(b)(6)

JAN 0 8 2009

Dear (b)(6)

This is in response to your November 27, 2008, complaint form and November 28, 2008, letter to this Office in which you make a number of allegations regarding (b)(6) (College) violating your rights under the Family Educational Rights and Privacy Act (FERPA). This Office administers FERPA which addresses issues that pertain 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" 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. Enclosed for your information is a guidance document regarding FERPA.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated 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 violation. Based on the information in your November 28 letter, it appears that you knew of these alleged violations of FERPA by the College in 2003. Notwithstanding the fact that these allegations do not appear to meet FERPA's threshold requirement for timeliness, below is additional information regarding FERPA as it would apply to the alleged violations.

In your complaint form, you state:

1. The College has reported to the [NSLDS] National Student Loan Data System that I have withdrawn myself completely from the College which I did not do.

2. The School has posted to my college statement unjustified debt for the amount of $1750, and hired a collection agency to collect this amount plus $588 of

> collection fee. This unjustified debt has also been reported to my Credit Bureau Report.

[Emphasis supplied] Under FERPA, a school may not generally disclose personally identifiable information from a student's education records to a third party unless the student has provided written consent. However, there are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records.

One such exception permits a school to disclose education records without consent when the disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to: determine the eligibility for the aid; determine the amount of the aid; determine the conditions for the aid; and/or enforce the terms and conditions of the aid. With respect to this exception, the term "financial aid" means payment of funds provided to an individual (or payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at a school.

Based on the information provided by you regarding the two allegations above, it appears the College disclosed information from your education records in regard to determining your current eligibility for financial aid and to enforce the terms and conditions for financial aid which you had received. As such, even if these allegations were timely, it appears there is no basis for this Office to further consider them.

In your November 27 complaint form, you allege that you did not receive the grade you deserved for a speaking course taught by [redacted] Specifically, you state:

> . . . The professor has graded me based on my attendance, and not based on my performance.
>
> Therefore, I request that the College modify the grade for this course from "D" to "W" as I have withdrawn from the course . . . For the same reason, I request that the College issue a refund for this course. . . .

Under FERPA, a student has the right to request that inaccurate or misleading information in his or her education records be amended. While a school is not required to amend education records in accordance with a student's request, the school is required to consider the request. If the school decides not to amend the record in accordance with the student's request, the school must inform the student of the right to a hearing on the matter. If, as a result of the hearing, the school still decides not to amend the record, the student has the right to insert a statement in the record setting forth his or her views. That statement must be maintained with the record for as long as the record is maintained.

However, while the amendment procedure may be used to challenge facts that are inaccurately recorded, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about a student. The FERPA amendment procedure is 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. As indicated above, you may not seek to amend your grade under the FERPA amendment procedure.

In your November 28 letter you raise concerns regarding school policies and procedures for student payment for housing, withdrawal from classes, refund of tuition, and withdrawal from school. Please note these issues, as you have raised them, are not addressed by FERPA and will not be discussed in this letter.

In your November 28 letter, you also raise a number of concerns regarding alleged inaccurate information contained in your education records maintained by the College. Please note that the focus of the FERPA amendment procedure is for consideration of "inaccurately recorded" information in education records. For example, let's say a professor required student attendance at a minimum of 17 of the 20 classes scheduled for a biology course over a semester, and the professor has marked a particular student as having attended only 16 classes. The professor has marked the student absent on November 8 and three other dates. Let's say the student has evidence that he or she was in attendance in class on November 8, such as a quiz taken on and dated November 8 which had been graded and returned to the student by the professor. The student could inform the appropriate official at the College that information regarding the student's attendance on the biology professor's attendance record is inaccurately recorded and request amendment of the record under FERPA. The student could submit a copy of the November 8 quiz as evidence to support his assertion that the information on the attendance record is inaccurately recorded.

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 and provide the College with evidence to support your assertion that such information is inaccurately recorded. If the College does not amend the inaccurately recorded information as you have requested or offer you the opportunity for a hearing on the matter, you may write to this Office. At such time, please provide us with a dated copy of your request to the College, including your supporting evidence, and any response from the College. We will review the information you submit and take any appropriate action.

Please note, as indicated above, that the College is not required to respond to you regarding a request to amend information in your education records that is not amendable under FERPA. Examples of information not amendable under FERPA are grades, opinions, and substantive decisions made by schools about students.

In your November 25 letter, you state:

> . . . Therefore, on 04/08/2003 I have filed a complaint with the "Better Business Bureau" regarding this unjustified debt. . . .
>
> . . . The College has filed a false and unjustified statement with the Better Business Bureau in response to a complaint I have made against the College regarding the $1750. . . .

As stated above, a school is not generally permitted by FERPA to disclose personally identifiable information from a student's education records to a third party unless the student has provided written consent. However, there are occasions in which an educational agency or institution may appropriately infer an implied waiver of the right to consent, such as when a parent or eligible student has sought the involvement of a specific third party regarding a conflict he or she has with the school. Specifically, an educational agency or institution may infer an implied waiver of the parent's or eligible student's right to consent to disclosure when:

1) the parent or student has taken an adversarial position against the educational agency or institution;

2) the parent or student has initiated the involvement of the third party by contacting that third party in writing, and, in so doing:

a) set forth specific allegations against the educational agency or institution; and

b) requested that action be taken against the educational agency or institution or that the third party assist the parent or student in circumventing decisions made about the student by the educational agency or institution;

3) the third party's special relationship with the educational agency or institution (Examples include: an educational agency or institution's grantor/grantee relationships; an educational agency or institution's relationship with a state or

federal commission charged with looking into allegations made by a parent or student.):

a) gives the third party authority to take specific action against the educational agency or institution; or

b) reasonably could be significantly adversely affected if the educational agency or institution cannot refute the allegations; and

4) the disclosure is as limited as is necessary for the educational agency or institution to adequately defend itself from the student's charges or complaint. The third party should follow the procedures set forth in 34 CFR § 99.33 on limitations that apply to the redisclosure of information derived from education records.

Notwithstanding the fact that this alleged disclosure does not appear to meet FERPA's threshold requirement for timeliness, it appears that it meets FERPA's criteria for an implied waiver of the right to consent. You filed a complaint against the College with the Better Business Bureau. It appears the College appropriately inferred an implied waiver of your right to consent to disclosure of certain information from your education records to the Better Business Bureau in order for the College to respond to the issues raised in your complaint.

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office