Mr. Daniel F. Sullivan
President
St. Lawrence University
23 Romoda Drive
Canton, New York 13617

NOV 1 2 2009

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

Dear Mr. Sullivan:

This is to inform you of the finding in the complaint filed by (b)(6) on behalf of her client, (b)(6) (Student) against St. Lawrence University (University) under the Family Educational Rights and Privacy Act (FERPA). By letter dated July 24, 2008, we informed you of the Student's allegation that the University violated § 99.30 of the FERPA regulations when it improperly disclosed information from the Student's education records. Specifically, by letter dated January 3, 2007, (b)(6) alleged that after the Student filed an October 9, 2006, appeal to a September 26, 2006, disciplinary decision of the University Honor Counsel, one of her education records was disclosed to an outside doctor. The University questioned whether the complaint met FERPA's timeliness requirement of 180 days and being that (b)(6) contacted this Office on January 3, 2007, relative to the fact that the Student learned of an alleged improper disclosure of her education records on or about December 7, 2006, we conclude that the complaint meets FERPA's timeliness threshold.

By letter dated August 20, 2008, (b)(6), Associate Professor, History Department, responded on behalf of the University. (b)(6) states in part the following:

> . . . we do not believe that the disclosure was a violation of FERPA. FERPA expressly authorizes the disclosure of educational records, without prior student consent, to school officials with a legitimate educational interest. 34 CFR § 99.31. The University's counsel has advised us that the Family Policy Compliance Office repeatedly has recognized that this exception for school officials extends to outside contractors and experts retained by an institution, provided there is a legitimate educational interest in doing so.

(b)(6) references that FERPA permits the disclosure of education records to appropriately designated school officials with legitimate educational interest and provides a copy of the University's annual notification that provides for the disclosure of education records absent

consent to school officials who are employed by or under contract to the University to perform a specific task who have a legitimate educational interest defined as a need to review education records in order to fulfill their University related responsibilities.

(b)(6) explains that the University decided to retain an expert on learning disorders in connection with the Student's appeal for advice on the matter. Accordingly, the University retained (b)(6) for the following reason:

> The University retained (b)(6) specifically to advise it with respect to disability issues [the Student] herself raised, and pursued, in the context of her AHC proceeding. In an attempt to make sure that it was not overlooking anything related to her claims, the University sought expert assistance. Clearly, there was a "legitimate educational basis" for sharing [the Student's] educational records with (b)(6) Given (b)(6) status as someone with whom the University had contracted to provide a specific task and the reason for the disclosure to her, this disclosure was expressly permitted by the University's policy and § 99.31.

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

"Education records" means those records that are:

(a) Directly related to a student; and

(b) Maintained by an educational agency or institution or by a party acting for the agency or institution.

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

Section 99.31(a)(1) states that an educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

> (1)(i)(A) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.
>
> B) A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party--

(1) Performs an institutional service or function for which the agency or institution would otherwise use employees;

(2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and

(3) Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

It appears the disclosure that the University made from the Student's education records to (b)(6) was a permissible disclosure under FERPA because as described by the University, it met the requirements of § 99.31(a)(1). Accordingly, we find that no violation of FERPA occurred.

Lastly, the University did not keep a record of disclosure in this instance because it made a disclosure to a school official with legitimate educational interest. Under FERPA a school is not required to make a record of a disclosure that is made to a school official with legitimate educational interest. Thus in regard to (b)(6) second allegation relative to FERPA's recordkeeping requirement, because no recordkeeping requirement exists in this instance, we find that there was no violation of FERPA.

We will inform (b)(6) of our findings by copy of this letter. Accordingly, we are closing this complaint. Thank you for your cooperation with regard to this matter.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

cc: Ms. Winona Zimberlin