(b)(6)

MAR 2 2 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 May 12, 2010. In that complaint, you are alleging that (b)(6) (School) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. Your son, (b)(6) (Student), is a student at the School. You also raise a couple of other issues in your letter, such as testing for and determining plagiarism in student research papers. These issues, as you have raised them, are not addressed by FERPA and will not be discussed below.

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 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 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.

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.

However, please note that FERPA does not protect the confidentiality of information in general and, therefore, does not apply to disclosure of information derived from a source other than education records, even if education records exist which contain that information. Rather, FERPA protects information derived from education records from improper disclosure. As a general rule, information obtained through personal knowledge or observation, and not from an education record, is not protected from disclosure under FERPA.

It appears that you are alleging that (b)(6) the Student's teacher in one of his classes at the School, disclosed to other students in one or more of her classes that the Student had plagiarized his research paper and was going to receive a failing grade. As evidence, you state that (b)(6) a student in one of (b)(6) classes stated to the Student: "You are going to fail your research paper. (b)(6) thinks you plagiarized your research paper."

If you wish this Office to further consider your allegation, we need to receive additional information from you. Please provide us with the name and address of the superintendent of the school district in which the School is located. Please verify that we have accurately captured your allegation above. Also, please provide us with the following information: the date of the alleged disclosure by (b)(6) to her class; the subject of the class in which (b)(6) allegedly made the disclosure; and the subject of the research paper (if it is different from the subject of (b)(6)). If possible, please provide us with a signed statement from (b)(6) or one or more of the other students who witnessed (b)(6) disclosure of information from the Student's education records.

If you believe (b)(6) nonconsensually disclosed other information recorded in the Student's education records, please inform us of the following: the date or approximate date of the disclosure (or the date you learned of the disclosure), the third party or parties to whom the information was disclosed; and the specific nature of the information disclosed. We will review the information you submit and take any appropriate action.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concerns. If you have questions regarding this matter, you may contact me as follows:

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(202) 260-3887

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosure