

(b)(6)

FEB 28 2011

Dear

(b)(6)

This is in response to your complaint, dated January 30, 2011, alleging that the New York City Department of Education (District) and the (b)(6) (Center) violated your rights under the Family Educational Rights and Privacy Act (FERPA). You state that your daughter (b)(6) age 21, was placed by the District in the Center under the Individuals with Disabilities Education Act (IDEA), and that the Center has denied you access to her records. This office administers FERPA, which affords parents and eligible students with certain rights with regard to education records.

FERPA is a Federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. When a student reaches the age of 18 or attends an institution of postsecondary education, that student is deemed an "eligible student" and all of the rights afforded by FERPA transfer from the parents to the student.

In your situation, it does not appear that FERPA applies. This is because your daughter is over 18 years of age and she is no longer in an educational agency or institution subject to FERPA. As such, the District and/or the Center are not required under FERPA to provide you with access to your daughter's education records. However, you may have rights under IDEA. As you may know, although IDEA is a Federal law, it is administered by the States. You may wish to contact the special education director for the State of New York. Her name and address are as follows:

Rebecca H. Cort
Associate Commissioner for Special Education
New York State Department of Education
One Commerce Plaza, Room 1606
Albany, New York 12234

Also, to assist you, I contacted a colleague in the Department's Office of Special Education Services (OSEP). You may wish to give Angela Tanner-Dean of OSEP a call at (202) 245-6320 for information about IDEA requirements. I trust this adequately explains the scope and limitations of FERPA as it pertains to your concern. We are returning the information you sent us in case it may be of assistance to you at a later date.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

FEB 24 2011

Dear

(b)(6)

This is to respond to your May 29, 2010, letter to this Office in which you allege that (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.

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).

Enclosed for your information is a FERPA guidance document.

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.

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.)

_____ 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.)

You allege that the District violated FERPA when it disclosed personally identifiable information from your education records to third parties without your prior written consent. By letter dated April 14, 2010, Ms. Kathleen Wolan, program analyst, informed your mother that the allegations included in her February 1, 2010, complaint form were not timely. I reviewed the information in your mother's February 1 complaint form (and accompanying information), and I also find that the allegations are not timely.

Based on the information in your May 29 letter, it appears you believe that you or your mother submitted allegations to this Office previously that do meet FERPA's 180-day timeliness requirement. However, I searched our paper files, our automated tracking system, and our e-mail box (though we do not accept complaints over the Internet), and I could not locate any submissions from you other than your May 29 letter, or any submission from your mother other than the February 1 complaint form. If you have contacted other agencies regarding this matter, such as your State Department of Education, or contacted other offices, such as the Department's Office for Civil Rights, regarding your concerns, you may have provided them with the information that you believe you provided to us.

As indicated above, due to privacy and administrative concerns, this Office does not accept complaint over the Internet. Also, for purposes of timeliness, the date of a phone call to this Office does not count as the date a complaint was submitted to us. Thus, if you wish this Office to further consider your allegation, you need to provide us with a copy of a document you previously submitted to this Office which includes a timely allegation, and provide us with

evidence that such document was previously submitted to us in a timely manner through the U.S. Postal Service or through a fax. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

(b)(6)

FEB 24 2011

Dear

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on February 9, 2010. In that complaint, you are alleging that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. Specifically, you allege that the District failed to provide you access to all of your children's education records, including "emergency contact information." Please note that the other issues raised in your letter are not addressed by FERPA and will not be discussed in this letter.

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

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

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

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

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

The provisions of 34 CFR Part 99, Subpart B detail the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request. You do not provide us with evidence that the District failed to comply with a specific request by you for access to information contained in your children's education records.

Specifically, you allege that the District did not provide you access to all of your children's education records. If you wish this Office to further consider your allegation, we need to receive additional information from you. Please complete the enclosed complaint form and include the following: the date you requested access to your children's education records; name of the official to whom your request was made (include your dated letter to the official, if possible); the response of that official, if any; the specific nature of the education records to which you believe you were denied access; and evidence that such education records are currently maintained by the District. We will review the information you submit and take any appropriate action.

However, in order to exercise your rights under FERPA, I suggest you write again to the appropriate official in the District and request the specific education records of your children to which you are seeking access. Though it is not required, you may want to include a copy of this letter along with your request. If the school fails to provide you access to the requested education records or fails to contact you within 45 days, you may write to this Office again. At such time, please provide us with a dated copy of your request to the District, any response from the District; the specific nature of the education records to which you believe you were denied access; evidence that such education records are currently maintained by the District; and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

As we explained to you in a January 28, 2011, e-mail, this Office would not require a school to provide a noncustodial parent with information regarding the home or work locations (addresses and telephone listings) of the student, custodial parent, or others if the school has evidence that the noncustodial parent might present a physical danger to any of them. Based on the information in the September 28, 2006, court order enclosed with your letter to this Office, we would not require the District to provide you with "emergency contact information" relative to the custodial parent's home or work locations even if such information is a part of your children's education records.

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

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

Mr. Gregory S. Frayser
Cline Williams Wright Johnson & Oldfather, L.L.P.
Attorneys at Law
233 South 13th Street
1900 U.S. Bank Building
Lincoln, Nebraska 68508-2095

FEB 17 2011

Dear Mr. Frayser:

This is in response to your letter, dated February 15, 2011, regarding the applicability of the Family Educational Rights and Privacy Act (FERPA) to records of a deceased student sought by a third party. This office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations, which are codified at 20 U.S.C. § 1232g and 34 CFR Part 99 respectively.

FERPA provides specifically that the rights afforded by FERPA belong to the student once he or she becomes an eligible student. 34 CFR § 99.3 "Eligible student." The FERPA rights of eligible students lapse or expire upon the death of the student. This interpretation is based on the common law principle that a cause of action based upon an invasion of privacy is personal, and the right to bring such an action lapses with the death of the person who held it. Therefore, FERPA would not protect the education records of a deceased eligible student and an educational agency or institution may disclose such records at its discretion.

However, FERPA rights do not lapse or expire upon the death of a non-eligible student. FERPA provides specifically that the rights it affords rest with the parents of students until that student reaches 18 years of age or attends an institution of postsecondary education. There is nothing to suggest that parents' rights under FERPA should terminate solely because their child is deceased. Rather, since the parents hold the rights in these circumstances, they may exercise those rights so long as the education records exist.

I trust this is responsive to your inquiry.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

FEB 16 2011

Dear (b)(6)

This is to respond to your June 5, 2010, complaint form 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 denied you access to your children's education records in response to your request. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives custodial and noncustodial parents alike the right to have an opportunity to inspect and review their children's education records, unless there is a court order or State law that specifically provides to the contrary. The school may ask for legal certification denoting parenthood, such as a court order or birth certificate, from the parent requesting access to education records. The term "education records" is defined as those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a FERPA fact sheet.

On January 26, 2011, (b)(6) superintendent of the District, informed this office that a court order exists which restricts your access to your children's information (see enclosed). Based on this office's review of the court orders which pertain to you that were provided by the District, FERPA permits the District to deny you access to your children's education records as discussed above. Accordingly, this office is unable to further assist you with regard to your inquiry.

I trust this information is helpful to address the scope and limitations of FERPA.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure

FEB 14 2011

(b)(6)

Dear (b)(6)

This is to respond to your March 17, 2010, letter to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated when the (b)(6) District) disclosed certain of your child's education records to a third party without your prior written consent. Specifically, you state that on November 11, 2009, (b)(6), special education case manager for the District, disclosed a copy of a letter to (b)(6), a driving instructor with the "Driver Education Department of Traffic Education." You state this letter was written by your wife to (b)(6) and included information about your child's mental state and medications. You state this private entity is separate from Stevensville High School. This office administers FERPA, which addresses issues pertaining to education records.

FERPA generally prohibits a school from disclosing a student's education records to third parties unless the parent to which the records relate provides his or her prior written consent. One of the exceptions to FERPA's prior written consent requirement allows "school officials" within the agency or institution to obtain access to education records provided the educational agency or institution has determined that they have "legitimate educational interest" in the information. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibilities. This Office has interpreted the term broadly to include such positions as a teacher; counselor; board member; registrar; counselor; admissions officer; attorney; accountant; human resources professional; information systems specialist; and support or clerical personnel.

To obtain additional information about the driver's education program at your son's school, I spoke on February 9, 2011, with (b)(6) principal in the District, who confirmed that the school district operates the school's driver education program in which your son was enrolled. Accordingly, (b)(6), the school's driver's education instructor, is a school official with a legitimate educational interest (i.e. he needed to know the information about your son in order to perform his professional duties) in your child's education records that were disclosed. Based on the information you provided to this office and information provided by the District, no basis exists for this office to investigate your allegation that the District violated FERPA when it disclosed your child's education record to a District official.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

FEB 14 2011

(b)(6)

Dear (b)(6)

This is to respond to your January 19, 2011, letter to this office in which you allege that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it did not respond to your questions with regard to a disciplinary event involving your son. This Office administers FERPA, which addresses issues pertaining to education records.

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

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

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

In this instance, you appear to allege that the District did not reply to certain of your questions involving your child's October 8, 2010, disciplinary event. As stated above, FERPA does not require a school to create records that it does not maintain in an education record. Although not required to do so under FERPA, (b)(6) of the District replied to your October emails in their responses of October 8 – 12, 2010. Accordingly, no basis exists for this office to investigate your allegation that the District violated FERPA when it did not respond to your requests for information that is not contained in an education record.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosures

FEB 15 2011

(b)(6)

Dear

(b)(6)

This is to respond to your June 6, 2010, complaint form and subsequent correspondence to this office in which you allege that school districts to which you have written have violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). Specifically, you state that the schools to which you have written fail to respond to your written requests for access to your children's education records, including your children's mailing addresses, phone numbers, and photographs. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives custodial and noncustodial parents alike the right to have an opportunity to inspect and review their children's education records, unless there is a court order or State law that specifically provides to the contrary. The school may ask for legal certification denoting parenthood, such as a court order or birth certificate, from the parent requesting access to education records. The term "education records" is defined as those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a FERPA fact sheet.

As stated above, FERPA generally requires schools to provide parents, custodial and noncustodial alike, access to their children's education records unless there is a court order or other legally binding document which revokes a particular parent's right to those records. This right allows parents the opportunity to inspect and review their children's education records so that they remain informed of their children's progress in school and aware of all records maintained by the school concerning their children. While a student's home address is technically part of his or her education records, it is not information created or developed by the institution that pertains to the student's life as a student, as are academic, disciplinary, or health data. Particularly, in circumstances such as these, where a school district believes that an individual may be a risk, we will not require the school to disclose a student's home address merely because it appears as part of the student's education records.

You have not provided this office with sufficient information (i.e. recent court order) which verifies that you are the parent or whether your parental rights have been terminated. In order to exercise your rights under FERPA if your rights have not been severed by the courts, you need to write to each school district where you believe each child attends or attended, and provide each with your request for each of that child's education records, along with a copy of the most recent court order or other legally binding document which verifies that your parental or FERPA rights have not been terminated. If the school district where your child attends or attended maintains your child's records

(b)(6)

and fails to respond or otherwise denies your request, you may write to this office again. At such time, please provide this office with a copy of your request to each school district which has denied you access, along with a completed complaint form (see enclosed) for each school district, and copy, if any, of the district's response. Once this office receives the needed information, we will take any appropriate action.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

FEB 9 2011

Dear (b)(6)

This is to respond to your September 1, 2010, faxed correspondence to this Office in which you allege that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it disclosed information from your son's education records to a third party without your prior written consent. Specifically, you state that (b)(6), superintendent of the District, disclosed your son's disciplinary record on March 22, 2010, to representatives of the Military Entrance Processing Station personnel in (b)(6) to which your son was processed as a Marine Corps recruit in its early entry program. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their child's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Under FERPA, whenever a student becomes eighteen years of age or attends a postsecondary institution, all rights once afforded to the parents transfer to the student. It is not clear whether or not your son is an eligible student (i.e. at least 18 years of age).

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 of the party who holds rights under FERPA. It is our understanding that when an individual is accepted in the military's early entry program which you describe, he or she or the parents must provide consent which allows for certain disclosures of information. If consent was provided in this instance, no violation of FERPA occurred. If that is not the case, please have the appropriate individual who holds the FERPA rights complete the enclosed complaint form. In the response, please verify the student's date of birth, the name of the individual to whom the information was disclosed along with a written statement from that individual which verifies any disclosure, and whether or not the school was provided a consent form which permitted it to disclose the student's education records to the military. Please respond within 3 weeks after receiving this response. Once this office receives the needed information, we will review it and take any appropriate action.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure

(b)(6)

FEB 8 2011

Dear (b)(6)

This is in response to your letter dated July 22, 2010, to this Office in which you allege that a private provider under Part B of the Individuals with Disabilities Education Act (Part B) violated your rights under the Family Educational Rights and Privacy Act (FERPA). This Office administers FERPA, which addresses issues that pertain to education records. Enclosed is a fact sheet for your review.

Please note that FERPA applies to education records on "students" who attend an educational agency or institution that receives funds from any program administered by the Department of Education. FERPA does not apply to individuals who are homeschooled. Accordingly, because your concerns may be addressed by Part B, you should contact the appropriate official at the Ohio Department of Education to assist you. The address and contact information is as follows:

Mr. Mike Armstrong
Director
Office for Exceptional Children
Ohio Department of Education
25 South Front Street
Columbus, Ohio 43215-4104
Telephone: (614) 466-2650

I trust that the above information is helpful to you.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

FEB 8 2011

Dear (b)(6)

This is in response to your June 28, 2010, letter in which you allege that (b)(6) (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it improperly disclosed information from your children's education records. Below is a discussion of FERPA as it relates to your concerns.

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. Once a student turns 18 years of age or attends a postsecondary institution, he or she becomes an eligible student and all rights under FERPA transfer from the parent to the student. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution.

Specifically, you allege that the District has refused to conduct a FERPA hearing to seek to amend your daughter's education records; that the inaccurate information in your daughter's record forced a delay in her college applications; that there is information in your daughter's record that should be removed, in particular information relative to another student; and you believe there is information from your daughter's record that is missing.

FERPA does not require schools to create or to re-create education records. Also, FERPA does not require a school to keep any particular file or record. Regarding your amendment concerns, 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.

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

You allege that school officials gained unauthorized access to your daughter's education records and improperly informed you that your daughter's education records would not be disclosed to colleges where she was seeking or intending to enroll. FERPA specifically exempts from the prior written consent requirement those disclosures of education records that are made to other school officials, such as teachers, within the educational agency or institution whom the agency or institution has determined to have a legitimate educational interest. A school official is a person employed by the school such as an administrator, supervisor, instructor, or support staff member. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. Additionally, FERPA permits a school to disclose education records to officials of another school where the student seeks or intends to enroll. In this regard, a school district may release a portion or all of a student's education records, under the "seeks or intends" to enroll exception in FERPA, at its discretion. Moreover, the parent or eligible student does not, under FERPA, have the right to prevent a school which a student previously attended from transferring the student's education records or from communicating information about a student to the student's new school.

You also allege that school officials used your daughter's education records in a court of law and that school administrators and their legal counsel improperly disclosed your daughter's education records and other student's education records to the public via the court system. Another exception in FERPA that permits a school district to disclose education records absent consent is when the disclosure is to comply with a judicial order or lawfully issued subpoena. Furthermore, FERPA provides that if a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the

student's education records that are relevant for the educational agency or institution to defend itself. Or, if an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

You also allege that the District violated FERPA when it improperly disclosed to you the records of another student. As for this allegation, FERPA vests the rights it affords with the parent or eligible student whose rights were violated. Thus, the parent or eligible student whose records were disclosed to you would have to file a complaint in order for us to contact the school about this matter.

Finally, you allege that a school official discussed your son's AP exam with third party parents and discussed general progress with students in the hallway. With respect to this allegation, FERPA prohibits the improper disclosure of information derived from education records. Therefore, information that is based on opinion, observation, or hearsay and not specifically contained in education records would not be protected under FERPA.

The other issues you raise in your letter that are addressed at the local school level, not by FERPA. I trust that the above information adequately explains the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

FEB 8 2011

Dear

(b)(6)

This is in response to your January 12, 2011, letter to this Office in which you express concerns related to the School District of (b)(6) and the “inappropriate sharing of our son’s Individualized Education Plan (IEP) and/or confidential or identifying information and failure to provide access to requested student educational records by us for the purpose of preparing for an IEP meeting.” This Office is responsible for administering the Family Educational Rights and Privacy Act (FERPA), a Federal law that pertains to education records. Enclosed is a fact sheet on FERPA for your reference.

