

(b)(6)

(b)(6)

JUN - 1 2011

Dear (b)(6)

This is to respond to your November 11, 2010, 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 denied you access to your education records. This office administers FERPA, which addresses issues pertaining to education records.

This office responded to concerns you raised in your May 5 and July 30, 2010, letters on November 4, 2010. In our response, we informed you that the University's refusal to provide you copies of your education records did not appear to be a denial of access. Rather, it appears that the University offered you an opportunity to inspect and review your education records as required by FERPA. In fact, by letter dated April 9, 2010, (b)(6) association university counsel, asked you to contact her paralegal to "schedule a mutually convenient date and time for you to inspect" your education records.

In the interim after our response was sent you to, it appears that you temporarily visited the United Kingdom and that you again requested the University to provide you with copies of your education records while you were overseas. In response, it appears that the University offered to provide you with access by scheduling an appointment for you to inspect and review your records upon your return to New York. In your November 11, 2010, letter to us, you indicated that the University violated your rights under FERPA when it failed to provide you with copies, because you state that you temporarily resided outside of commuting distance.

Under FERPA, a school is not required 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.

Due to the passage of time, the fact that you are back in New York, and the fact that the University has asked that you contact them to make arrangements to inspect and review your education records, we are not initiating an investigation into your allegations. However, if in the future you write to the University and specify the records that you are seeking, and the University fails to provide you with access, you may complete the enclosed complaint form,

(b)(6)

Page 2

including a copy of your written request along with a response from the University, if any, and forward it to this office. If you are still not in commuting distance of the University and the University does not either provide you with copies or appropriately make arrangements for you to inspect and review the records, please clearly indicate that to us in your correspondence. Once we receive your complaint, we will consider the information and take any appropriate action.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure

(b)(6)

JUN - 3 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 September 20, 2007, and again on April 26, 2011. In that complaint, you are alleging that (b)(6) (b)(6) (University) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. You are an associate professor in the (b)(6) (b)(6) (COPHS) -- not a student.

In your letters, you state:

... I also allege that the action of the [University's] Administration, relative to this matter, is part of an on-going pattern of **intimidation, harassment, and retaliation** that is being perpetrated against me by COPHS Administrators and the Provost of [the University] since I participated in protected activities when I (a) sent a written testimony in support of a student's complaint (against COPHS) which was filed with the U.S. Department of Education, Office for Civil Rights (OCR) in Dallas, Texas; (b) filed a complaint of discriminatory practices and retaliation by COPHS with OCR in Dallas, Texas; and (c) wrote an expose on the mismanagement of education at the COPHS. ...

[Emphasis supplied.] These issues 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>.

This Office's enforcement process is intended to work cooperatively with colleges and other postsecondary 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 college and the complainant a notification letter about the allegation, and requesting a written response from the college concerning the allegation. If this Office then determines that a college is in violation of FERPA, the college and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the college 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 college take punitive or disciplinary action against an individual as the result of a FERPA violation. This Office closes its investigation when the college has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because your allegation does not meet FERPA's standing requirement described in (a), above. Only a parent or eligible student (as defined in 34 CFR §99.3) has rights protected by FERPA. FERPA does not vest these rights in any third party. An individual must have suffered an alleged violation of his own protected rights, in order to file a valid complaint under FERPA. The FERPA rights in the education records you describe belong to the students listed in the attachment to your May 9, 2007, memorandum.

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

Notwithstanding the fact that you do not have standing under FERPA, you have not provided sufficient evidence to support your allegation. You allege that the University violated FERPA when it disclosed your May 9, 2007, memorandum and attachment to a female student in attendance in COPHS. In addition to the female student's name and several of her grades, your attachment to the memorandum contains the names and grades of a multitude of other students in attendance in COPHS.

As evidence to support your allegation, you provided this Office with a copy of a May 17, 2007, memorandum from (b)(6), an attorney for the female student, to (b)(6) (b)(6) of the (b)(6). However, (b)(6) letter only

(b)(6)

mentions having received and viewed a copy of your May 9, 2007, memorandum – not the attachment. Thus, you did not provide specific evidence that the University provided the female student and her attorney with the attachment which includes the students' names and grades.

Since you do not have standing regarding your allegation, there is no basis for this Office to assist you regarding your concern. If you have questions regarding this matter, you may contact me. The name, address, and telephone number of the Office are:

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

JUN - 6 2011

Honorable Gary Miller
Member, United States House of
Representatives
1800 East Lambert Road, Suite 150
Brea, California 92821

Dear Mr. Miller:

This is in response to your May 19, 2011, correspondence regarding concerns raised by one of your constituents, (b)(6) under the Family Educational Rights and Privacy Act (FERPA). Your inquiry was referred to the Family Policy Compliance Office for response because, as you know, we administer FERPA.

Specifically, you asked for any assistance we could provide in resolving the issues raised by (b)(6) in his May 18, 2011, letter to you. Enclosed is a letter dated June 6, 2011, to him that outlines the scope and limitations of FERPA as it relates to his concerns.

I trust that this is responsive to your inquiry. If you have any questions, please do not hesitate to contact this office at 202-260-3887.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

JUN - 6 2011

(b)(6)

(b)(6)

This is in response to your February 22 and March 22, 2011, letters to this office, your May 18, 2011, letter to Congressman Miller, and your May 18, 2011, letter to Secretary Duncan regarding the Family Educational Rights and Privacy Act (FERPA). Specifically, in your February 22 letter, you allege that the (b)(6) [District] denied you access to your daughter's education records. In your March 22 letter, you allege that the District improperly discloses education records of all its students. As you know, this office administers FERPA, a Federal law that pertains 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. 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 prohibits the improper disclosure of information derived from education records. Therefore, information that is based on opinion or hearsay and not specifically contained in education records would not be protected under FERPA.

With respect to your allegation that the District improperly discloses education records of all its students, you provided copies of newsletters that the District has released. However, any disclosures relative to students therein, all appear to fit FERPA's permissible disclosure as directory information. While FERPA generally prohibits the nonconsensual disclosure of information derived from education records, there are exceptions to the general prohibition, one of which permits the nonconsensual disclosure of "directory information" that has been appropriately designated as such by the educational agency or institution.

In this regard, FERPA defines directory information as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

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

With respect to your allegation of denial of access to your daughter's education records, when a student reaches the age of 18 or attends an institution of postsecondary education at any age, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the student. In this regard, the age of your daughter is not clear to us. Even if your daughter is 18 years of age and receiving services under Part B of the Individuals with Disabilities Education Act (Part B), depending on certain circumstances, you may have additional rights under Part B. Although Part B is a Federal law, it is administered by the States. Regarding your allegation against the District that it denied you access to her education records relative to her Individualized Education Program, you should contact your State department of education at the following:

Dr. Alice D. Parker
Assistant Superintendent of Public Instruction
State Director of Special Education
California Department of Education
1430 N. Street, Suite 2401
Sacramento, California 94244-2720
Telephone: (916) 445-4602

Please note, this office investigates specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. Additionally, it is unclear whether or not you are taking legal action against the District or vice-versa. It is the policy of this office that if any of the issues in the litigation relate to FERPA, we need to know the decision of the court before we can further consider them. In this regard, if a party commences litigation in court involving the subject matter of an alleged FERPA violation, this office would not investigate that alleged violation prior to a decision by the court. Generally, once the allegation in question is no longer the subject of such litigation, this office will again consider the allegation upon request. The results of the litigation are considered in determining what action the Department will take. Thus, this office cannot fully consider your complaint until you have clarified whether any litigation is on-going between you and the District and whether such litigation involves your FERPA allegation. Therefore, please inform this office about the nature of any on-going litigation against the District. We will review the information you provide and take any necessary action.

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. There is no basis under FERPA to require that a school take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the school has completed the required corrective actions.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Ms. Meg Kieran
Attorney
Gartland, Nelson, McCleery, Wade & Walloch, P.C.
44 Club Road
Suite 200
Eugene, Oregon 97401

JUN 14 2011

Dear Ms. Kieran:

This responds to your April 5, 2011, letter as legal representative for Lane Community College (College) asking for advice regarding the Family Educational Rights and Privacy Act (FERPA), as well as your June 6, 2011, telephone conversation with Ms. Kathleen Wolan of this Office. Specifically, you ask for answers to three questions "regarding the application of FERPA to the [Classified] Union's [(Union)] requests for student worker information." You have also requested that we advise whether the actions in the proposed Settlement Agreement (Agreement) would permit the College to fulfill the Union's information requests.

As you described in your telephone discussion with my staff, the Union has filed a complaint with Oregon's Employment Relations Board (Board) that asks the Board to compel the College to provide the Union with student name and employment information of student workers paid with work-study funds. The Union has requested it be supplied with student name, duties, supervisor, pay rate, hours worked, and number of terms enrolled for all student workers who are provided these positions as part of a financial aid package. These workers must be students of the College, and all are paid by college or federal work-study funds. The College has attempted to respond to the Union's request by providing the information using an "alpha-identifier" for each student in place of the student's name.

The proposed Agreement states that the College will provide the Union with the requested information without the consent of the student workers. The Agreement limits the persons within the Union that may have access to the names of the students. It also requires the documents containing this information be kept in a locked cabinet and destroyed two years after receipt.

We respond to your questions below. As you are aware, this Office administers FERPA and is responsible for providing technical assistance to educational agencies and institutions regarding issues related to education records.

Records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution are "education records" under FERPA. 34 CFR § 99.3 ("Education records.") The FERPA regulations specifically state that *those records relating to an individual in attendance at the agency or institution who is*

employed as a result of his or her status as a student are education records. Therefore, under FERPA, records of student employees whose employment at the University is contingent on their status as students, are "education records," and, as such, are subject to the FERPA provisions authorizing their disclosure or nondisclosure.

With regard to the disclosure of education records, FERPA generally provides that an educational agency or institution may only disclose a student's education record to a third party if the eligible student has given appropriate written consent. 34 CFR § 99.30. FERPA does provide that written consent is not needed if the disclosure concerns information the educational agency or institution has designated as "directory information," under the conditions described in 34 CFR § 99.37. See 34 CFR § 99.31(a)(11). Directory information could include information such as the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended. Generally, directory information cannot be disclosed linked to other, non-directory information about a student. This is the case when a student is receiving need-based financial aid such as work-study funding.

Question 1: May the College provide student worker's names to the Union without the student's consent in response to the Union's requests for student worker information without violating FERPA?

In the circumstances you present, each worker is employed because he or she is a student. Thus, records about the student's employment are education records, and all information in those records is protected by FERPA and may only be disclosed in accordance with FERPA. No exception to consent under FERPA applies in the described circumstances. The exception to consent that permits disclosure of directory information does not apply in the described circumstances. There is no provision in FERPA that permits the requested disclosures to be made based on the conditions in the Agreement that the Union will provide restricted access to the information. It appears that the College must have the student's prior written consent before it may disclose any personally identifiable information from the student worker's education records to the Union.

Question 2: Is the answer to question number 1 the same if the student worker is working at the College pursuant to a federal financial aid work-study grant?

The circumstances are unchanged, and our answer remains the same. The College must have the student's prior written consent before it may disclose any information from the student worker's education records to the Union. No exception to the need for consent appears to apply in the described circumstances.

JUN 14 2011

(b)(6)

Dear (b)(6)

We are writing to confirm our telephone discussion of May 6, 2011, in which you were informed the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on May 17, 2010. In that complaint you alleged that the (b)(6) (School) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

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>. As you requested, a copy of a Guidance Document for Parents and a FERPA complaint form are enclosed.

