Mr. Matthew S. Wolf
Attorney
Pappas & Wolf, LLC
423 White Horse Pike
Haddon Heights, New Jersey 08035

MAR 15 2011

Dear Mr. Wolf:

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to February 19 and 22, 2010, complaints filed by you on behalf of your clients, (b)(6) (Parents). In that complaint, the Parents are alleging that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. Specifically, the Parents allege that the District improperly disclosed information from the education record of their son, (b)(6) Student), a student who receives special education services.

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.

This Office's enforcement process is intended to work cooperatively with schools and districts to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the district and the complainant a notification letter about the allegation, and requesting a written response from the district concerning the allegation. If we then determine that a district is in violation of FERPA, the district and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the district 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 district take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the district 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 the Office reasonable cause to believe that a FERPA violation occurred. In order for the 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 parent or 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. This Office will not consider further the Parent's allegation regarding improper disclosure of information from the Student's education record by Mrs. Tracey Dunn because this allegation does not meet FERPA's threshold requirement for timeliness.

The other allegation of an improper disclosure concerns a letter written by (b)(6) superintendent of the District, to the (b)(6) a local newspaper. In the letter, Dr. Lynch explains the reason he believes the (b)(6) failed to make adequate yearly progress under the Federal No Child Left Behind (NCLB) Act for the 2009-2010 school year. In his letter to the local newspaper, (b)(6) s that not enough of the students in the "subgroup labeled special education" met the NCLB guidelines for proficiency in mathematics.

"Personally identifiable information" includes, but is not limited to: the student's name; the name of the student's parent or other family member; the address of the student or student's family; a personal identifier, such as the student's social security number, student number or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. 34 CFR § 99.3 "Personally identifiable information."

Based on the information provided to us, (b)(6) did not disclose the name of the Student or the names of any of the other students in his letter to the (b)(6) nor did he disclose any information that is linked or linkable to the Student or any student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the Student or any other students with reasonable certainty. As such, there is no basis for this Office to further 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:

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

Sincerely,

Kathleen Wolan
Program Analyst
Family Policy Compliance Office