JAN 04 2010

(b)(6)

Dear (b)(6)

This is in response to your letter, dated December 22, 2009, addressed to Secretary Duncan, concerning the Family Educational Rights and Privacy Act (FERPA). Specifically, you state that (b)(6) University) has refused to release your granddaughter's transcript due to an outstanding tuition balance. You explain that your granddaughter, (b)(6) Underwood, has been unsuccessful in enrolling into several other institutions because the University will not release her transcript, presumably to those other institutions, and that you are asking that the University provide her with a copy of the transcript. I have been asked to respond to your letter because this Office administers FERPA. 20 U.S.C. § 1232g; 34 CFR Part 99.

FERPA protects parents and eligible students' privacy interests in "education record," which are defined as records that are directly related to a student and maintained by an educational agency or institution or a party acting for the agency or institution. 34 CFR § 99.3 ("Education records.") "Eligible student" means a student who has reached 18 years of age or is attending a postsecondary institution at any age. 34 CFR § 99.3 "Eligible student." The rights under FERPA belong to the parents of students under the age of 18 at the elementary/secondary level and transfer to the student when he or she becomes an "eligible student."

Postsecondary institutions subject to FERPA may not have a policy or practice of permitting the disclosure of "education records" without the written consent of the eligible student, unless an exception in FERPA applies. 34 CFR §§ 99.30 and 99.31. Under § 99.31(a)(2), a postsecondary institution may disclose education records, without the student's prior written consent, to officials of another school where the student seeks or intends to enroll, provided the institution complies with the requirements in § 99.34(a). Please note that FERPA does not <u>require</u> that a postsecondary institution disclose education records to another institution. In fact, a postsecondary institution is not required to disclose education records to anyone other than the eligible student. Thus, a school may refuse to transfer education records in general to another school due to money owed. There may be State or local guidelines or regulations relevant to the transfer of education records in each State.

With regard to your granddaughter's request for a copy of her transcript, FERPA requires that postsecondary institutions provide eligible students the opportunity to inspect and review their education records within 45 days after receipt of a request. 34 CFR § 99.10(b). FERPA requires that educational agencies and institutions give students a copy of the records if failure to do so would effectively prevent the student from exercising the right to inspect and review the records. 34 CFR § 99.10(d). Thus, for example, if a student does not live in commuting distance of the school, an educational institution must give the student a copy of his or her records or make other arrangements in accordance with FERPA to provide access to the records.

I trust this is responsive to your concerns and adequately explains the scope and limitations of FERPA with regard to these issues. Enclosed is a guidance document on FERPA for eligible students.

Sincerely,

Paul Gammill
Director
Family Policy Compliance

Enclosure