(b)(6)

MAY 17 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 February 27, 2011. In that complaint, it appears you are alleging that (b)(6) (College) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 20 USC Part 99. Specifically, it appears you are alleging that the College violated your rights when it failed to provide you access to information in your education records; when it failed to amend information in your education records or offer you the opportunity for a hearing on the matter; and when it disclosed information from your education record to a third party without your prior written consent.

It appears you are also raising concerns regarding the College's alleged failure to follow its stated policies and procedures regarding dismissal of a student and admission/reinstatement of a student. These specific concerns, as you have raised them, are not addressed by FERPA and will not be discussed in this letter.

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 forms.

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.

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." A school is not generally required by FERPA to maintain particular education records or education records that contain specific information. Rather, a school is required to provide certain privacy protections for those education records that the school selects to maintain. Also, unless there is an outstanding request by a student to inspect and review education records, the school may destroy such records without notice to the student. Please note that a school is not required to provide a student access to information that is not maintained or to create education records in response to a student's request. Accordingly, a school is not required to provide a student with updates on his or her progress in a certain subject unless such information already exists in the form of an education record.

The College would not generally be required by FERPA to maintain redacted records regarding your nursing courses or records regarding the rape or sexual harassment claims. Conversely, FERPA would not generally prohibit the College from maintaining these records. If the College does maintain the records, you would have the right to inspect and review them.

The provisions of 34 CFR Part 99, Subpart B 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. 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 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 College. Therefore, the College is required by FERPA to provide you with an opportunity to inspect and review your education records. The College is not required to provide you with copies of the records, though it is permitted to do so.

In your letter you state:

> . . . I was never given the original test documents to review. . . .

In order to exercise your right to inspect and review the "original test documents" or other education records, I suggest you send a dated request to the appropriate official at the College asking for an opportunity to inspect and review the specific education record to which you are seeking access. We advise that this Office can assist you best if your request for access to education records does not include other concerns and issues you may have with the College outside your request for access to education records. If the College fails to provide you an opportunity to inspect and review the requested education records or fails to contact you within 45 days, you may write to this Office again. At such time, please provide us with a dated copy of your request to the College, any response from the College, and a completed copy of one of the enclosed complaint forms. We will review the information you submit and take any appropriate action.

The provisions of 34 CFR Part 99, Subpart C 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. Please note that a school is not required to respond to a request from a student for amendment of information that is not amendable under FERPA as discussed below.

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. For example, you may not use the FERPA amendment procedure to gain readmission to the College, i.e., challenge a substantive decision made by the College regarding you.

However, if you believe there is inaccurately recorded information in your education records, you should write to the appropriate official at the College and request amendment of the specific information in your education records that you believe is inaccurately recorded. We advise that this Office can assist you best if your request for amendment of information in education records does not include other concerns and issues you may have with the College outside your request for amendment of education records. Along with your request for amendment, you need to include evidence to support your assertion that such information is inaccurately recorded.

If the College does not amend the information in accordance with your request or offer you the opportunity for a hearing on the matter, you may write to this Office again. At such time, please provide us with a dated copy of your request to the College for amendment of your education records (including your evidence that the information is inaccurately recorded), any response from the College, and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

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 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, most of the disclosures you described would generally be authorized under FERPA's school official exception.

In your letter, you state:

> . . (b)(6), the Associate Dean of Nursing, and (b)(6) the program coordinator, at [the College] were not employed during the time I was sexually assaulted and dismissed from the college. . . . and additionally, (b)(6) admission to reading the record, which has now extended itself to (b)(6), the damage I have experienced is considerable. . . .

One of the exceptions to FERPA's prior written consent requirement 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

§ 99.31(a)(1). Although the term "school official" is not defined in the statute or regulations, this Office generally interprets the term to include parties such as: professors; instructors; administrators; health staff; counselors; attorneys; clerical staff; trustees; members of committees and disciplinary boards; and a contractor, volunteer or other party to whom the school has outsourced institutional services or functions.

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."

(b)(6) (then) dean of health sciences at the College, and (b)(6) an instructor at the College, would all generally be school officials. A school official generally has a legitimate educational interest if the school official needs access to information in an education record to carry out his or her responsibilities. As stated above, the disclosures you describe appear to be permitted under FERPA.

In your letter, you also state:

> . . . Due to the heinous gossip by (b)(6) the damage I have experienced is considerable. . . .

If you have evidence that (b)(6) or other school official disclosed information from your education records to an unauthorized third party (who is not a school official) absent your prior written consent, you may write to this Office again. In order for us to further consider such an allegation, you should complete one of the enclosed complaint forms and include the following information: the date or approximate date the information was improperly disclosed from your education records, or the date you learned of the disclosure; the name of the school official who made the disclosure, if that is known; the third party or parties to whom the information was disclosed; and the specific nature of the information disclosed from your education records. We will review the information you submit and take any appropriate action.

If you have questions regarding this matter, you may contact me. 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,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures