

FEB 15 2012

(b)(6)

We are writing to inform you that the Family Policy Compliance Office (FPCO or this Office) is not initiating an investigation with regard to a complaint you filed with us on April 25, 2011. In that complaint you alleged that (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. Specifically, it appears that you are alleging that the District violated FERPA when, in March or April 2011, the District held an assembly and rewarded individual students who received proficient or advanced status on the (b)(6) (MAP).

This Office investigates certain complaints under authority of Subpart E of the FERPA regulation (34 CFR Part 99) 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 accessed through the Office 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, this Office 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 this Office then determines 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 as the result of a FERPA violation. This Office closes its investigation when the district has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it is not clear that it meets the standing requirement described in (a), above. Only a parent or eligible student (as defined by in 34 CFR §99.3) has rights protected by FERPA. FERPA does not vest these rights in any third party. An individual must have suffered an alleged violation of his own protected rights, in order to file a valid complaint under FERPA. You do not state whether you are the parent of a student in the District whose records you believe were improperly disclosed during the assembly.

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 has provided specific prior written signed consent for the disclosure.

However, FERPA allows for limited disclosure of such records without consent under certain circumstances to specific persons and under specific conditions as detailed at 34 CFR § 99.31. One of these exceptions permits the nonconsensual disclosure of "directory information" that has been appropriately designated as "directory information" by the educational agency or institution. FERPA defines directory information as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

A school may disclose directory information to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the parent's right to restrict the disclosure of such information, and the period of time within which a parent has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." The means of notification could include publication in various sources, including in a newsletter, in a local newspaper, or in the student handbook. A school is not required to individually notify parents regarding directory information.

Thus, FERPA permits schools to publish honor rolls, for example, as long as honor or award is appropriately designated as a directory information item. Similarly, recognizing students who pass an assessment test with an advanced status would generally meet the FERPA directory information exception. Given the facts alleged, the disclosure you described for students achieving advanced status on the assessment test could be authorized if the District designates "honors and awards" as a category of directory information. Furthermore, honoring the students who achieve advanced status does not automatically identify the scores achieved by the students who were not honored.

With regard to your allegation, it remains unclear whether honoring students who achieved a proficient rating on the test is sufficient under FERPA to meet honor or award under FERPA's directory information exception, although you do indicate that at the assembly, the District was also honoring students who received a proficient status on the MAP.

Enclosed for your reference are a FERPA guidance document and a complaint form. If you are the parent of a child whose education records were improperly disclosed, you need to make the following distinctions to this Office should you decide to pursue your complaint:

1. Are you a parent of a student in the District? If yes, please list the possible MAP status or scores that students can attain in addition to "advanced" and "proficient."
2. If your child received a proficient status, are you alleging that his or her score of proficient on the MAP was improperly disclosed at the assembly when the District awarded the students who attained both advanced and proficient? If yes, please explain how.
3. If your child did not receive an advanced or proficient status on the MAP, are you alleging that by honoring the advanced and proficient students, that in turn identified the score attained by your child? If yes, please explain how.

If you wish us to consider your allegation, please complete the complaint form, including responses to the above questions and return it to FPCO at the address shown below.

If you have questions regarding this matter, you may contact this Office at:

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

Sincerely,

Ellen Campbell  
Acting Director  
Family Policy Compliance Office

Enclosure