

OCT 19 2010

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Dear

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This is in response to your letter, dated September 9, 2010, addressed to Secretary Duncan, concerning the Family Educational Rights and Privacy Act (FERPA). As with your previous letter, dated April 29, 2010, regarding the same matter, your current letter was referred to the Family Policy Compliance Office for response because we administer FERPA. By letter dated May 27, 2010, we responded to your concerns, explaining how FERPA applies to your situation. A copy of that letter is enclosed for your review.

Also enclosed is a fact sheet on FERPA. As noted in our May 27th letter, even if FERPA permitted you to have access to the records you are seeking, (b)(6) College would not be required to provide you with such access. Rather, it would only be permitted to do so.

I regret that we can be of no further assistance to you on this matter.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

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OCT 19 2010

Dear (b)(6)

This is to respond to your August 19, 2010, letter to this Office in which you allege that (b)(6) (b)(6) (School) violated the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. You allege that the above school, school district, or institution did not comply with one of the following provisions of FERPA:

- FERPA's access provision.
- FERPA's disclosure provision.
- FERPA's amendment provision.

FERPA provides that an educational agency or institution that receives U.S. Department of Education funds may not have a policy or practice of denying parents or eligible students the right to:

- Inspect and review education records (34 CFR § 99.10).
- Seek to amend education records (34 CFR §§ 99.20, 99.21, and 99.22).
- Consent to the disclosure of personally identifiable information from education records except as specified by law (34 CFR §§ 99.30 and 99.31).

The term "education records" is defined as those records that are directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for you information is a FERPA Guidance Document and complaint form.

Based on the information you provided this Office, we are unable to investigate your allegation(s) for the following reason(s):

- Your complaint is untimely. A complaint must be received by this Office within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation. (See highlighted portion of the enclosed guidance.)
- While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist. (See highlighted portion of the enclosed guidance.)

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- FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See highlighted portion of the enclosed guidance.)
- You have not provided sufficient information for this Office to determine that a violation of FERPA may have occurred. (See enclosed guidance.)
- Requests to modify a grade, opinions included in education records, and other substantive decisions are not subject to FERPA's amendment provision. (See highlight portion of the enclosed guidance.)

With respect to your allegation regarding the School improperly disclosing to you information from the education records of a student who is not your child, please see page six of the enclosed FERPA guidance document regarding "standing." I have enclosed a complaint form which you may forward to the other parent should that parent wish to file a complaint with this Office.

With regard to your allegation concerning inaccurate information in your child's education records, please see page two of the guidance document regarding "amendment of education records," and page 7 of the guidance document regarding the information that must be included in any complaint to this Office regarding amendment of education records. Please note that the focus of the FERPA amendment procedure is for consideration of "inaccurately recorded" information in education records. A school is not required to respond to a request from a parent seeking to amend information that is not amendable under FERPA. Examples of information not amendable under FERPA are grades, opinions, student placement determinations, and substantive decisions made by schools about students.

I trust this information adequately explains the scope and limitations of FERPA as it pertains to your concerns.

Sincerely,

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Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

Dr. Angela Lynn
Registrar
Office of the Registrar
Sherman Hall 110
1 University Circle
Macomb, Illinois 61455-1390

OCT 29 2010

Dear Dr. Lynn:

This Office is responsible for administration of the Family Educational Rights and Privacy Act (FERPA), which protects the privacy interests of parents and eligible students in students' education records. See 20 U.S.C. §1232g and 34 CFR part 99. Under that authority we investigate, process, and review complaints and violations and provide technical assistance to ensure compliance with all FERPA requirements. We are responding to your letter dated September 24, 2010, in which you explained that on September 3, 2010, an academic advisor inadvertently sent a joint email to all of her advisees that contained protected student education records. Within 1 ½ hours of the breach, the emails were retracted and you notified each advisee that their education records may have been compromised.

Under FERPA, a parent or eligible student must provide a signed and dated written consent before a postsecondary institution discloses personally identifiable information from the student's education records. 34 CFR §§99.5(a); 99.30. Exceptions to the consent requirement are set forth in § 99.31(a) of the regulations. "Disclosure" means "to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means." 34 CFR § 99.3.

The preamble to the December 8, 2009, FERPA regulations explains the necessity for educational agencies and institutions to ensure that adequate controls are in place so that the education records of all students are handled in accordance with FERPA's privacy protections. See 73 *Fed. Reg.* 74806, 74843 (Dec. 9, 2008). The "Department Recommendations for Safeguarding Education Records" (Safeguarding Recommendations) that were published in both the Notice of Proposed Rulemaking (NPRM) and the Final Regulations are intended to provide agencies and institutions additional information and resources to assist them in meeting this responsibility. (The NPRM was published at 73 *Fed. Reg.* 15574, March 24, 2008.)

The FERPA Safeguarding Recommendations recognize that no system for maintaining and transmitting education records, whether in paper or electronic form, can be guaranteed safe from every hacker and thief, technological failure, violation of administrative rules, and other causes of unauthorized access and disclosure. Although FERPA does not dictate requirements for

safeguarding education records, the Department encourages the holders of personally identifiable information to consider actions that mitigate the risk and are reasonably calculated to protect such information. Of course, an educational agency or institution may use any reasonable method, combination of methods, or technologies, taking into consideration the size, complexity, and resources available to the institution; the context of the information; the type of information to be protected (such as SSNs or directory information); and methods used by other institutions in similar circumstances. The greater the harm that would result from unauthorized access or disclosure and the greater the likelihood that unauthorized access or disclosure will be attempted, the more protections an agency or institution should consider using to ensure that its methods are reasonable.

As explained in the FERPA Safeguarding Recommendations, one resource for administrators of electronic data systems is “The National Institute of Standards and Technology (NIST) 800-100, Information Security Handbook: A Guide for Managers” (October 2006). See <http://csrc.nist.gov/publications/nistpubs/800-100/SP800-100-Mar07-2007.pdf>. Another resource is NIST 800-53, Information Security, which catalogs information security controls. See <http://csrc.nist.gov/publications/nistpubs/800-53-Rev1/800-53-rev1-final-clean-sz.pdf>. Similarly, a May 22, 2007, memorandum to heads of Federal agencies from the Office of Management and Budget requires executive departments and agencies to ensure that proper safeguards are in place to protect personally identifiable information that they maintain, eliminate the unnecessary use of SSNs, and develop and implement a “breach notification policy.” Although directed towards Federal agencies, this memorandum may also serve as a resource for educational agencies and institutions. See <http://www.whitehouse.gov/omb/memoranda/fy2007/m07-16.pdf>.

The Department’s FERPA Safeguarding Recommendations specify that an educational agency or institution that has experienced a theft of files or computer equipment, hacking or other intrusion, software or hardware malfunction, inadvertent release of data to Internet sites, or other unauthorized release or disclosure of education records, should consider one or more of the following steps:

- Report the incident to law enforcement authorities.
- Determine exactly what information was compromised, i.e., names, addresses, SSNs, ID numbers, credit card numbers, grades, and the like.
- Take steps immediately to retrieve data and prevent any further disclosures.
- Identify all affected records and students.
- Determine how the incident occurred, including which school officials had control of and responsibility for the information that was compromised.
- Determine whether institutional policies and procedures were breached, including organizational requirements governing access (user names, passwords, PINS, etc.); storage; transmission; and destruction of information from education records.
- Determine whether the incident occurred because of a lack of monitoring and oversight.
- Conduct a risk assessment and identify appropriate physical, technological, and administrative measures to prevent similar incidents in the future.

- Notify students that the Department’s Office of Inspector General maintains a website describing steps students may take if they suspect they are a victim of identity theft at <http://www.ed.gov/about/offices/list/oig/misused/idtheft.html>; and <http://www.ed.gov/about/offices/list/oig/misused/victim.html>.

The Safeguarding Recommendations note also that FERPA does not require an educational agency or institution to notify students that information from their education records was stolen or otherwise subject to an unauthorized release, although it does require the agency or institution to maintain a record of each disclosure. 34 CFR §99.32(a)(1). However, student notification may be required in these circumstances for postsecondary institutions under the Federal Trade Commission’s Standards for Insuring the Security, Confidentiality, Integrity and Protection of Customer Records and Information (“Safeguards Rule”) in 16 CFR part 314. In any case, direct student notification may be advisable if the compromised data includes student SSNs and other identifying information that could lead to identity theft.

Under FERPA, no funds shall be made available to an educational agency or institution that has a policy or practice of permitting the release of personally identifiable information in education records except as authorized by statute. 20 U.S.C. §1232g(b). Failure to take reasonable and appropriate steps to protect education records could result in the release or disclosure of personally identifiable information from education records and may also constitute a policy or practice of permitting the release or disclosure of education records in violation of FERPA requirements. Should this Office investigate a complaint or other indications of noncompliance, we would take into consideration what steps an educational agency or institution has taken in response to a data breach or other unauthorized access to, release, or other disclosure of education records.

If you have any questions, please contact this Office at (202) 260-3887.

Sincerely,

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Ellen Campbell
Acting Director
Family Policy Compliance Office



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

OCT 29 2010

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Dear

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This is to respond to your May 19, 2010, email correspondence and September 7, 2010, complaint form to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (District). Specifically, you allege that the District violated FERPA when it denied you access to education records of your child (b)(6) Student) and when it failed to amend certain of her education records in response to your written requests. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents, custodial and non-custodial alike, the right to have access to his or her child's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records, unless there is a court order or State law that specifically provides to the contrary. The school may ask for legal certification denoting parenthood, such as a court order or birth certificate, from the parent requesting access to education records. The term "education records" is defined as 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.

Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is required to provide a parent with copies of education records, or make other arrangements, only if a failure to do so would effectively prevent the parent from obtaining access to the records. A case in point would be a situation in which the parent does not live within commuting distance of the school.

While a school is required to comply within 45 days with each individual request for access, it is not required by FERPA to honor standing requests, to provide immediate access to records, or to send out grades to parents at the end of marking periods. Further, a school is not required to provide information that is not maintained or to create records that do not exist.

Additionally, FERPA would not require a school to provide parents documents such as school calendars, updates, or notices of parent/teacher conferences because such documents are generally not directly related to individual students. Also, FERPA does not address who will attend parent/teacher conferences or provide a parent with access to teachers – such decisions are made at the discretion of local and State officials.

FERPA affords parents the opportunity to seek amendment of their child's education records which they believe contain information that is inaccurate or misleading. While a school is not required to amend a record in accordance with a parent's request, it is required to consider the request for amendment of an education record, to inform the parent of its decision, and if the request is denied, to advise the parent of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the parent has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

This right is not unlimited, however, and a school is not required by FERPA to afford a parent the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student. This fact is indicated in the legislative history of FERPA. The primary source of legislative history regarding FERPA is contained in the "Joint Statement in Explanation of Buckley/Pell Amendment," Volume 120 of the Congressional Record, pages 39862-39866. The Joint Statement states that FERPA was "not intended to overturn established standards and procedures for the challenge of substantive decisions made by an educational institution." (Emphasis added.) FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. Thus, while FERPA affords parents the right to seek to amend education records which contain inaccurate information, this right cannot be used to challenge a grade, an individual's opinion, or a substantive decision.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has failed to comply with FERPA. A timely complaint is defined as one that is submitted to this Office within 180 days of the date that the complainant knew or reasonably should have known of the alleged failure to comply with FERPA. Based on the May 19, 2010, date when this office received your original inquiry, any allegations you made regarding violations of FERPA which occurred prior to November 20, 2009, are untimely. Allegations that are not timely are not investigated.

In response to your allegation that the District denied you access to the student's education records, you provided information which indicates that the District's stated policy requires parents who request copies of education records to provide it with a self-addressed, stamped envelope before the District forwards such copies to parents. Such a policy does not violate FERPA, unless a failure to do so would effectively prevent the parent from obtaining access to the records. You have not provided information to this office to demonstrate that the District's policy effectively denied you access to the Student's education records when it required you to comply with its access policy. In fact, you acknowledged the District's policy and agreed to

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comply with the District's access policy, and did not further clarify to the District your February 9, 2010, request. Based on copies of your correspondence you provided this office, District officials, including (b)(6) assistant superintendent of educational services, offered you access to the Student's education records in compliance with FERPA. Accordingly, no basis exists for this office to investigate your allegation that the District denied you access to the Student's education records.

In response to your allegation that the District failed to amend the Student's education records in response to your specific request to modify her education records to reflect the Student's birth name as it appears on her birth certificate, the District held a hearing on July 22, 2010. At that hearing, the District considered your request for amendment, denied your request to modify her records and complied with your request to insert your statement in the records in regard to your request for amendment in compliance with FERPA. Accordingly, no basis exists for this office to investigate your allegation that the District failed to afford you an opportunity to seek an amendment of the Student's records as you alleged.

I trust this information addresses the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

(b)(6)

Ellen Campbell
Acting Director
Family Policy Compliance Office