

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 the (b)(6) Preparatory High School of the School District of (b)(6) (District) violated the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. Specifically, you allege, in part, that the District violated FERPA when it provided the education records of an 18 year old student who attends the District to that student's father. The other issues you raise are not addressed by FERPA and as such will not be discussed in this letter.

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 this Office's 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 does not meet the standing requirement described in (a), above. Only a parent or eligible student, that is a student who has reached 18 years of age or is attending an institution of postsecondary education, 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.

Accordingly, the FERPA rights in the education records you describe belong to the 18 year old eligible student, and it would be the responsibility of the eligible student to file a timely complaint under FERPA with this Office. The student would need to establish that his rights under FERPA were violated when the District did not provide him access to his education records within 45 days of his request, or that the District improperly disclosed his education records to his father. Enclosed is a guidance document on FERPA that outlines exceptions under which prior written consent is not required to disclose education records. One exception that we have highlighted and that may allow for disclosure absent consent is to parents of a student who claim the child as a dependent for income tax purposes, regardless of the student's age.

If you have other questions, you may contact us 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