(b)(6)

APR 13 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 form received in this Office on July 12, 2010. In that complaint, you are alleging that the (b)(6) (University) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

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 information is our FERPA guidance document.

This Office's enforcement process is intended to work cooperatively with colleges and other postsecondary institutions to achieve their voluntary compliance with FERPA's requirements. Following a review of the allegations and evidence submitted by a complainant, this Office may initiate an administrative investigation by sending the college and the complainant a notification letter about the allegation, and requesting a written response from the college concerning the allegation. If this Office then determines that a college is in violation of FERPA, the college and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the college 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 college take punitive or disciplinary action against an individual as the result of a FERPA violation. This Office closes its investigation when the college 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 this Office reasonable cause to believe that a FERPA violation occurred. In order for this Office to initiate an investigation, a complaint must contain such specific allegations.

Specifically, it appears you are alleging that the University violated FERPA when (b)(6) (b)(6) director of the (b)(6) Program at the University, disclosed information from your education records regarding your academic situation to (b)(6) (b)(6), a neonatal nurse practitioner (NNP) in the Division of (b)(6) University. You provided us with several e-mails from (b)(6) to you in which she discusses your academic situation. These e-mails were also sent to (b)(6)

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.

One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to education records provided the school has determined that they have "legitimate educational interest" in the information. 34 CFR Sec. 99.31(a)(1). Although the term "school official" is not defined in the statute or regulations, this Office had interpreted the term broadly to include a professor or instructor, administrator, board member, support or clerical staff, attorney, counselor, human resources staff, information systems specialist, and attorney.

A school may disclose education records without consent to a "school official" under this exception only if the school has first determined that the official has a "legitimate educational interest" in obtaining access to the information for the school. A school that allows school officials to obtain access to education records under this exception must include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interests." 34 CFR Sec. 99.7. Generally, a school official has a legitimate educational interest if he or she needs access to information in an education record to carry out his or her official responsibilities.

Based on the information in your letter, it appears that (b)(6) is one of the neonatal nurse practitioners on the team that oversees the clinical work activities of nursing students in the neonatal nurse practitioners program at the University. Based further on the information in your letter, it appears your academic situation is related to your clinical work activities in the neonatal nurse practitioners program. While you do not specifically state the relationship between you and (b)(6), it appears that (b)(6) would generally meet the criteria for a school official with a legitimate educational interest in obtaining access to information in your education records.

You also allege that (b)(6) violated FERPA when she sent you e-mails including information regarding other students' "academic activities." However, FERPA vests the rights it affords in the parents of minor students and in eligible students (as defined in 34 CFR §99.3). The statute does not provide for these rights to be vested in a third party who has not suffered an alleged violation. Thus, we require that a parent or eligible students have "standing," i.e., have suffered an alleged violation in order to file a complaint under FERPA. You do not have standing with regard to this allegation.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides educational agencies and institutions with technical assistance to ensure they are in compliance or come into compliance with FERPA. Attached is a copy of our letter of technical assistance to the University regarding your allegations concerning disclosure of education records.

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