APR 28 2011

(b)(6)

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 September 1, 2010. In that complaint you alleged that the (b)(6) District violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

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. A guidance document about FERPA is enclosed.

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.

Sections 99.20 – 99.22 of the FERPA regulations 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 school may appoint any individual to conduct the hearing that does not have a direct interest in the outcome of the hearing.

However, a school is not required to follow the requirements of the FERPA amendment process when the item is not amendable under FERPA. For example, a school is not required to afford you a hearing to seek to amend an opinion that a school official has written about you or your child or to remove documents which may contain such opinions.

With respect to the facts alleged, it is not clear that the amendment of the education record you seek is protected by FERPA. 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. The FERPA right to seek amendment of education records which contain inaccurate information cannot be used to challenge a grade or an individual's opinion, unless that information has been inaccurately recorded.

Also, it appears that you believe there is a "conflict of interest" because the District has appointed as the hearing office a special education administrator from another district. An individual is not disqualified from appointment as a hearing office because of familiarity with officials of the District.

For further information regarding issues which you believe may be addressed by the U. S. Department of Education, you may contact the Department via our toll-free telephone number at 1-800-USA-LEARN (800-872-5327).

Sincerely,

Kathleen M. Wolan
Program Analyst
Family Policy Compliance Office

Enclosure