DEC - 8 2009

(b)(6)

Dear (b)(6)

This is to respond to your October 12 and 23, 2009, letters to this Office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by (b)(6) (College). In your letters, you allege that the College failed to comply with your written request to access your education records within 45 days after it received your request. Specifically, you state that you requested in your August 6, 2009, letter (received by the College on August 10, 2009) to (b)(6) director of admission at the College, that he provide you with access to certain of your education records. You also allege that the College violated FERPA when it did not amend certain of your education records, including staff/student opinions which relate to your disciplinary records and a substantive decision involving your transcript. As you know, this Office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives eligible students the right to have access to their 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. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.

In response to your allegation that the College did not comply with FERPA's 45-day access provision, this Office informed you in a September 24, 2009, letter that Mr. Bernard Cieplak of my Office contacted (b)(6) on September 19, 2009, to provide him with technical assistance regarding FERPA's 45 day access requirement and to inform you that the College would soon contact you to provide you with access to your education records. (b)(6) wrote to you on September 21, 2009, (postmarked September 22, 2009) and offered you the opportunity to inspect and review your education records. You state that you received the College's September 2009 letter in which it offered you to inspect and review your education records, however, you provided this Office with no evidence to confirm the date when you received that letter. Without further evidence from you which verifies that the College's September 21, 2009, letter, was not received by you within 45 days of it receiving your August 6, 2009 request for access, this Office is unable to investigate your allegation that the College failed to comply with FERPA's 45-day access provision. Additionally, you confirmed in your letter that the College provided you with access to your education records. Based on these facts, the District complied with FERPA when it offered you the opportunity to inspect and review your education records within 45 days after it received your request. Accordingly, no basis exists for this Office to investigate your allegation that the College did not comply with FERPA's 45-day access requirement.

In response to your allegation that the College did not comply with FERPA when it failed to amend certain of your education records, FERPA affords students the opportunity to seek amendment of their 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 student's request, it is required to consider the request for amendment of an education record, to inform the student of its decision, and if the request is denied, to advise the student 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 student 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 student 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 students the right to seek to amend education records which contain inaccurate information, this right cannot be used to challenge substantive decisions or an individual's opinion. The records you are seeking to amend pertain to a substantive decision involving your transcript and opinions made about you. As discussed above, FERPA's amendment provision does not apply in this instance. Accordingly, no basis exists for this Office to investigate your allegation that the College did not amend certain of your education records.

I trust this information is helpful in explaining the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

Mr. Paul Gammill
Director
Family Policy Compliance Office