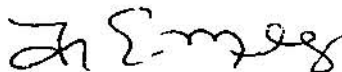
Although FERPA states that a school will provide an opportunity for an amendment hearing, this is only required in a case where the school conducts a FERPA hearing that falls within the scope of FERPA. In this case, the District was not required to consider your amendment request

because it fell outside the scope of FERPA's amendment provisions and therefore, the District was not required to provide you a FERPA hearing. Therefore, there is no basis on which to further consider this allegation.

Some of the issues you raise may be addressed by Part B of the Individuals with Disabilities Education Act (IDEA). Although a Federal law, IDEA is administered by the States. Therefore, I suggest you contact the Director of the Office of Exceptional Children at the Ohio Department of Education. Her name and telephone number are: Dr. Sue Zake at 615-466-2650. Also you may contact your State contact for Part B of IDEA in the Department's Office of Special Education Programs. His name and telephone number are Bob MacGillivray at 202-245-7433.

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

Sincerely,



for Dale King
Director
Family Policy Compliance Office



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 10, 2014

FILE COPY

(b)(6)

Dear (b)(6)

This letter is in response to the correspondence you sent to the U.S. Department of Education, Family Policy Compliance Office (FPCO). FPCO administers the Family Educational Rights and Privacy Act (FERPA), which affords parents and eligible students certain rights with regard to education records. Unfortunately the information you provided is not sufficient to determine if there has been a violation of your rights under FERPA.

FERPA is a Federal law that affords parents and eligible students the right to have access to their children's or their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. Education records are those records that 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.

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

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

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

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Your correspondence also appears to pertain to a matter for which the Office of Civil Rights (OCR) may be responsible. Specifically you mention that the College may have discriminated against you due to your age. OCR enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive Federal funds from the Department of Education. These laws prohibit discrimination on the basis of race, color, and national origin, sex, disability, and on the basis of age. These laws extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive U.S. Department of Education funds. OCR also has responsibilities under Title II of the Americans with Disabilities Act of 1990 (prohibiting disability discrimination by public entities, whether or not they receive federal financial assistance) with following link:
<http://www2.ed.gov/about/offices/list/ocr/know.html>

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

Sincerely,

Dominica Donovan
Family Policy Compliance Office