(b)(6)

JAN 12 2010

Dear (b)(6)

This is in response to your letter, dated December 23, 2009, regarding the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g; 34 CFR Part 99. You state that you are writing on behalf of your client, (b)(6) who is a claimant in (b)(6) (b)(6) You ask that we confirm informal advice that Ingrid Brault of my staff provided to (b)(6) in an email on December 17, 2009. Specifically, you asked that we confirm that Ms. Brault accurately stated that this Office's position is that student directories are not protected by FERPA, unless the parent/student has opted out of the disclosure of directory information.

FERPA generally prohibits the nonconsensual disclosure of information derived from education records, except in certain specified circumstances. 34 CFR §§ 99.30 and 99.31. One of these exceptions permits the nonconsensual disclosure of information derived from education records that has been appropriately designated as "directory information" by the educational agency or institution. 34 CFR §99.31(a)(11). 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. 34 CFR § 99.3 "Directory information." 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.

FERPA provides that a school may disclose directory information if it has given public notice of the types of information which it has designated as "directory information," the student's right to restrict the disclosure of such information, and the period of time within which a student 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." 34 CFR § 99.37(a).

A school is not required to inform former students regarding directory information or to honor their request that directory information not be disclosed without consent. 34 CFR § 99.37(b). However, if a student, within the specified time period during the student's last opportunity as a student in attendance, requested that directory information not be disclosed, the school must honor that request until otherwise notified.

Please note that, under FERPA, all disclosures – except to a student of his or her own education records – are permissive, not required. Therefore, a school could determine not to disclose "directory information" to a particular party.

The above discussion relates to FERPA's directory information exception to the prior written consent requirement of FERPA. However, the statement made by Ms. Brault in her email to (b)(6) was not a statement about directory information *per se* but relative to a subpoena for education records, and to my knowledge this Office has never issued any formal guidance on this specific question. The December 17, 2009, email was simply informal advice to (b)(6) based on Ms. Brault's understanding of his question.

If an educational agency or institution contacts this Office for technical assistance on this matter, we would provide an analysis and issue a formal opinion. Or, in some cases when a finding is made relative to an investigation of a FERPA complaint, these types of technical assistance questions are answered. Otherwise, we can only suggest that you and your client, if after a review of the information provided in this letter, believe that the (b)(6) violated FERPA, file a complaint directly with this Office. We can provide you a complaint form if you so request.

Please note, however, that 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. Therefore, if after a determination has been issued in (b)(6) arbitration with (b)(6) you continue to believe that the Seminary violated FERPA, you or your client may file a complaint with this Office, if a specific, timely allegation indicating that the school violated his rights under FERPA exists.

I trust this is responsive to your inquiry.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office