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. Therefore, we suggest you contact the appropriate official at the Michigan Department of Education regarding your allegations:

Dr. Jacquelyn J. Thompson
Director
Office of Special Education
and Early Intervention Services
Michigan Department of Education
P.O. Box 30008
608 West Allegan Street
Lansing, Michigan 48909-7508
Telephone: (517) 373-9433

I trust that the above information is helpful to you.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

FEB 8 2011

Dear (b)(6)

This is in response to your October 11, 2010, 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). Specifically, you allege that your daughter's education records were disclosed to an attorney representing the District "when no legal action had been initiated on our part." This office administers FERPA.

FERPA is a Federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. 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 is a fact sheet for your review.

As noted above, FERPA generally prohibits the nonconsensual disclosure of information derived from education records. 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. 34 CFR § 99.31(a)(1). 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.

Section 99.7(a)(3)(iii) of the FERPA regulations requires an educational agency or institution to include in its annual notification of rights under FERPA a statement indicating whether it has a policy of disclosing personally identifiable information under § 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest.

(b)(6)

It appears from the information you provided that the attorney is a school official whom the District determined had a legitimate educational interest in gaining access to your child's education records in compliance with FERPA. There is not a need for litigation or pending litigation to permit a disclosure of education records to a school official with legitimate educational interest under FERPA. Accordingly, there is no basis on which to pursue your allegation.

Sincerely,

Ingrid Brault
Management and Program Analyst
Family Policy Compliance Office

Enclosure

FEB 4 2011

(b)(6)

Dear (b)(6)

This is to respond to your June 21, 2010, 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/fpcoi/index.html>.

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

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

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

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

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure

FEB 3 2011

(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 December 1, 2010. In that complaint, you are alleging that (b)(6) in Palm Springs and (b)(6), violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. (b)(6) (Student), attended both these schools.

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>. Also, enclosed for your information are a FERPA guidance document and complaint form.

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

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

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

Given the facts alleged, the disclosure you described would generally be authorized under Section 99.31(a)(2). It appears (b)(6), the Student's father, informed (b)(6) that he intended to enroll the student in (b)(6). Once (b)(6) had evidence that the Student was seeking or intending to enroll at (b)(6) would generally be permitted to nonconsensually forward education records to (b)(6). Also, please see the second paragraph on page three of the guidance document.

The provisions of 34 CFR § 99.10 detail the right of inspection and review of education records. Also, you will find an overview of the access provision beginning near the bottom of page one of the guidance document. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request. However, a school is not required to provide a parent with copies of education records unless a failure to do so would effectively prevent the parent from obtaining access to the records. A case in point would be a situation in which the parent does not live within commuting distance of the student's school. Based on the information in your letter, it appears that (b)(6), school director of (b)(6) provided you an opportunity to inspect and review the Student's education records during your August 10, 2010, visit to (b)(6).

Based on your letter, you visited the School again on August 11, 2010, and requested a copy of all the Student's education records. At that time, it appears you were still within commuting distance of (b)(6). Thus, (b)(6) would not be required to provide you with copies of the requested education records. Rather, it would be required to provide you with an opportunity to inspect and review the requested records. If you requested copies of the Student's education records after you left (b)(6) and returned to (b)(6), and you wish this Office to further consider such an allegation, please provide us with the following information: the date you requested access to the education records, the name of the official to whom your request was made (please provide us with any written copy of your request), and the date on which you received copies of the requested education records. We will review the information you provide and take any appropriate action.

(b)(6)

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

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Dr. Heath Morrison
Superintendent
Washoe County School District
380 Edison Way
Reno, Nevada 89520-3425

FEB - 2 2011

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 an email dated January 11, 2011, from (b)(6) Senior Director Public Policy, Washoe County School District, in which she reported a breach that occurred under FERPA. (b)(6) explained that a special education case manager accidentally provided a list of 152 special education students attending (b)(6) High School to a parent. (b)(6) also provided the subsequent steps the District has taken to rectify the breach.

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/fv2007/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 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 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: (b)(6)

Mr. Scott G. Reynolds
Assistant Superintendent
Washoe County School District