(b)(6)

NOV 5 2009

Dear (b)(6):

This is in response to your May 18 and July 14, 2009, correspondence to this Office in which it appears you are alleging that (b)(6) (University) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it failed to provide you access to all of your education records in response to your requests. Along with your correspondence to this Office, you provided a March 30, 2009, letter to the physical therapy department at the University in which you state:

> . . . Please consider this a request for all my academic records – records from the registrar, PT dept., student affairs, counseling center, and any other office that may contain records of me.
>
> The PT department has given a file to me, but I have reason to believe that it is incomplete (b)(6), there are other e mails that were not given to me in my file. I want all of them, including all correspondence between you and me; particularly the matter in which you assumed I was asking you out on a date to a school function.

This Office administers FERPA which addresses issues that pertain 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" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information are a FERPA fact sheet, guidance document, and complaint form.

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

the information in your letter, it appears you live within commuting distance of the University. Therefore, the University is required to provide you with an opportunity to inspect and review your education records, though it is permitted by FERPA to provide you with copies of the records instead.

Please note that a school is not generally required by FERPA to maintain particular education records or education records that contain specific information. Rather, a school is required to provide certain privacy protections to those education records that the school selects to maintain. Also, a school may destroy education records without notice to the student unless there is an outstanding request by the student to inspect and review such education records.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. 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 date you requested access to your education records. Are you considering your March 30 letter as your request? Your March 30 letter is addressed to the physical therapy department. Based on your May 18 correspondence, it appears that the physical therapy department provided you access to certain of your education records. Did the physical therapy department advise you to contact any other office at the University (such as the registrar's office) to obtain access to additional education records? Did the University respond to your request for copies of education records by inviting you to set up an appointment to come and inspect and review the requested education records? Also, please provide this Office with any evidence you may have that the University maintained education records at the time of your request to which it did not provide you access. For example, evidence could be that the e-mails at issue were subsequently part of a disciplinary proceeding, and the University's policy in the student handbook stated that it maintains all records that are related to a disciplinary proceeding for three years. 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 University and request the specific education records to which you are seeking access. As stated above, the University is not required by FERPA to provide you with copies of the records. I believe the University will be more likely to provide you with copies of education records (if that is what you want) if your request is more targeted. Though it is not required, you may want to include a copy of this letter along with your request. If the University fails to provide you access to the requested education records (copies of the records or an invitation to inspect and review the 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 letter to the University, any response from the University, and a completed copy of the enclosed complaint form. We will review the information you submit 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 concern.

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures