

JUN 27 2012

(b)(6)

Dear (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 by letter dated April 11, 2012. In that complaint, you are alleging that the (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; CFR Part 99. Your son, (b)(6) (Student), attends school at (b)(6) School (School) in the District.

This Office investigates certain complaints alleging violation of FERPA if it:

- (a) Is filed by the “parent” of a 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 this office reasonable cause to believe that a FERPA violation occurred. In order for this office to initiate an investigation, a complaint must contain such specific allegations.

Under FERPA, 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. 34 CFR § 99.3 "Education records." 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.

Please note that FERPA does not protect the confidentiality of information in general and, therefore, does not apply to disclosure of information derived from a source other than education records, even if education records exist which contain that information. Rather, FERPA protects information derived from education records from improper disclosure. As a general rule, information obtained through personal knowledge, personal observation, or from hearsay -- and not from an education record -- is not protected from disclosure under FERPA.

Specifically, you allege officials at the School are improperly disclosing information from the Student's education records to a front office worker at the School who is also the parent (Parent) of a student (Other Student) at the School. The Other Student is in the same third grade class as the Student. As evidence to support your allegation, you provided us with a February 13, 2012, e-mail sent by the Other Parent to (b)(6) principal at the School, and (b)(6) (b)(6) interim executive director at the District. With regard to the e-mail, you state:

1. The content contains nearly verbatim information that is currently under discussion in [the Student's] supposedly confidential IEP team process. For instance the [Other Parent] uses the term "meaningful consequences" . . . to address [the Student's] behaviors. This is a hot button topic for the school staff members who are part of the

[the Student's] IEP team. From [December] 2011 through March 2012 our IEP team has had a series of meetings to address [the Student's] behavioral intervention plan. "Meaningful consequences" refers to a conversation within the IEP team about the system of positive behavioral supports which is part of [the Student's] IEP. The school principal believes these do not hold [the Student] accountable for his behavior. In [paragraph] #5 the [Other Parent] states that teachers and specialists are "powerless to hold [the Student] accountable even within the limitations of his disability." This is nearly verbatim the conversation in the IEP team.

2. The content closely aligns with information in the principal's handwriting that is on the back of a supposedly confidential Student Discipline History Report . . . In [paragraph] #5 the [Other Parent] writes that [the Student] has been heard claiming that he can do what he wants and won't get into trouble. The principal has used these exact words repetitively in our IEP team meetings. On the back of the Discipline History Report the principal records "3 times overheard: "Tell them I did it because they can't [make] me stay in for recess" or "they won't punish me."

In her e-mail, the Other Parent claims that the information she is sharing in the e-mail came from her observations and from hearsay, such as information told to her by the Other Student. Specifically she states:

. . . As a parent of a special needs child, a volunteer and a part time staff member I have spent innumerable hours in various capacities in the classrooms, hallways, and playgrounds. This has provided me with many opportunities to witness a growing number of disturbing occurrences perpetuated by [the Student] and exacerbated by his mother . . .

Since the Other Student also receives special education services, it is reasonable to expect that the Other Parent would be familiar with and use some technical terms and phrases that are used by special education professionals. She may have very well had discussions with school officials regarding "meaningful consequences" relative to the Other Student, and discussions regarding holding the Other Student "accountable even within the limitations of his disability." The Other Parent could have overheard the Student stating: "Tell them I did it because they can't [make] me stay in for recess" or "they won't punish me." Alternatively, the Other Student could have told the Other Parent about those statements the Student had made.

Based on the evidence you have submitted, it is not clear that an improper disclosure of the Student's education records occurred. If you have any additional evidence that the Other Parent obtained or was provided information from the Student's education records -- not information

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that could be obtained from personal observation or hearsay -- you may provide it to this Office. We will review the information you submit and take any appropriate action.

If you have questions regarding this matter, you may contact me. The name, address, and telephone number of the office are:

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Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office