June 22, 1998

Dr. Hoke Smith
President
Towson State University
Towson, Maryland 21204-7097

Complaint No. [ ]
Family Educational Rights
and Privacy Act

Dear Dr. Smith:

This is to advise you of the partial finding in the complaint filed with this Office by Ms. [ ] under the Family Educational Rights and Privacy Act (FERPA). Ms. [ ] alleged that Towson State University (University) violated her rights under FERPA when it disclosed information from her education records to [a newspaper] and when it denied her access to certain of her education records. By letter dated February 18, 1998, this Office advised you of the allegations and by letter dated March 27, 1998, Mr. Michael A. Anselmi, University Counsel, responded on behalf of the University. Each allegation is discussed separately below.

ALLEGATION 1

[ ] alleged in her December 20, 1997, letter to this Office that the University violated her rights under FERPA when Mr. Anselmi disclosed without her consent her education records and medical records to [ ], a reporter for [the newspaper]. She stated that the article came out on or before [ ] and that she learned of it on [ ]. She explained that Mr. Anselmi provided [the reporter] with a consent for her to sign prior to disclosing information from her education records, but that upon seeing the consent she "had second thoughts about doing the article at all." She stated that when she next spoke with [the reporter], she was advised that Mr. Anselmi had already disclosed information from her education records based on "the recent Family Policy Compliance Office ruling that allowed Johns Hopkins University to release information to a third party without written consent."

Mr. Anselmi responded to this allegation by asserting that the University had not violated FERPA as alleged when it disclosed information from Ms. [ ]'s education records to [the newspaper] because Ms. [ ] "impliedly waived her right to consent." Mr. Anselmi cited in support of his claim a February 19, 1997, letter of finding issued by this Office in which we ruled that Johns Hopkins University had not violated FERPA when it disclosed information from a student's education records to the student's employer, the National Cancer Institute (NCI). Mr. Anselmi stated the following:

> Although FERPA regulations do not address waiver, the Department has ruled that students can impliedly waive the right to consent to disclosure. Specifically, in the November 21, 1996 Final Rule, the Department ruled that a student who sues a school impliedly waives the right to consent to disclosure before the school releases information in its defense. See 61 FR 59292, 59294. Thereafter, by letter of ruling of February 19, 1997 . . . the Department extended the reach of the implied waiver rule and said that universities may release information from student records, without consent where (1) "a student has taken an adversarial position against an institution"; (2) "made written allegations of wrongdoing against the institution"; and (3) "shared this information with third parties". As more particularly shown below, [ ] has a long history of filing charges of wrongdoing against the University. This history, coupled with the seriousness of

> the charges she made to [the newspaper], fully supports a finding of waiver in this matter.

Mr. Anselmi further stated that Ms. [ ] had previously sought to involve third parties in her dispute with the University by contacting them in writing about her concerns. He provided a list of those parties, which includes accrediting associations, state legislators, the Maryland Higher Education Commission, the Attorney General of Maryland, the Chancellor of the University of Maryland System, the Maryland State Treasurer, and [another newspaper]. He asserts that Ms. [ ]'s history in contacting third parties with "convenient and purposeful disclosure of her educational records . . . clearly weakens her claim of confidentiality in these records." He further stated the following:

> Apparently, as a last resort, [ ] wrote [the newspaper] in [ ]. . . . Following review of the charges, [ ], a [ ] reporter, telephoned the University's attorney in [ ] asking for information about [ ] charges. [The reporter] said [ ] provided her a number of documents to support her claims. . . . During the phone call, [the reporter] verbally summarized [ ]'s allegations. . . .
>
> * * * * *
>
> [The reporter] informed the University that she would report on these charges and she requested a timely University response. [The reporter] said she spoke to [ ] and that [ ] would consent to the University's reference to educational records in its response to the charges. By letter dated [ ] . . . the University provided [the reporter] the written consent form for [ ] to sign. Shortly thereafter, [the reporter] informed the University that [ ] would not sign the consent. Nonetheless, [the reporter] wished to proceed with the article and again provided the University an opportunity to respond. Given the seriousness of [ ]'s charges, the University reasonably could assume it would be harmed if it did not answer them.

Mr. Anselmi then stated that "neither the public nor the University's interest are served by an article that reports only the student's allegations of wrongdoing." He also stated that the University sought to obtain the student's consent, but that she refused. He contended that:

> [c]learly, [ ] cannot be permitted to charge the University in a public forum with serious misconduct and then, knowingly and intentionally, seek to deprive the University from using the very information it needs to defend itself. Fairness required that the University be permitted to respond without [ ] consent; accordingly, finding a waiver of the right to consent in these circumstances is entirely appropriate and fully supported.

Mr. Anselmi stated that the information from Ms. [ ]'s education records that was disclosed was directly and solely limited to that information that was necessary to respond to the charges made to [the reporter] by Ms. [ ]. He further stated that [the reporter] was not permitted to view nor was she provided copies of Ms.[ ]'s education records, but that he did reference the education records to refute the charges that Ms. [ ] made to [the newspaper].

Mr. Anselmi provided this Office with a copy of his [ ] letter to [the reporter] in which he provided her with a consent form for Ms. [ ] to sign. Mr. Anselmi also provided [the reporter] with a copy of the Department's February 19, 1997, letter to Johns Hopkins University (which he refers to as the "Ruling") and stated:

> While I believe the Ruling applies to the [ ] allegations, it is always best to obtain a student's written consent; accordingly, I would appreciate you having Ms. [ ]

> execute the attached original before we speak on Friday morning. . . . [I]f Ms. [ ] elects not to sign the Consent, I will rely on the Ruling in our discussions.

The consent form, a copy of which he also provided this Office, states:

> I, [ ], consent to the release, inspection, copying or other disclosure, including the discussion of, any and all student records (whether academic, disciplinary, financial, scholarship, degree or otherwise) to [the reporter] or other journalists employed by [the newspaper], or parties associated with that paper, in connection with their review and report on recent allegations I made against Towson University. This authorization may only be revoked by a subsequent writing signed by me, and any person or entity presented with an original or copy of this authorization shall be duty bound promptly to release the information referred to above.

The consent includes a signature line for Ms. [ ] to sign her name.

DISCUSSION

FERPA generally prohibits the nonconsensual disclosure of education records. The term "education records" is defined as those records which contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." "Disclosure" means to permit access to or the release, transfer or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means. 34 CFR § 99.3 "Disclosure."

FERPA generally requires that a student provide written consent before an educational agency or institution discloses a student's education records. 20 U.S.C. §1232g(b); 34 CFR § 99.30 and 99.31. While there are several statutory exceptions to the written consent provision, none permits the nonconsensual disclosure in circumstances such as the subject of this complaint. 20 U.S.C. § 1232g(b); 34 CFR §99.31. Moreover, neither the statute nor the regulations specifically permit an educational agency or institution to infer an implied waiver of the right to consent.

As Mr. Anselmi referenced in his letter, the Department stated in the "Analysis of Comments and Changes" section of the November 21, 1996, publication of the FERPA Final Rule issued to implement certain changes made to FERPA by the Improving America's Schools Act of 1994 that this Office has a policy of permitting a school to infer an implied waiver of the right to consent to disclosures of information from education records if the parent or student has sued the institution. The rationale for this policy is based on the belief that a student or parent should not be permitted to use rights afforded them under FERPA to prevent an educational agency or institution from defending itself in a court of law when the parent or student has initiated legal action and seeks damages against the agency or institution. In such circumstances, the educational agency or institution must be able to defend itself. The Department has maintained a consistent position on this issue, and advises educational institutions that any disclosure of personally identifiable information from a student's education records to a court of law in response to a lawsuit filed against the institution by the student must be limited to that information necessary to defend itself against the specific charges made.

Mr. Anselmi also correctly notes in his letter that this Office extended its policy permitting educational agencies and institutions to infer an implied waiver of the right to consent in other specific circumstances. However, the policy was extended based on the narrow set of facts present in that particular case, although our February 14, 1997, finding did not explicitly state this. In that case, a student copied his letter to a dean at Johns Hopkins University in which he had made allegations concerning Johns Hopkins University and a professor therein to his then employer, the National Cancer Institute (NCI). The dean responded to the student's letter, and

sent a copy of the response to NCI, which was an organization with which Johns Hopkins has a special grantor-grantee relationship. The student requested that NCI, based on his allegations, take a particular action to assist him outside Johns Hopkins, and Johns Hopkins disclosed the information believing that, as such, NCI should be fully aware of the facts and have information from the perspective of Johns Hopkins on the matter.

In an August 14, 1995, letter, this Office issued its finding that Johns Hopkins had violated FERPA as alleged, based on the policy of this Office to permit a school to infer an implied waiver of the right to consent only in limited situations, specifically where a student files a lawsuit against a school and a school cannot defend itself without reference to information from the student's education records. In so doing, this Office took into consideration the fact that NCI was not rendering a decision affecting Johns Hopkins based on the student's allegations. In a July 10, 1996, letter, Johns Hopkins requested that this Office reconsider the complaint and our policy of allowing a school to infer an implied waiver of the right to consent in extremely limited circumstances. We did so, and as a result issued the February 14, 1997, finding in which we stated:

> Based on the additional information provided by the University in its July 10 letter, we have determined that this complaint is analogous to an educational institution inferring a student's implied waiver of the right to consent to the release of information from his education records when the student has sued the institution. In both instances, the student had requested the involvement of an entity outside of the institution, and it is logical and appropriate that the institution would respond on the record.
>
> Therefore, we believe that if a student has taken an adversarial position against an institution, made written allegations of wrongdoing against the institution, and shared this information with third parties, the institution must be able to defend itself. In order to defend itself, it would be difficult for an institution to provide a response without referring to the student's education records.

While the policy statement made in the Johns Hopkins finding was general and suited toward a broad application, the extension of the policy on implied waiver of the right to consent was based on a narrow set of facts. In retrospect, this Office believes that it should have more clearly delineated guidelines in the Johns Hopkins ruling that would have better clarified those situations, other than those in which the student has sued the agency or institution, where it is appropriate for an educational agency or institution to infer an implied waiver of the right to consent. We therefore set forth clearer guidelines in this decision today. However, we also wish to emphasize that any educational agency or institution that faces a question about disclosure with respect to an implied waiver of the right to consent should contact this Office with details about the particular situation it is facing for guidance before the agency or institution releases any education records. As a matter of clarification of the Department's policy on permitting an educational agency or institution to infer an implied waiver of the right to consent to disclosure of personally identifiable information from a student's education records in a non-litigation context, we offer the following guidelines:

> The Department will support an educational agency or institution that has inferred an implied waiver of the student's right to consent to disclosure when:,
>
> 1. the student has taken an adversarial position against the educational agency or institution;
> 2. the student has initiated the involvement of the third party by contacting that party in writing, and, in so doing:
>
>   a) set forth specific allegations against the educational agency or institution; and,

b) requested that action be taken against the educational agency or institution or that the third party assist the student in circumventing decisions made about the student by the educational agency or institution;

3. the third party's special relationship[1] with the educational agency or institution:

   a) gives the third party authority to take specific action against the educational agency or institution; or,

   b) reasonably could be significantly adversely affected if the educational agency or institution cannot refute the allegations; and

4. the disclosure is as limited as is necessary for the educational agency or institution adequately to defend itself from the student's charges or complaint. The third party should follow the procedures set forth in 34 CFR § 99.33 on limitations that apply to the redisclosure of information derived from education records.

In formulating and establishing a policy that is not directly addressed by FERPA and is being implied, the Department seeks to ensure that the basis for such policy is strong enough to outweigh the potential harm. In this circumstance, the strong policy consideration behind the waiver of the right to consent doctrine is that an educational agency or institution should be able to defend itself against an adversarial position that has been taken against it by a student where the student has shared this information in writing with a third party that has a special relationship with the educational agency or institution in a way that could significantly adversely affect the educational agency or institution. The potential harm is the dissemination of personally identifiable information from education records without the appropriate written consent. The above guidelines are our effort to minimize the harm, while at the same time to protect the strong policy consideration that gives rise to the doctrine of the waiver of the right to consent.

The widespread dissemination that occurred with Ms. [ ]'s records is not permissible under the implied waiver of the right to consent for two reasons. First, the harm to Ms. [ ] from the disclosure to the [the newspaper] was too great. In this respect, the harm to the student differs from a disclosure in a lawsuit or a disclosure to a discrete third party that has a special relationship with the educational agency or institution and has been asked by the student to assist the student in an adversarial situation with the educational agency or institution. With respect to the University's disclosure to the [the newspaper], there can be no effective limitation on the widespread dissemination of the information from Ms. [ ]'s education records. Unlike a situation where the student has sued the school, the student cannot seek an order of protection from further disclosure when a school has disclosed records to the general public. Similarly, unlike a situation where information is disclosed to a discrete third party that has a special relationship with the educational agency or institution and has been asked by the student to assist the student in an adversarial situation against the educational agency or institution, the disclosure of information in this case was to the general public, and there can be no limitation on redisclosure. The harm to the student's privacy interest under FERPA is simply too great where the disclosure of personally identifiable information in education records is to the general public.

Second, unlike situations in which an educational agency or institution would be unable to defend itself in litigation brought by the student, or in which the educational agency or institution's special relationship with a third party could be significantly adversely affected, or the third party might take specific action against the educational agency or institution unless the agency or institution could refute the charges made against it by the student, the media and the general public cannot take such specific actions. Nothing in FERPA prevents an educational agency or institution from responding to a request for information or an interview with a statement to the effect that FERPA prohibits the disclosure of information from the student's education records which would be

necessary to respond. If information is published which is inaccurate and misleading, FERPA does not prohibit an educational agency or institution from filing suit for libel.[2]

With regard to Mr. Anselmi's assertion that Ms. [ ]'s history of writing third parties with her allegations against the University "weakens her claim to confidentiality," FERPA does not protect the confidentiality of information, per se. Rather, FERPA affords students a right to privacy of information contained in their education records, in particular, the right to consent to most disclosures of personally identifiable information derived from their education records. With respect to Mr. Anselmi's reference to previous occasions where Ms. [ ] sought the involvement of third parties with respect to her complaints against the University, it is possible that some of those sets of circumstances would have met the criteria for inferring an implied waiver of the right to consent, as outlined above. However, because any such disclosures by the University that may have occurred in such instances where Ms. [ ] contacted other third parties regarding her complaints against the University are not subject to the investigation of this complaint, further comment or analysis of such circumstances is immaterial to this letter of finding.
Finally, with regard to the consent which Mr. Anselmi drafted and provided to [the reporter] for Ms.[ ], FERPA requires that a student's consent for disclosure of education records must:

1. Specify the records that may be disclosed;
2. State the purpose of the disclosure; and
3. Identify the party or class of parties to whom the disclosure may be made.

The consent must also be signed and dated.
The consent prepared for Ms. [ ]'s signature appropriately specified the records that could be disclosed, stated the purpose of disclosure and identified the parties to whom the disclosure could be made. However, we note that FERPA does not require that an educational agency or institution disclose education records when a student has consented to the disclosure, as implied by the last sentence of the consent that Mr. Anselmi drafted. We further note that should a student revoke consent, such action would not affect disclosures made prior to the date the student does so.

FINDING
While Mr. Anselmi stated that he neither permitted [the reporter] to review Ms. [ ]'s records nor sent [the reporter] copies of them, Mr. Anselmi orally disclosed information from Ms. [ ]' education records to [the reporter]. In so doing, the University assumed that an implied waiver of Ms. [ ]' right to consent to disclosures from her education records could be inferred. We find that this assumption incorrectly went beyond the limited scope of those circumstances in which such an inference is appropriate. We find this because Ms. [ ] had not sued the University and because the disclosure was not to a third party with a special relationship with the University that would allow the third party to take specific action against the University. Also, we do not believe that [the newspaper] and the University's relationship would have been significantly adversely affected had the University not refuted Ms. [ ]'s allegations.

However, in recognition of the facts that the University met the three prongs of the test that we set forth in our February 14, 1997, finding involving Johns Hopkins University and that our guidance on the special relationship prong of the doctrine of implied waiver of the right to consent under FERPA did not clearly delineate that the rule was based on the narrow set of facts present in that case, we do not find that the University committed a FERPA violation. However, we set forth clearer guidance today and encourage University officials to contact this Office for technical assistance, prior to the release of education records without the student's written consent, when guidance is needed in applying FERPA to a particular set of facts.

ALLEGATION 2
Ms. [ ] alleged that the University violated her rights under FERPA when it failed to provide her access to her education records within 45 days. Specifically, Ms. [ ] alleged that Dr. Frederick

Arnold informed her on December 19, 1997, that "there was hardly anything left in [her] file" and that while she could have copies of her own letters regarding her appeals, "Mr. Anselmi would not let [her] have the information that was presented before the Graduate Studies Committee that was presented by 'the other side' because that was considered privileged."

In our February 18, 1998, letter to the University, we set forth the position of this Office on permitting an educational agency or institution to deny a student access to education records that are subject to the attorney-client privilege and we asked that the University provide specific information for each document Ms. [ ] had been denied based on that privilege. Our analysis of Ms. [ ]'s allegation that she has been denied access to her education records is considered in two parts C records subject to her general allegation and records which the University claims are protected by the attorney-client privilege.

Records Subject to General Allegation
Mr. Anselmi explained in his response the following:

> Dr. Arnold, Associate Dean of the Graduate School, recalls that Ms. [ ] called him on December 16, 1997 and made a request to "look at her file." Dr. Arnold informed [her] of the information typically maintained by the Graduate School on former students. Dr. Arnold did not tell [her] she could not have access to certain information. Rather, to avoid misunderstanding regarding her request, Dr. Arnold asked [her] to put her request in writing identifying the information she wished to see. Ms. [ ], however, continued to call Dr. Arnold, and each time she called he asked that she put her request in writing. On December 23, 1998, [she] did so. . . . That letter requested "a copy of all [her] undergraduate and graduate student records," including "(academic, disciplinary, financial, scholarship, degree, or otherwise)."

Mr. Anselmi explained that after a series of contact between the University and Ms.[ ], the University "express mailed to Ms. [ ] the records she requested" on January 30, 1998.
By letter dated March 12, 1998, Ms. [ ] alleged that she had not been provided access to "copies of audiograms done at [the University] on campus Speech and Hearing Clinic." She stated that "these audiograms would document [her] hearing over [a] long period of time." She stated that in response to a phone call to his office regarding these records, Mr. Anselmi wrote her a February 23, 1998, letter but that he did not provide her with the audiograms. She provided a copy of the February 23, 1998, letter, which does not appear to address her request for access to the audiograms. She also provided a copy of a February 20, 1998, summary of the questions Ms. [ ] raised in her telephone call. Item one on that list is that Ms. [ ] "wants to know if the University has copies of the audiograms that were performed on her here at the University, and, if so, would like copies of them."
Finally, by letter dated April 27, 1998, Mr. Anselmi wrote this Office and explained the following:

> In preparing the University's response to the above complaint, the University conducted an extensive and thorough search of all University records that pertain to Ms. [ ]. Because of Ms. [ ]'s 10 year history of filing complaints against the University, several files were established in a number of different University departments. To assure that Ms. [ ] has received all the documents to which she is entitled, my administrative assistant and I personally reviewed each file and every University record relating or pertaining to Ms. [ ] This review resulted in the identification of certain documents that may not have been disclosed to Ms. [ ]. The University mailed these documents to Ms. [ ] and the attached letter.

In his April 27, 1998, letter to Ms. [ ], a copy of which he provided to this Office, Mr. Anselmi stated:

> After we expressed mailed the records to you on January 28, 1998, my assistant and I again reviewed University records to prepare a response to the complaint you filed with the Department of Education. To assure completeness, I am providing you these additional documents. While you may have received some of these documents, and some may be duplicates, there are documents included in this response that inadvertently may not have been provided to you in the University's January 28, 1998, response.

In order for this Office to make a determination as to whether the University fully complied with FERPA with respect to Ms. [ ]'s request for access, we will need additional information from you. In particular, please advise this Office whether the University maintains "copies of audiograms" completed on Ms. [ ], and if so, whether (and when) she was provided access to them. Additionally, we will need clarification as to whether the University believes that the copies of records sent to Ms. [ ] on April 27 definitely included records that had not previously been provided to Ms. [ ] in compliance with her December 1997 request for access. We are also requesting that Ms. [ ] provide additional information relative to this allegation (see copy of enclosed letter to Ms. [ ]).

Records for which the University Has Claimed Attorney-Client Privilege
Finally, in Mr. Anselmi's March 27, 1998, response to the complaint, he explains that the University denied Ms. [ ] access to 12 documents on the grounds that the documents are covered by the attorney-client privilege. He explains that for each document, the privilege is held by Towson State University, the communication is between the University and its attorney (himself) for the purpose of obtaining a legal opinion or legal services and not for the purpose of committing an illegal act or tort, and the communication is confidential and the privilege has not been waived. He identified the documents as:

- Letter dated September 29, 1987 from Michael A. Anselmi to Dr. Vic S. Gladstone regarding Complaint of [ ]'s confirming their previous discussions and requesting information needed for legal advice.
- Letter dated October 13, 1987 from Bill L. Wallace, Ph.D. to Mr. Michael A. Anselmi regarding Complaint of [ ] providing the information requested in the September 29, 1987 letter above.
- Letter dated March 31, 1988 from Michael A. Anselmi to Bill L. Wallace, Ph.D. regarding Complaint of [ ] requesting additional information needed for legal advice.
- Letter dated April 7, 1988 from Bill L. Wallace, Ph.D. to Mr. Michael A. Anselmi regarding Complaint of [ ] in response to Mr. Anselmi's March 31, 1988 letter.
- Letter dated July 25, 1988 from Bill L. Wallace, Ph.D. to Mr. Michael A. Anselmi regarding Complaint of [ ] requesting legal advice on Complainant's allegations.
- Memorandum dated March 13, 1990 from Dr. Vic. S. Gladstone to Michael A. Anselmi providing information needed for legal advice.
- Memorandum dated May 18, 1990 from Dr. Vic S. Gladstone to Michael A. Anselmi requesting legal review of letter dated May 18, 1990 to Clinical Certification Board.
- Memorandum dated May 18, 1990 from Michael A. Anselmi to Vic Gladstone advising him that Ms. [ ] threatened litigation and providing legal advice on University obligations.
- Memorandum dated May 17, 1990 from Michael A. Anselmi to Vic Gladstone regarding Complaint of [ ]and commenting on letter dated May 15, 1990 from Peter Taliaferro.
- Memorandum dated May 4, 1990 from Michael A. Anselmi to Vic Gladstone regarding draft letter prepared by Mr. Anselmi for Dr. Gladstone's review and signature.

- Memorandum dated March 22, 1990 from Michael A. Anselmi to Dr. Vic Gladstone regarding University's legal position on [ ]'s request for certification.
- Memoranda dated May 16, 1990, May 10, 1990 and May 16, 1990 from Michael A. Anselmi to his file regarding discussion with Dr. Gladstone and Ms. [ ]'s attorney on the legal obligations, if any, that Dr. Gladstone may have to complete certification forms.

As discussed in our February 18, 1998, letter, FERPA requires educational agencies and institutions to provide eligible students an opportunity to inspect and review their education records within 45 days of receipt of a request. 20 U.S.C. § 1232g(a)(1)(A); 34 CFR § 99.10(a). As noted above, FERPA broadly defines the term "education records." 20 U.S.C. § 1232g(a)(4)(A); 34 CFR § 99.3 "Education records." While FERPA does exempt certain types of records from the definition of education records, neither the statute nor the implementing regulations specifically provides for denying a student's right to inspect and review an education record based on attorney-client privilege or work product privilege grounds. Nonetheless, an educational institution may deny a request to inspect and review on these grounds in certain circumstances. In particular, an educational institution's ability under FERPA to assert the privilege against a student seeking access to education records may be inferred by the institution's need to obtain confidential legal advice in certain circumstances. That is, when an educational institution needs to obtain confidential legal advice, and in so doing creates "education records," the institution may decline to permit inspection and review of those records, or portions of those records, on attorney-client privilege grounds, provided that all of the below conditions are met. In order for an attorney to invoke the attorney-client privilege for his client, he or she must establish that:

1. the asserted holder of the privilege is or sought to become a client;
2. the communication is between a client and a member of the bar, or his or her subordinate, who is acting as a lawyer in connection with the communication;
3. the communication relates to facts disclosed by the client to the attorney for the purpose of securing either an opinion of law or legal services, and not for the purpose of committing an illegal act or tort;
4. the communication is in fact confidential and not made in the presence of anyone outside the particular attorney-client relationship; and
5. the privilege has been claimed and not waived.

After reviewing the above-delineated information about the letters in question, this Office has determined that the letters are Ms. [ ]'s education records. However, the University has provided this Office with facts showing that each of the above-delineated requirements for invoking attorney-client privilege has been met with regard to each of the identified documents. This Office finds that the University did not violate FERPA when it withheld from Ms. [] those education records of hers which are subject to the attorney-client privilege, and, accordingly, this Office is closing its investigation of this aspect of this allegation. Consequently, the University will not be required to provide Ms. [ ] with access to these documents.

Thank you for your continued cooperation with regard to the investigation of this complaint. Please provide the additional information requested under the general discussion of allegation two within three weeks of your receipt of this letter.

Sincerely,
LeRoy S. Rooker
Director
Family Policy Compliance Office
Enclosure
cc:
Ms. [ ]
Mr. Michael A. Anselmi

[1]Examples include: an educational agency or institution's grantor/grantee relationships; an educational agency or institution's relationship with a state or federal legislator; or an educational agency or institution's relationship with a state or federal commission charged with looking into allegations made by a student.
[2]When a school sues a parent or student, it may disclose personally identifiable information from the student's education records to the court absent a court order or subpoena so long as it first notifies the parent or student in accordance with 34 CFR § 99.31(a)(9)(i). 34 CFR § 99.31(a)(9)(iii).