(b)(6)

SEP 25 2009

Dear (b)(6)

The purpose of this letter is to notify you that we will not initiate an investigation of your February 2, 2008, complaint that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act.

Under § 99.64(a) and (b) of the FERPA regulations, this Office investigates a timely complaint that contains specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. A timely complaint is defined in § 99.64(c) as an allegation of a violation that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonable should have known of the alleged violation. As explained below, your allegations are either untimely or fail to contain specific allegations of fact giving reasonable cause to believe that the District violated FERPA.

Allegation #1

You alleged that a press release issued by the District on April 2, 2007, entitled "Enough is Enough" (Press Release No. 1) violated § 99.30 of the FERPA regulations, which provides that a parent must provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records. The term "education records" is defined in § 99.3 of the regulations as records that are 1) directly related to a student; and 2) maintained by an educational agency or institution or by a party acting for the agency or institution.

Among other things, Press Release No. 1 states that on February 20, 2006, you filed a due process complaint against the District under the Individuals with Disabilities Education Act (IDEA); that the (b)(6) (b)(6) issued a decision in the District's favor on July 24, 2006; and that you did not file an appeal of (b)(6) decision. This statement provides sufficient allegations of fact giving reasonable cause to believe that the District violated § 99.30 of the regulations when it released this information. In particular, information that you filed a due process complaint under IDEA is directly related to a student (your child) and, therefore, constitutes the student's education record under FERPA (assuming that the District maintained a record of this information.) However, you failed to file a compliant with this Office until 10 months later, which makes this allegation untimely. As explained below, you have not shown good cause for this Office to extend the time limit as provided in § 99.64(c).

Allegation #2

According to your complaint with this Office, on April 18, 2007, you filed a complaint with ISBE about the District's release of information from your child's education records in Press Release No. 1. You provided us with a copy of (b)(6) December 21, 2007, finding that the District violated State confidentiality requirements in 23 (b)(6) Administrative Code 226.740(a)(b)(c)(f) and (g) when it released Press Release No. 1. (b)(6) found that the District's statement "discloses publicly that the complainant filed for a remedy specific to [IDEA] and thus identifies his child as a student with disabilities. This constitutes a release of student specific information without parental consent.")

On January 2, 2008, the District issued a "Statement from the District 7 Board of Education regarding the recent (b)(6) finding" (Press Release No. 2). You alleged that the District's publication of Press Release No. 2 violates § 99.30 of the FERPA regulations because it re-released and discussed the confidential information contained in Press Release No. 1. In that regard, we note that Press Release No. 2 states:

> In [Press Release No. 1], the District revealed to the public that (b)(6) had personal motives for his attacks against District 7 by informing the public that (b)(6) had initiated litigation against the District. The litigation was noted, but no information specific to the basis for the claim was discussed. No student records were released.

While we may disagree with the substance of the District's assertion that no student records were released in Press Release No. 1, we find that neither that statement, nor any other information contained in Press Release No. 2, provides reasonable cause to believe that a violation of FERPA has occurred.

As noted above, the term "education records" in FERPA means records that are directly related to a student (and maintained by the District). Statements that you had initiated litigation against the District, without reference to your due process complaint under IDEA (which is directly related to your child), or any other references to your child, are not "directly related" to a student and, therefore, do not constitute a disclosure of personally identifiable information from that student's education records.

Timeliness Issue

According to your complaint, on January 14, 2008, you provided the Department's Office for Civil Rights (OCR) with a copy of a letter to you dated March 26, 2006, from attorney (b)(6), outside counsel for the District. You expressed concerned about the following statement in (b)(6) 2006 letter: (b)(6) [Director of Special Education for the District] has taken actions consistent with the legal advice that I have provided to her." Shortly thereafter, on January 29 you asked OCR the following question: "Since I have alleged that the district was acting on (b)(6) legal advice with regard to records when issuing these press releases, does the OCR have jurisdiction

to enforce [§ 99.33(e) of the FERPA regulations] and restrict (b)(6) and her firm from accessing District 7 records for 5 years?" OCR advised you by letter dated January 29, 2008, that it has no authority to investigate alleged violations of FERPA and referred you to this Office.

You did not file your complaint with this Office alleging that the District's statements violated FERPA until after OCR advised you that it could not provide you with the remedy you sought against the District's outside counsel under § 99.33(e) of the FERPA regulations. Section 99.33(e) provides:

> If this Office determines *that a third party outside the educational agency or institution* improperly redisclosures personally identifiable information from education records in violation of this section … the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years. [Emphasis added.]

(b)(6) March 16, 2006, letter appears to be concerned solely with your request to inspect and review your child's education records and contains no reference to the District's release of information from education records. Therefore, even assuming that § 99.33(e) applies to the release of information by the District relying on the advice of outside counsel (and not a third party outside the District), we find no basis for concluding that (b)(6) March 16, 2006, letter to you shows that the District was following her advice when it issued the two press releases in question.

Further, because (b)(6) has already addressed the improper disclosure of information from your child's education records in Press Release No. 1, and we do not find sufficient allegations of fact to believe that the District violated FERPA when it issued Press Release No. 2, you have not shown good cause for this Office to extend the time limit for filing your complaint.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office