(b)(6)

JUN 27 2011

Dear (b)(6)

We are writing to confirm our April 28, 2011, telephone conversation in which we informed 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 August 20, 2010. In that complaint you alleged that the (b)(6) University) 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) and the Guidance Document for Eligible Students can be found on our website at http://www.ed.gov/fpco.

This Office's enforcement process is intended to work cooperatively with postsecondary institutions to achieve their voluntary compliance with FERPA's requirements. Following a review of the allegations and evidence submitted by a complainant, we may initiate an administrative investigation by sending the institution and the complainant a notification letter about the allegation, and requesting a written response from the institution concerning the allegation. If we determine that a postsecondary institution is in violation of FERPA, the institution and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the institution 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 postsecondary institution take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the institution has completed the required corrective actions.

In this case, we will not open an investigation into your complaint that the University improperly disclosed your education records to third parties when your records from the University's disability office were disclosed to school officials of the University. Your complaint 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.

FERPA specifies 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. Given the facts alleged, the disclosure you described would generally be authorized because FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See page 3 of the guidance document on our website.)

As we discussed in our telephone conversation, disability records are education records subject to the privacy protections of FERPA. FERPA does not require extraordinary protection be provided for disability records. You may wish to review a November, 2, 2004, letter from this Office to the (b)(6) (available on our website under "On-Line Library") that discusses the proper handling of disability records under FERPA.

We will not open an investigation into your complaint that the University failed to provide you access to your education records in accordance with FERPA. Your allegation does not meet the FERPA timeliness requirement described in (b), above. The complaint clearly indicates that the alleged violation(s) occurred in 2008. This Office received your complaint in 2010, which was two years after the alleged violation. (34 CFR § 99.64).

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