(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 March 14, 2011. In that complaint, you are alleging that (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. Your son, (b)(6) (Student), attends (b)(6) (School) in the District.

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 convenience is a FERPA complaint form.

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 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 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 parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from obtaining access to the records. 34 CFR § 99.10. A case in point would be a situation in which the 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 Student's school. Therefore, the District is required by FERPA to provide you with an opportunity to inspect and review the Student's education records. The District is not required to provide you with copies of the records, though it is permitted to do so. Also, FERPA permits a school to charge a fee for copies of education record unless the imposition of a fee effectively prevents the parent from exercising the right to inspect and review a student's education records.

It appears you are alleging that the District violated FERPA when it did not provide you an opportunity to inspect and review the Student's education records within 45 days of your January 27, 2010, request. Along with your letter to this Office, you enclosed a copy of a March 15, 2010, e-mail to you from (b)(6), principal of the School. Based on the information in her e-mail it appears that the District attempted to set up an appointment for you to inspect and review the Student's education records. Also, based on the information in (b)(6) e-mail, it appears that you did not attempt to establish a date for an appointment until around March 11, 2010. If this is true, that is about two days before the 45-day period ends. We believe it is unreasonable for a parent to expect a school to set up an appointment for the Parent to inspect and review education records in that timeframe.

Unless you have specific evidence that the information in the above paragraph and/or in (b)(6) March 15 e-mail is inaccurate, there is no basis for this Office to further consider your allegation. In her e-mail, Ms. Donovan states that Ms. Jerden, a school official, telephoned you on January 28 and 29, 2010, and sent you an e-mail on January 29, in an attempt to schedule

an appointment. (b)(6) states (b)(6) telephoned you again on February 16 in an attempt to schedule an appointment. Based on (b)(6) e-mail, you did not agree to a date for an appointment on any of these occasions. If this is not accurate, please provide us with specific evidence that you did attempt to agree to a date for an appointment, such as a copy of an e-mail proposing a date for the appointment. We will review the information you submit and take any appropriate action.

However, in order to exercise your right to inspect and review the Student's education records, I suggest you write again to the appropriate official in the District and request an opportunity to inspect and review the Student's education records to which you are seeking access. 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 District outside of your request for access to education records. Also, you should work with the District around the time of your request to establish a date for an appointment for you to inspect and review the Student's education records. Perhaps, you could suggest some dates when you would be available in your request for access to the records.

If the School fails to comply with your request, or fails to contact you within 45 days, you may contact this Office. At such time, please provide us with a dated copy of your request to the District for access to the Student's education records, any response from the District, and a completed copy of the enclosed complaint form. We will review the information you submit and take any appropriate action.

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 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 § 99.31(a)(1). Although the term "school official" is not defined in the statute or regulations, this Office has interpreted the term broadly to include a teacher; administrator, board member, support or clerical staff; attorney; nurse and health staff; 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."

It also appears you are alleging that the District violated FERPA when (b)(6) an attorney for the District, improperly disclosed information from the Student's education records in a March 19, 2010, e-mail to (b)(6), the student's one time tutor, in an effort to obtain records regarding the Student form (b)(6) As a matter of note, during the time (b)(6) worked for the District, she was a school official and would have a legitimate educational interest in obtaining access to information in education records that she needed to carry out her responsibilities.

However, it appears you are asserting that while (b)(6) tutored the Student, she created records independent of existing education records maintained by the District. If this is true, these records maintained by (b)(6)s would not meet the FERPA definition of education records and would not be protected by FERPA. The District would not generally be prohibited by FERPA from seeking to obtain these records. However, (b)(6) would be prohibited from disclosing information from the Student's education records maintained by the District in her attempt to obtain (b)(6) records.

If you wish this Office to further consider this allegation, we need to receive additional information from you, including a completed copy of the enclosed complaint form. It appears that (b)(6) no longer worked for the District at the time of (b)(6) March 19 e-mail. Please verify whether this is accurate. Based on the information in your letter, it is not clear that (b)(6) email to (b)(6) disclosed any information beyond the Student's name and that the District maintains education records regarding him (i.e., that he attends or attended school in the District). Unless you opted the Student out of directory information, this would generally be a permissible disclosure of information under FERPA. Please inform us whether you opted the Student out of directory information. If not, you need to provide this Office with the specific nature of the information you are alleging (b)(6) disclosed from the Student's education record in the March 19 e-mail. We will review the information you submit and take any appropriate action.

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

Enclosure