This Office's enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation, and requesting a written response from the district concerning the allegation. If we then determine that a district is in violation of FERPA, the district and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the district in order to

come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a district take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the district has completed the required corrective actions.

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

FERPA specifies the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written signed consent for the disclosure. FERPA allows for limited disclosure of such records without consent under limited circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31. The information you provided does not contain evidence that an improper disclosure of education records by the School actually occurred. Without such evidence, there is no cause for this Office to initiate an investigation of your allegation.

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

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

Sincerely,

Kathleen M. Wolan
Program Analyst
Family Policy Compliance Office

Enclosures

(b)(6)

JUN 14 2011

Dea (b)(6)

This is to respond to your March 15, 2011, 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) (University) when it did not amend certain unidentified education records in regard to your February 25, 2011, written request. Specifically, you state that you have written to (b)(6) legal counsel at the University, and (b)(6) of the University, to request amendment. However, you have not provided this office with a copy of any letter to verify that the University received any such request. 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. Enclosed is a copy of a FERPA fact sheet for additional information.

You have not provided this office with sufficient information for us to investigate your allegation. In order for this office to consider your allegation, additional information is needed from you. Specifically, you have not provided this office with a copy of your February 25, 2011, request to the University. Additionally, please identify which of your education records you identified in your February 2011 request to the University are subject to FERPA's amendment provision and explain why you believe those education records are subject to FERPA's amendment provision. Please provide the needed information to this office within 4 weeks after you receive this response. Once this office receives and reviews the above needed information, we will consider it and take any further appropriate action.

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosure

(b)(6)

JUN 13 2011

Dear (b)(6)

This is to respond to your March 4, 2011, 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 disclosed certain information from your education records to a third party. Specifically, you state that (b)(6) superintendent of the District, disclosed information to a military recruiter at the time when you were being processed by the Marine Corps in its early entry program. 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. 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 appears that you are 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. As stated in this office's February 9, 2011, response, when an individual is accepted in the military's early entry program, applicants who are eligible students provide consent which allows for disclosures of education records. If consent was provided in this instance, no violation of FERPA occurred. It appears that you provided your consent to the military which allowed the District to disclose your education records as part of the recruitment process. You have provided no information to dispute this assertion. Accordingly, no basis exists for this office to investigate your allegation.

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

Mr. Bob Mosier
Public Information Officer
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

JUN 14 2011

Dear Mr. Mosier:

This is to respond to your February 22, 2011, letter to this office in which you requested information regarding the Family Educational Rights and Privacy Act (FERPA). Specifically, you request guidance relating to FERPA, which permits schools to disclose certain student information as directory information to third parties. 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. Enclosed is a copy of a FERPA regulations and guidance document for parents.

Under FERPA, educational agencies and institutions must annually notify parents of their rights. In this regard, schools are required to notify parents of the right to inspect and review their child's education records and the procedure to do so; the right to seek amendment of records the parent believes are inaccurate and the procedure to do so; and the right to consent to disclosures of education records except to the extent FERPA authorizes disclosure without consent. The notification must also inform parents of their right to file a complaint with this office and it must include a specification of criteria for determining who are school officials and what constitutes a legitimate educational interest in education records. A school is not required to notify parents individually, but rather is required to provide the notice by any means that are reasonably likely to inform parents of their rights. These means could include publication in the school activities calendar, newsletter, or student handbook.

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 parent. 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.

Page 2-- Mr. Bob Mosier

This office has reviewed the District's annual notice of FERPA that was included in its 2010-2011 Parent Handbook. Based on this document, student telephone number is not included as a directory information item. Therefore, in order for the District to disclose telephone numbers to a third party in compliance with FERPA, the District would be required to obtain a parent's prior written consent as discussed above or designate telephone number as directory information in the District's annual notice of FERPA. As discussed with you previously, you may also wish to consult appropriate State officials to determine if any statutes or policies affect the District's ability to comply with third party requests for student information.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosures

JUN 13 2011

(b)(6)

Dear (b)(6)

This is to respond to your April 19, 2011, letter to this office in which you allege that the (b)(6) (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it disclosed information to the parent of your children without your prior written consent. Specifically, you learned since March 28, 2011, that the District superintendent disclosed information from your children's education records based on a Facebook transcript of (b)(6) the parent of your children. 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 directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information is a FERPA guidance document for parents. You may also find more information regarding FERPA on our website at: <http://www2.ed.gov/policy/gen/guid/fpco/index.html>.

You have provided no information to indicate that (b)(6) parental rights have been severed by the court as discussed above. In fact, information which you provided to this office states that both you and (b)(6) "shall have access to all information relating to their children including but not limited to, school records...." See page 17, paragraph 10 of the July 26, 2006, Parenting Plan which you provided to this office. In this instance, the District is required by FERPA to provide (b)(6) a parent, with her children's education records. Accordingly, no basis exists for this office to investigate your allegation that the District improperly disclosed your children's information to her. Finally, (b)(6) decision to post information about your children on Facebook is not addressed by FERPA.

(b)(6)

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

Mr. Mel Sheldon, Jr.
Chairman
Tulalip Tribes
6406 Marine DR
Tulalip, Washington 98271

JUN 15 2011

Dear Mr. Sheldon:

This is in response to your letter, dated May 19, 2011, addressed to Secretary Duncan, in which you provided comments on the proposed regulations for the Family Educational Rights and Privacy Act (FERPA). The Secretary forwarded your letter to this office, the Family Policy Compliance Office, for response because we administer FERPA.

We appreciate your taking the time to provide comments on the proposed changes to the FERPA regulations. Unfortunately, we did not receive your letter in time to include it in the comments that we are considering in our regulatory process. You may review other comments that we received on www.regulations.gov. Thank you again for contacting us about this important matter.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

(b)(6)

JUN 27 2011

Dear

(b)(6)

This is in response to your undated letter which this Office received on April 26, 2011, in which you allege that (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA). This office administers FERPA, a Federal law that pertains to education records.

Specifically, you state that on March 16, 2011, a juvenile probation officer contacted you about your son (b)(6) who attends (b)(6) High School). The probation officer said the vice principal of the High School brought up your son's name came up a lot and said that he was "high risk." You explain that the disclosure by the principal occurred at the High School's monthly meeting that is held in conjunction with juvenile services and various other social service agencies. You further explain that no consents exist that would allow for the disclosure of education records by the High School to these agencies under FERPA. In your specific case, you state that "these meetings took place prior to juvenile probation getting a referral on my son." Finally, you allege that on April 21, 2011, the juvenile probation officer asked if your son abused drugs, and that the officer indicated that the High School is disclosing to the community that your son is abusing drugs. You assert which your son has not abused drugs.

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.

FERPA prohibits the improper disclosure of information derived from education records. Therefore, information that is based on opinion or hearsay and not specifically contained in education records would not be protected under FERPA. It is not clear what, if any, of your son's education records were disclosed to the probation officer or to the local school community.

(b)(6)

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Accordingly, if you wish to pursue this complaint, please complete the enclosed complaint form and state concisely which of your son's education records were disclosed, on what date and to whom. We will review the information you provide and take any necessary action.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure

(b)(6)

JUN 27 2011

Dear

(b)(6)

This is to respond to your February 11, 2011, complaint form to this office in which you state that the (b)(6) (SEA) to which you have written has violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). Specifically, you state that you have made multiple requests to (b)(6) superintendent of public instruction in (b)(6), to provide you with the names of specific school districts at which your children attended but have received no recent response from him. You provide a copy of a November 5, 2009, response from (b)(6) at the SEA in which she advised you to provide her office with legal documentation which verifies that your parental rights remain intact.

As a preliminary matter, a school or department of education is not required by FERPA to provide or create records that are not maintained in response to a parent's request. It is not clear whether or not the SEA maintains your children's education records. Furthermore, as stated in this office's February 15, 2011, response to you (see attached), FERPA affords certain rights to custodial and noncustodial parents alike, records unless there is a court order or other legally binding document which revokes a particular parent's right to those records. In that response, we discussed the scope and limitations regarding a parent's right to access education records of one's children, particularly in circumstances where a school district or in this instance, a State educational agency, believes that an individual may be a risk.

Also, 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. Nor have you provided this office with a copy of a recent request you made to the SEA and its response, if any. In order to exercise rights you may have under FERPA if your rights have not been severed by the courts, you should follow the guidance provided in our February 15 response, and write again to the SEA. You should provide the SEA 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 SEA maintains records regarding your children 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 dated copy of your request to the SEA which has denied you access, along with a completed complaint form (see enclosed), and copy, if any, of the SEA's response. Once this office receives the needed information, we will take any appropriate action. Without receiving such information from you, this office will be unable to provide you with further assistance in this matter.

Page 2 (b)(6)

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

Enclosure

(b)(6)

JUN 27 2011

Dear N (b)(6)

This is in response to your letter, dated March 10, 2011, in which you seek access to your child's records maintained by the Head Start program for the 2010-2011 school year at Anacoco Elementary in (b)(6) (District). In this regard you state that on February 15, 2011, you went to the Head Start Building to obtain a copy of your son's Head Start file. However, when you reviewed the file, you state that several incident reports that you had signed during the year were missing. Therefore, you contacted an individual at the Head Start Office who informed you that all the information that the District maintains on your son was in his file to which you had been provided access. This Office administers the Family Educational Rights and Privacy Act (FERPA), which pertains to education records. The other issues you raise in your letter are not addressed by FERPA and, as such, will not be discussed in this letter.

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. Under FERPA, parents must also provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from a student's education records, except as authorized by law. Enclosed is a guidance document on FERPA for parents.

FERPA applies to educational agencies and institutions that receive Federal funds from programs administered by the U.S. Department of Education (Department). In general, Head Start programs usually receive funds from the Department of Health and Human Services and do not receive funds from programs administered by the Department and are, therefore, not subject to FERPA. However, where a Head Start program is run by a school or school district that is subject to FERPA, any records on a student that the school maintains would be subject to FERPA. As such, a parent would have the right to inspect and review those "education records."

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

(b)(6)

FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records. Additionally, FERPA does not require a school to keep education records in any particular file or location. Finally, FERPA would not require a school district 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. FERPA does not otherwise address the destruction of education records by a school.

While a school district would be required to conduct a reasonable search for education records, it is the responsibility of the parent to clearly specify the records to which he or she is seeking access. If a parent makes a “blanket” request for a large portion of her child’s education records and the parent believes that she has not been provided certain records which were encompassed by that request, she should submit a follow-up request clarifying the additional records she believes exist.

We suggest you write a follow-up letter to the District describing the education records of your son that you believe are maintained by the District but to which you have not been provided access. Once the District responds to you relative to the outstanding records to which you believe you have been denied access, you may contact this Office again. At such time, you may complete the enclosed complaint form and provide the letter you sent to the District and any response received. We will review the information you provide and take any necessary action.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

(b)(6)

JUN 27 2011

Dear (b)(6)

We are writing to confirm our April 28, 2011, telephone conversation in which we informed 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 August 20, 2010. In that complaint you alleged that the (b)(6) University) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

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

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

The FERPA regulations (34 CFR Part 99) and the Guidance Document for Eligible Students can be found on our website at <http://www.ed.gov/fpc>.

This Office's enforcement process is intended to work cooperatively with postsecondary institutions to achieve their voluntary compliance with FERPA's requirements. Following a review of the allegations and evidence submitted by a complainant, we may initiate an administrative investigation by sending the institution and the complainant a notification letter about the allegation, and requesting a written response from the institution concerning the allegation. If we determine that a postsecondary institution is in violation of FERPA, the institution and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the institution 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 postsecondary institution take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the institution has completed the required corrective actions.

In this case, we will not open an investigation into your complaint that the University improperly disclosed your education records to third parties when your records from the University's disability office were disclosed to school officials of the University. Your complaint 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.

FERPA specifies the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written signed consent for the disclosure. FERPA allows for limited disclosure of such records without consent under limited circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31. Given the facts alleged, the disclosure you described would generally be authorized because FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See page 3 of the guidance document on our website.)

As we discussed in our telephone conversation, disability records are education records subject to the privacy protections of FERPA. FERPA does not require extraordinary protection be provided for disability records. You may wish to review a November, 2, 2004, letter from this Office to the (b)(6) (available on our website under "On-Line Library") that discusses the proper handling of disability records under FERPA.

We will not open an investigation into your complaint that the University failed to provide you access to your education records in accordance with FERPA. Your allegation does not meet the FERPA timeliness requirement described in (b), above. The complaint clearly indicates that the alleged violation(s) occurred in 2008. This Office received your complaint in 2010, which was two years after the alleged violation. (34 CFR § 99.64).

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

Sincerely,

Kathleen M. Wolan
Program Analyst
Family Policy Compliance Office

(b)(6)

JUN 27 2011

Dear

(b)(6)

This is in response to your June 13, 2011, email to Secretary Duncan in which you attach a letter to Congressman Gary Miller that concerns your allegations under the Family Educational Rights and Privacy Act (FERPA). Congressman Miller's office also contacted us on your behalf. Specifically, you were responding to our June 6th letter to you which we wrote in response to your allegation that (b)(6) (District) denied you access to your daughter's education records. You also state that the District improperly disclosed personally identifiable information from your daughter's education records.

We have reviewed your allegation that District is violating FERPA when it discloses non-directory type information when it publishes its weekly student recognition bulletin and have determined that specific allegations of fact alleging giving reasonable cause to believe that your rights under FERPA have been violated exist. Accordingly, we will contact the District setting forth your allegation on this matter.

With regard to your allegation that the District has denied you access to your daughter's education records, we need to receive additional information from you before we can contact the District. You state that on several occasions you have demanded your child's records. In this regard, you specify that on September 2010, you asked for all audio recordings of your daughter's IEP meetings and that, on May 9, 2011, you requested a copy of your daughter's transcripts from the District. You also indicate that the District has an ongoing practice of denying you access to your child's education records.

FERPA requires that schools comply with a parent's request for access to his or her children's education records within 45 days of receipt of the request. While a district would be required to conduct a reasonable search for education records, it is the responsibility of the parent to clearly specify the records to which he or she is seeking access. If a parent makes a "blanket" request for a large portion of his child's education records and the parent believes that he has not been provided certain records which were encompassed by that request, he should submit a follow-up request clarifying the additional records he believes exist.

A school is not required by FERPA to provide *copies* of education records to a parent unless a failure to do so would effectively prevent the parent from exercising the right to inspect and review the records. For example, a school could be required to provide copies, or make other arrangements, if the parent does not live within commuting distance of the school.

In order to assist you regarding your allegation that the District has violated your rights under FERPA because it refuses to provide you access to your child's education records within 45 days of your request, please provide this office a copy of the most recent request(s) you have made for access to your daughter's education records. For example you can provide this Office with a copy of the May 9 request to the District that you reference, and any response received. We will review the information you provide and take any necessary action. If the information you provide sets forth specific allegation of fact giving reasonable cause to believe that your rights under FERPA have been violated, we will contact the District setting forth your allegation on this matter as well.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc: Congressman Gary Miller