(b)(6)

APR 8 2011

Dear (b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on February 18, 2011. In that complaint, you are alleging that the Yuma School District One (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA). Your son, whom you identify as (b)(6)" attends or attended (b)(6) School in the District and received special education services there.

This Office investigates certain complaints alleging violation of FERPA if it:

Is filed by the "parent" of a minor student at a public elementary or secondary school or an "eligible student" who is at least 18 years of age or who attends or attended a postsecondary institution with FERPA rights in the education records which are the subject of the complaint;

(a) Is filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known about the violation; and

(b) Contains specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred.

The FERPA regulations (34 CFR Part 99) can be found on our website at http://www.ed.gov/policy/gen/reg/ferpa/index.html.

This Office's enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation, and requesting a written response from the district concerning the allegation. If we then determine that a district is in violation of FERPA, the district and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the district in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a district take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the district has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it does not provide specific allegations of fact which give the Office reasonable cause to believe that a FERPA violation occurred. In order for the Office to initiate an investigation, a complaint must contain such specific allegations.

In your letter to this Office you state:

> . . . This complaint is for release of special education information related to the Office of administrative hearing decision by the school and its attorney to the court without parental or court order. . . .

Specifically, it appears you are alleging that the District violated your rights when it disclosed personally identifiable information from your son's education records in a brief submitted to the Superior Court of the State of (b)(6) by (b)(6) and (b)(6), attorneys for the District. The specific statement that you highlight in the brief as a violation of FERPA is as follows:

> . . . [Plaintiff's suggestion that the defendants have failed to defend is] absurd in light of their success in achieving dismissal of the Administrative Review Act claim (in this Court), all constitutional due process claims (in the U.S. District Court), and all special education issues (in the Office of Administrative Hearings).

Based on the information provided in your letter and attachment, it appears the District's brief, at issue, was submitted to the Court in connection with litigation initiated by you against the District.

The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." Please note that at the elementary and secondary school levels, FERPA does not distinguish between different types of education records, such as academic records, disciplinary records, attendance records, or health or medical records. Rather, if any of these types of records are directly related to a student and maintained by a school, they meet the definition of education records.

The provisions of 34 CFR Part 99, Subpart D specify the conditions under which information can be disclosed from student education records. Generally, FERPA prohibits disclosure of personally identifiable information from student education records unless the parent or eligible student has provided specific prior written signed consent for the disclosure. FERPA allows for limited disclosure of such records without consent under limited circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31.

Regarding such non-consensual disclosures, FERPA specifically provides that if a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself. 34 CFR § 99.31(a)(9)(iii)(B). Please note that there is no requirement for a school to notify a parent of its intention to disclose education records under this exception.

Based on the information provided by you, it appears that the District disclosed its brief to the court in compliance with FERPA. As such, there is no basis for this Office to assist you regarding your concern. If you have questions regarding this matter, you may contact Mr. Ricky Norment of my staff. The name, address, and telephone number of the Office are:

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U.S. Department of Education
400 Maryland Avenue, SW
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(202) 260-3887

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office