(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 June 10, 2010. In that complaint, you are alleging that the (b)(6) (Law School), which is a component of (b)(6) (College) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

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 and complaint form.

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 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 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 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."

FERPA does not specifically address disclosure of education records to contractors, consultants, volunteers, and service providers who are not employees of a school. However, the statutory definition of "education records" recognizes the use of outside service providers in calling for the protection of records maintained by "a person acting for the" school.

Under FERPA, a school must annually notify eligible students in attendance of their rights under FERPA. 34 CFR § 99.7. Among other things, the annual notification must inform eligible students of how the school defines the terms "school official" and "legitimate educational interest." After that, a school may nonconsensually disclose education records to a school official when such official has a legitimate educational interest.

FERPA does not require a school to notify eligible students individually of their rights under FERPA. Rather, the school may provide the notice by any means likely to inform eligible students of their rights. Thus, the annual notification may be published by various means, including any of the following: in a schedule of classes; in a student handbook; in a calendar of

school events; on the school's website (though this should not be the exclusive means of notification); in the student newspaper; and/or posted in a central location at the school or various locations throughout the school. Additionally, some schools include their directory information notice as part of the annual notice of rights under FERPA.

Specifically, it appears you are alleging that the College violated FERPA when your "contracts professor" disclosed information from your education records to his "teaching assistants (who are also students." You state:

> . . . I was outraged to learn that a student was allowed to 1) read my final 2) assist in grading our final by providing feedback to the professor 3) was actually given access to my final and that if I wanted to discuss my grade on the final I needed to see the student [teaching assistant] instead of the professor. . .

Teaching assistants at the graduate level are generally employed by the school. They generally meet the definition of school officials and generally have a legitimate educational interest in obtaining access to education records regarding the types of responsibilities you describe above. Generally, a school official has a legitimate educational interest when that official needs access to information in an education record to carry out his or her responsibilities. Unless you have evidence that the College does not define these terms such that your contracts professor is permitted to nonconsensually disclose information from your education records to his teaching assistants for the purposes you describe above, there is no basis for this Office to assist you regarding your concern.

If you have questions regarding this matter, you may contact me. The name, address, and telephone number of the Office are:

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400 Maryland Avenue, SW
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Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures