(b)(6)

MAR 16 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 September 22, 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.

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 are a FERPA guidance document and complaint form.

This Office's enforcement process is intended to work cooperatively with schools 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 school and the complainant a notification letter about the allegation, and requesting a written response from the school concerning the allegation. If we then determine that a school is in violation of FERPA, the school and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the school 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 school take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the school 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.

Specifically, it appears you are alleging that the University violated your rights under FERPA when it failed to provide you with access to certain of your education records in response to your request. Please note that this Office does not have the staff resources to view voluminous documents to determine whether there is a specific allegation of fact regarding a violation of FERPA. It is the responsibility of the complainant to state his or her allegation as clearly and succinctly as possible, and to provide only relevant supporting information.

The term "education records" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." The provisions of 34 CFR Part 99, Subpart B of the regulations 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.

Also, a school is required to provide a student with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the student from obtaining access to the records. A case in point would be a situation in which the Student parent does not live within commuting distance of the school. Based on the information in your letter, it appears that you live within commuting distance of the University. Therefore, the University is required by FERPA to provide you with an opportunity to inspect and review your education records. The University is not required to provide you with copies of the records, though it is permitted to do so.

FERPA provides that if the education records of a student contain information on more than one student, each student may inspect and review or be informed of only the specific information in the record about him or her. 34 CFR § 99.12. Also, please note that under certain specified circumstances a school may deny a student access to certain information in his or her education records based on the claim of attorney-client privilege.

If you wish this Office to further consider your allegation, we need to receive additional information from you. Please complete the enclosed complaint form and include the following information: (1) the date you requested access to your education records under FERPA; (2) the name of the official to whom your request was made; (3) the response of that official, if any; and (4) the specific nature of the education records requested. Also, if possible, please include a dated copy of your request for access to your education records under FERPA. It appears that

you are alleging that the University provided you with several redacted e-mails, and you believe the redacted information is directly related to you. Please note that if the redacted information is directly related to another student, the University would generally be prohibited by FERPA from providing you the opportunity to inspect and review the information absent the other student's written consent. Also, as stated above, under certain circumstances, a school may deny access to certain information based on a claim of attorney-client privilege.

All this Office needs to further consider you allegation is: 1-4 above on the complaint form; a dated copy of your request to the school for access to records under FERPA; copies of the e-mails (if they are the focus of your allegation; and, if possible, the University's rationale for redacting the e-mails. I am returning the information you submitted to this Office because it may be useful should you decide to resubmit your complaint. If you do, we will review the information you submit and take any appropriate action.

If you have questions regarding this matter, you may contact me at the address or telephone number below:

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures