



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 6, 2014

**FILE COPY**

(b)(6)

Dear (b)(6)

We are writing to inform you that this office is not initiating an investigation with regard to a complaint you filed with us on March 5, 2014. In that complaint you allege that the (b)(6) (b)(6) (University) violated the requirements of the Family Educational Rights and Privacy Act (FERPA). Specifically, you allege that the University improperly disclosed information from your education record on two separate occasions, and that the University did not follow its own protocol with regard to its initiation of an Honor Code Complaint against you.

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 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 universities 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 university and the complainant a notification letter about the allegation, and requesting a written response from the university concerning the allegation. If we then determine that a university is in violation of FERPA, the university and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the university 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. We close the investigation when the university has completed the required corrective actions.

In this case, we will not open an investigation into your complaint because it does not contain specific allegations of fact which give this office reasonable cause to believe that a FERPA

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violation has occurred. In order for this office to initiate an investigation, a complaint must contain such specific allegations.

First Allegation:

Specifically, you allege that (b)(6) a professor at the University, disclosed information from your education records to (b)(6) your supervisor during your Practicum in Recreation Therapy, without your prior written consent. In your allegation you assert that (b)(6) disclosed to (b)(6) your University (b)(6) business Photo. You assert that the photo is maintained in the University database and therefore you believe it is information that would fall under the protection of FERPA.

FERPA provides that educational agencies or institutions may disclose a student's education records, or personally identifiable information from such records, to third parties only after obtaining the written consent of a minor student's parent, or of a student who has reached the age of 18 or is attending an institution of postsecondary education. "Education records" means those records that are directly related to a student and maintained by a school or by a party acting for the school. Please note, however, that a school may disclose personally identifiable information from an education record of a student without the consent required if the disclosure meets an exception to FERPA's prior written consent requirement.

One of the exceptions to the prior written consent requirement in FERPA allows "school officials, including teachers, within the agency or institution" to obtain access to education records provided the educational agency or institution has determined that they have "legitimate educational interests" in the information. Although "school official" is not defined in the statute or regulations, this office has interpreted the term broadly to include a teacher; school principal; president; chancellor; board member; trustee; registrar; counselor; admissions officer; attorney; accountant; human resources professional; information systems specialist; and support or clerical personnel. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

FERPA requires an educational agency or institution to include in its annual notification of rights under FERPA a statement indicating whether it has a policy of disclosing personally identifiable information under the "school official" exception and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest.

According to the University's policy, "an employee or other person ("University official") who has a "legitimate educational interest" in the education record may be provided with access. The University asserts that a University official has a "legitimate educational interest" if the official is:

- performing a task that is specified in his or her position description or by a contract agreement
- performing a task related to a student's education
- performing a task related to the discipline of a student
- providing a service or benefit relating to the student or student's family, such as advising, job placement, financial aid or housing assistance
- maintaining the safety and security of the campus

It appears that (b)(6) was at one time performing a task related to your education. Therefore, FERPA would not generally prohibit (b)(6) and (b)(6) from discussing information related to your participation in the Practicum in Recreation therapy because both would generally have a legitimate educational interest in the information. Therefore, there is no basis on which to further consider this allegation.

#### Second Allegation

You assert that the University did not follow its own policy in initiating an Honor Code Complaint against you. Generally, FERPA does not address the way in which universities administer their own policies so long as the school does not violate a student's rights under FERPA. As such, it appears there is no basis for this office to further consider this allegation.

#### Third Allegation

You allege that during a meeting held on September 13, 2013, with (b)(6), (b)(6) a professor at the University was also present. You assert that you did not believe (b)(6) was employed by the University the summer that you participated in the practicum, and therefore that "(b)(6) had nothing to do with [the meeting]." As discussed above, information from education records may be shared with school officials when such officials have a legitimate educational interest. A school official generally has a legitimate educational interest if the official needs to review an education record to fulfill his or her responsibility. According to the University website (b)(6) is currently employed with the University and appears to have been a school official at the time of the meeting. If you would like us to consider this part of your allegation, please provide us with an explanation of why you believe (b)(6) did not have a legitimate interest. Without receiving such information from you, this office is unable to investigate your allegation. Once we receive this information, we will take any appropriate action.

#### Fourth Allegation

Finally, you assert that you believe that information from your education records may have been improperly disclosed to an individual named "(b)" who is referenced in an email that contains information from your education records. You assert that you inquired as to whom "(b)" was, and you were told by the Dean of Students to ignore the reference and that it was "a glitch". While the inclusion of a reference to an unidentified figure names "(b)" may imply that the education record may have been improperly disclosed, the information is not sufficient enough to determine that a violation of FERPA has indeed occurred.

I trust the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concerns.

Sincerely,



*h* Dale King  
Director  
Family Policy Compliance Office