AUG 23 2010

Honorable Bernard Sanders
United States Senator
1 Church Street, 2nd Floor
Burlington, Vermont 05401

Dear Senator Sanders:

This is in response to your August 10, 2010, letter to this office on behalf of your constituent (b)(6) regarding allegations that she makes against (b)(6) (College) under the Family Educational Rights and Privacy Act (FERPA). This Office administers FERPA which addresses issues pertaining to education records. 20 U.S.C. § 1232g; 34 CFR Part 99.

As you know, FERPA is a Federal law that affords parents and eligible students the right to have access to their children'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. Education records are those records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for the agency or institution. Under FERPA, "Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

FERPA generally requires prior written consent for the disclosure of personally identifiable information, from education records, except in certain limited circumstances specified by statute. One of the exceptions to the prior written consent provision permits a school to disclose education records to officials of another school where the student seeks or intends to enroll. A school that discloses education records under this provision must make a reasonable attempt to notify the student of the disclosure, unless the disclosure is initiated by the eligible student, or the school's annual notification of rights under FERPA includes a notice that it forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll. Your constituent explains that two professors at the College may have learned of her previous history at the prior school where she was enrolled. As noted above, at the time (b)(6) transferred to the College, her records from her previous school may have been forwarded to the College under this exception in compliance with FERPA.

Another exception to the prior written consent requirement in FERPA allows "school officials, including teachers, within the agency or institution" to obtain access to education records provided the educational agency or institution has determined that they have "legitimate educational interests" in the information. 34 CFR § 99.31(a)(1). Although "school official" is not defined in the statute or regulations, this Office has interpreted the term broadly to include a teacher; school principal; president; chancellor; board member; trustee; registrar; counselor; admissions officer; attorney; accountant; human resources professional; information systems specialist; and support or clerical personnel.

Section 99.7(a)(3)(iii) of the FERPA regulations requires an educational agency or institution to include in its annual notification of rights under FERPA a statement indicating whether it has a policy of disclosing personally identifiable information under § 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest. See online – Post secondary model notification: http://www.ed.gov/policy/gen/guid/fpco/ferpa/ps-officials.html Because the two professors in question are currently teaching (b)(6) it appears that they meet the exception under FERPA that permits school officials with legitimate educational interest to access her education records in compliance with FERPA. Finally, FERPA prohibits the improper disclosure of information derived from education records. Therefore, information that is based on opinion or hearsay and not specifically contained in education records would not be protected under FERPA.

We are enclosing for your constituent a FERPA guidance document, and complaint form. If, after reviewing these documents, she continues to believe the College failed to comply with the requirements of FERPA, she may complete the complaint form and return it to this Office. We will review the information she provides and take any appropriate action.

Should you or your staff have any additional questions in regard to this matter or questions about the administration of FERPA, you may contact us directly at:

Family Policy Compliance Office
U. S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-8520
Telephone: (202) 260-3887

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures