(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 June 28, 2010. In that complaint, you are alleging that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. Your son (b)(6) Student) attends school in the District.

You raise a number of concerns that are not addressed by FERPA, as you have raised them, including: the District testing the Student for Autism; placing the Student in a "Develop Mentally Delayed Category"; providing the Student with special education services; and collecting funds under an educational program after the Student has been removed from the program.

With regard to the first three concerns listed above, I have enclosed contact information for the organization responsible for administering Part B in your State. If you have specific evidence regarding your allegation concerning possible fraud and theft, you may want to contact the Department's Office of the Inspector General (OIG). I have enclosed contact information for OIG as well.

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

(a) 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;

(b) 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

(c) 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. Enclosed for your review is a FERPA guidance document.

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 you do 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.

The provisions of 34 CFR Part 99, Subpart B detail the right of inspection and review of education records. Generally, FERPA requires that educational agencies and institutions provide parents or eligible students access to education records within a reasonable period of time, but not more than 45 days after the request. A school is permitted by FERPA to provide a parent with copies of education records in response to a request by a parent to inspect and review education records. However, if a school selects to provide a parent with copies of education records, the school is required to provide the parent with true and accurate copies of the records. In order for this Office to consider an allegation that a school did not provide a parent with a true and accurate copy of an education record maintained by the school, the parent would have to provide this Office with specific evidence that a record is not a true and accurate copy of the other record -- not simply provide us with conjecture or hearsay.

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 for those education records that the school selects to maintain. Also, unless there is an outstanding request by a parent to inspect and review education records, the school may destroy such records without notice to the parent.

The provisions of 34 CFR Part 99, Subpart C describe the process for requesting amendment of education records. Generally, parents or eligible students have the right to request that a school correct education records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a hearing. After the hearing, if the school decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.

The FERPA amendment procedure may be used to challenge facts that are inaccurately recorded. However, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about a student. FERPA requires only that schools conform to fair recordkeeping practices. It does not provide a means to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. A school is not required to respond to a parent's request for amendment of information that is not amendable under FERPA. For example, a school is not required by FERPA to respond to a request by a parent seeking to amend a grade, an opinion, a placement decision, or other substantive decision made by the school about a student.

If you believe there is inaccurately recorded information in the Student's education records, you should send a dated letter to the appropriate official in the District requesting amendment of the specific information in the Student's education records that you believe is inaccurately recorded and provide the school with specific evidence to support your assertion that such information is inaccurate. If the school does not amend the information or offer you the opportunity for a hearing on the matter, you may contact this Office. At such time, please provide us with a dated copy of your letter to the District along with your evidence, and any response from the District. We will review the information you submit and take any appropriate action.

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:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-8520
(202) 260-3887

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures