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SAN FRANCISCO, CA 94102
(415) 557-2312
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AssemblymemberTing@assembly.ca.gov
www.assembly.ca.gov/ting

Assembly
California Legislature

PHILIP Y. TING
DEMOCRATIC CAUCUS CHAIR
ASSEMBLYMEMBER, NINETEENTH DISTRICT

丁右立
州眾議員

COMMITTEES
BUDGET
BUDGET SUBCOMMITTEE NO. 2 ON EDUCATION FINANCE
BUSINESS, PROFESSIONS AND CONSUMER PROTECTION
ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
REVENUE AND TAXATION

SELECT COMMITTEES
CHAIR, ASIA/CALIFORNIA TRADE AND INVESTMENT PROMOTION

JOINT COMMITTEE ON FISHERIES AND AQUACULTURE

June 24, 2014

Frank E. Miller Jr.
Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202-5437

Dear Mr. Miller:

I am writing to request your official opinion on how the standards for sharing student information in the federal Family Educational Rights and Privacy Act (FERPA) impact a bill that I am authoring within the California State Legislature.

My Assembly Bill 2160 aims to streamline the application process for California state financial aid known as the Cal Grant program, which is administered under the California Student Aid Commission (CSAC). In order to apply for a Cal Grant, students must complete the Free Application for Federal Student Aid and their verified grade point average (GPA) must be received by CSAC before March 2nd each year. Unfortunately, the GPA component of the application process is not always completed, rendering many students ineligible for aid.

As a solution, my proposed legislation would require California's public high schools to send the GPA of every 12th grade student to CSAC electronically. In order to capture all students in this financial aid reform, the bill designates every 12th grader enrolled in a California public school as an applicant for a Cal Grant, in lieu of an opt-in provision. The student's parent or guardian would be notified of this designation and be permitted to opt out, if desired. This designation is intended to make the transfer of every student's GPA from their high school to CSAC permissible under the financial aid exception in the FERPA statute (20 U.S.C. § 1232g(b)(1)(D)). The details and exact language of my proposed changes to existing California Education Code are contained in the attached document for your review.

AB 2160 will remove a common barrier to state financial aid and improve access to higher education for thousands of students across California each year. I look forward to receiving your official opinion about the consistency of this language with the FERPA statute and welcome any drafting suggestions from you. Since we are approaching the end of this year's legislative session in the California State Legislature, I hope to receive your official opinion by July 21, 2014. Thank you for your consideration of these issues.

Sincerely,

(b)(6); (b)(7(C)

PHILIP Y. TING
Assemblymember, 19th District

COMPLAINT UNDER THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

06/09/2014

TO: Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue. S.W.
Washington, D.C. 20202-4605

RE: **School In Violation Of FERPA**

I hereby lodge an official complaint against the School District of Clark County on behalf of (b)(6); (b)(7(C) (b)(6); (b)(7 who attended (b)(6); (b)(7(C) School for what I believe to be:

[ ] Inappropriate maintenance of records/content
[X] A violation of the Family Educational Rights and Privacy Act of 1974.

The nature of the complaint is as checked:

[ ] Challenge to Record or Content

__ _ Inaccurate
__X__ Misleading
____ Incomplete
__X__ Inappropriate

Record challenged may be identified as:

Title: Letter submitted by (b)(6); (b)(7(C) containing progress and hygiene information of a minor, (b)(6); (b)(7(C) while he was a student/peer in her classroom. The letter was submitted to his aunt, (b)(6); (b)(7(C) Co-worker, at (b)(6); (b)(7(C) request without parental consent. The letter was not used for academic concern but to promote favor in a custody battle for (b)(6); (b)(7(C) brother, (b)(6); (b)(7(C) It was submitted to a District Court in Clark County. The letter was not on letterhead or in the minor child's file maintained by the school. No parent of the child was notified or requested the information. Information in the letter was not communicated to the minor's sole custody parent and information was misleading. It stated that in (b)(6); (b)(7(C) opinion, the child would need special services education with a delay and currently the child does not use special education avenues for learning.

Date: 06/13/2013
Person responsible for Entry or person currently maintaining record: (b)(6); (b)(7(C) School
Date challenged content discovered: June 6, 2014 (When motion was served to minor's parent)

[ ] Alleged Violations of Act or Regulations

____ Failure to provide notification of all rights (totally or in needed language)
____ Failure to publish local access and hearing procedures

____ Inappropriate person(s) grant denied access
____ Failure to provide interpretation assistance as requested
____ Failure to provide requested hearing
____ Failure to provide uninvolved hearing officer
____ Failure of hearing officer to provide written opinion within reasonable time
__x__ Inappropriate sharing of confidential information
_ __ Other: ___ _____ _ _____ _____ _ ____

Date of Violation: __June 11, 2013_____ _____ _
Date Violation Discovered if different from above: __June6, 2014_____ _____

Other Relevant Information:
(Use this section to add any additional explanatory comments)

Copies of the letter and statement from Randi M. Chatterton are included
_____ _____ _____ _____
_ _____ _____ _____ _____ _____
_____ _____ _____ _____ _____ _

Yours Truly
(b)(6); (b)(7(C)

(b)(6); (b)(7(C)

(b)(6); (b)(7(C)

May 25, 2014

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

To Whom It May Concern:

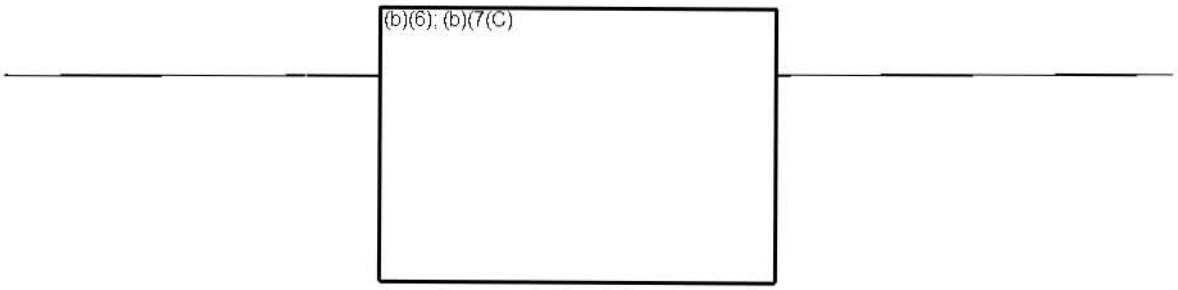
I am writing regarding a possible, unintentional violation of FERPA and/or other education law by an employee of the (b)(6); (b)(7(C) while I was enrolled as a doctoral student there. Admittedly the situation is surrounded by a fair amount of drama, but I will make every effort to limit the influence of that and focus on facts as I am aware of them.

I was accepted as a PhD student in school psychology at the (b)(6); (b)(7(C) and began study in the fall semester of 2011. (b)(6); (b)(7(C) was assigned as my advisor. He was provided with a copy of the transcript from my master's degree program (also in school psychology, at (b)(6); (b)(7 University). Rather than properly advise me (as other students were advised) during the summer as to which courses I should enroll in, he continuously postponed our advising meeting until the first week of classes.

When I entered his office, he began to look for my (b)(6); (b) transcript, but couldn't find it initially. He looked a bit more, but again, to no avail. We both agreed that I had sent it to him. In the interests of making the meeting time efficient, I ultimately remote-connected to my personal computer and retrieved an unofficial copy in PDF format which he printed.

The potential FERPA violation lies in that he lost an official transcript from (b)(6); (b) University, containing my full name, (b)(6); (b)(student identification number, the last four digits of my social security number, and so on. The transcript was at no time authorized or considered public information.

To this day, I have received no notification that it has been found. As such, I have no idea where it is or how it may be abused, especially for purposes of identity theft. Although (b)(6); likely did not lose the original transcript intentionally, his failure to adequately secure and protect confidential academic information from others may constitute a FERPA violation.



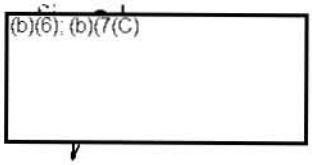
Further complicating matters is the drama earlier referenced. To summarize, he waited too long to advise me, classes had filled, and his solution was to enroll me in an independent study course with him. He did nothing as stated in the syllabus and when the situation was reviewed by the then-department chairperson, one or both of them dishonestly claimed that (b)(6); advised me to sign up for the independent study in the fall. Since then, and after much prodding, the university has essentially conceded that (b)(6); did not advise me to sign up for the course in the spring (in fact it can be demonstrated to be impossible).

As such, if you contact him, I have extreme doubt that he would honestly communicate with you. He may even go so far as to contact other university offices (such as Admissions) and suddenly produce an official transcript. If monitored and given any amount of time, it is doubtful he would find it.

Again, this complaint should be focused more on the loss of the transcript as a potential FERPA (and/or other education law) violation, not so much the circumstances leading me to doubt his ability to be honest. I can, however, upon request, produce documents supporting my claims in the independent study matter.

I strongly recommend that he be investigated for this and possibly other violations. Should you have questions and/or concerns for me, please feel free to contact me via email, fax, and/or U.S. mail. Given the serious nature of these allegations I strongly prefer to avoid telephone conversations as they are not easily documented and more prone to miscommunication than the written word.

I appreciate, in advance, your attention to this matter, and hope that this letter of unfortunate nature finds you well otherwise.



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direct dial: 713.646.1352
lsessions@bakerlaw.com

June 13, 2014

VIA OVERNIGHT DELIVERY

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-5920

Re: Incident Notification

Dear Sir or Madam:

On June 2, 2014, our client, Riverside Community College District (RCCD) learned that an email containing student records was sent to an incorrect external e-mail address the previous Friday, May 30. RCCD immediately began an investigation and determined that the e-mail contained information about RCCD students enrolled in spring 2014 semester classes. The data file contained students' names, home addresses, preferred phone numbers, student e-mail addresses, birth dates, student identification numbers, enrolled classes, and, in some cases, Social Security numbers.

At this time, RCCD does not know if the external email account is active. However, in an abundance of caution, RCCD sent letters to affected students and is providing them with free one-year credit monitoring and identity protection services through Experian. To prevent this from happening again, RCCD is reassessing and enhancing security measures, reviewing policies and procedures for safeguarding student information, and re-enforcing best practices in secure data handling with its staff.

Commencing on June 13, 2014, RCCD is notifying 34,269 students in substantially the same form as the letter attached hereto.

Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely,

(b)(6); (b)(7(C)

Enclosure

June 18, 2014

Re: Request For Investigation Of The Department Of Education And Department Of Health And Human Services For Their Failure To Enforce Requirements Of The *Joint Guidance On HIPAA And FERPA*

President Obama
Congressman Darrell Issa Chair the of the Committee on Oversight and Government Reform
Congressman John Mica Chair of the Subcommittee on Government Affairs
Congressman James Lankford Chair of the Health Care subcommittee
Congresswoman Virginia Foxx Chair of the House Subcommittee on Higher Education and Workforce Training
Congresswoman Nancy Pelosi, (My Home District), Help With Federal Agency
Senator Lamar Alexander Chair of the Senate Health, Education, Labor and Pensions Committee
Secretary Arne Duncan of the Department of Education
Interim Secretary of Department of Health and Human Services

REQUEST FOR INVESTIGATION OF DHHS AND DOEd FOR FAILURE TO ENFORCE HIPAA AND FERPA PROCEDURES, AND DOEd REGARDING ITS RECOGNITION OF WSCUC ACCREDITED COLLEGES

I am requesting that you and your agencies investigate the refusal of the Departments of Education, Office of Civil Right (DOEd OCR) and the Health and Human Services, Office of Family Protection, to enforce the provisions of the Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. Further, I am requesting that you also investigate the WASC Senior College and University Commission (WSCUC) for its failure to ensure that the University of California met the WSCUC standards for institutional integrity.

I do not make these allegations lightly or without a sufficient basis. I was an attorney for the UC's General Counsel for 16 years - 4 as the first ever on-site UC hospital attorney (UCLA) and 12 years in the General Counsel's Office. I was a health attorney for 33 years, handling most of the major mental health issues. I was a legal aid attorney who brought several class action civil rights suits on behalf of mental patients against a state mental hospital. I subsequently went to Harvard and received an MPH in Hospital Administration, and a few years later became the CEO of the same state hospital I had sued. I provided more trainings to more people on more subjects for the California Hospital Association and when I finally retired from practicing law, the CHA honored me with their first Distinguished Service Award and further honored me by naming the award after me.

"In May 2002, the Board of Regents determined that the UC would be a Single Health Care Component for the purposes of complying with the HIPAA (Privacy) Rule." http://www.universityofcalifornia.edu/hipaa/

I drafted most of the clinic HIPAA documents as a result of the Regents' decision. Since the issuance of the Joint Guidance in 2008, a year after I retired from the University I have been telling the University that the documents I drafted as a result of the Regents' decision needed to be eliminated with the issuance of the *Joint Guidance*. The UC, like many other colleges, decided in 2002 to voluntarily apply the provisions of HIPPA to its clinics for various sound reasons - uniformity, higher levels of confidentiality, training of professional students. However, after the *Joint Guidance* it was clear that HIPAA did not apply to university campus health clinic student/patients, but FERPA and state law did.

Unfortunately, the critics of President Obama who assert that he is more interested in passing health care legislation than enforcing it may be correct given the lack of enforcement of his agencies in enforcing FERPA and HIPAA. This is especially troublesome when you listen to President Obama powerfully expressed sadness regarding the school shootings such as Virginia Tech, but his administration including his Secretary of Education and his Secretary of Health and Human Services have failed to enforce the requirements of HIPAA and FERPA fostering the very legal confusion that led to the Virginia Tech massacre. Shameful hypocrisy - a charge I am reluctant to raise.

It was the confusion over these very two federal laws that the review committees of the Virginia Tech shootings concluded may have led to that tragedy. As a result of the Virginia Tech legal confusion, in 2008 the DOEd and DHHS issued the *Joint Guidance on the Application of HIPAA and FERPA, clearly stating that campus health and counseling clinic information concerning students was subject to FERPA and exempt from HIPAA. The University of California (UC) continues to improperly and illegally apply HIPAA's provisions to their health and counseling clinic information regarding students.* The refusal of these two federal agencies to carry out their enforcement responsibilities regarding the *Joint Guidance* and these two federal laws allows the UC to continue its clear violation of federal law, which as reflected by the findings regarding Virginia Tech could lead to further similar tragedies. Since the Sandy Hook school shooting, just 18 months ago, there have been 74 school shootings, 35 of which are college shootings, a number which does not even include events like the Isla Vista shooting in late May, which involved the shooting of 6 University of California Santa Barbara students in the adjoining student ghetto of Isla Vista. http://everytown.org/article/schoolshootings/ ✓

It is shameful that for all of the publicly expressed sadness and concern by various politicians, school administrators and various governmental officials following ever increasing college shooting tragedies, so many of these same persons have totally failed to carry out their professional responsibilities which could prevent another Virginia Tech tragedy. President Obama condemns weak gun laws, questions the role of mental health issues, but totally fails to ensure his own cabinet members are enforcing the very federal laws that led to the confusion that led to the Virginia Tech shootings. Similarly, and quite ironically, University of California President Napolitano only last month on the 27th of May expressed her platitudes and ordered that campus flags be flown at half staff for the UCSB students killed in the adjoining student community. What she failed to acknowledge is that six months earlier on Oct. 20, 2013, I sent her a lengthy document, which detailed in pertinent part the University of California's improper and confusing handling of student healthcare and privacy information by campus staff and a list of questions to ask the UC General Counsel regarding what federal law applied to campus clinic student health records. (ATTACHMENT E) The UC has failed to comply with the requirements of the *Joint Guidance and the requirements of HIPAA and FERPA for the entire 5 years since the* Joint Guidance was issued. The UC exhibits a greater legal confusion regarding the very

laws that led to the Virginia Tech massacre than did Virginia Tech. President Obama's two Departments have failed to enforce the two laws of the Joint Guidance, and as an aside, President Napolitano has done nothing to remedy the UC's clear violation of federal law and the resulting confusion allowing it to continue down an even more confused and potentially dangerous path than the one Virginia Tech took.

Unfortunately, both of President Obama's enforcement entities, DHHS Office of Civil Rights (OCR) and DOEd Family Policy Compliance Office (FPCO), despite being aware that the UC is in clear and complete violation of the *Joint Guidance and HIPAA and FERPA have refused to carry out their enforcement obligations for these two federal acts.* Short of an investigation into the Obama administration's failure to meet its enforcement obligations, there is a concern that there is no possibility of any future action being taken by DOEd or DHHS to bring the UC into legal compliance with the *Joint Guidance since Napolitano is a former member of the Obama Administration and these agencies would not want to put a black mark on their colleague's record.*

VIRGINIA TECH SHOOTINGS RESULTED FROM CONFUSION REGARDING THESE TWO FEDERAL LAWS

The post-massacre review committees that reviewed the Virginia Tech shootings concluded that the massacre may have been preventable had college officials and other members of the college community not been confused regarding federal health care and privacy laws, most specifically, HIPAA and FERPA.

> "University officials in the office of Judicial Affairs, ...counseling center, campus police, the Dean of Students, and others explained their failure to communicate with one another or with Cho's (the assailant) parents by noting their belief that such communications are prohibited by the federal laws governing the privacy of health and education records. In reality, federal laws and their state counterparts afford ample leeway to share information in potentially dangerous situations."
>
> "The Review Panel noted 'widespread confusion about what federal and state privacy laws allow.' This confusion, incidentally, creates a setting in which any university would likely have acted as Virginia Tech did." *Expecting The Unexpected, Lessons From The Virginia Tech Tragedy, American Association of State Colleges and Universities*, Pg. 4-5 (Nov. 2007).

FERPA NOT HIPAA APPLIES TO STUDENT HEALTH RECORDS

To eliminate this confusion, the DHHS and DOE in 2008 issued the *Joint Guidance* to clarify that student clinic health records are subject to FERPA and not HIPAA.

> FAQ 7. "Does FERPA or HIPAA apply to records on students at health clinics run by postsecondary institutions?
>
> FERPA applies to most public and private postsecondary institutions and, thus, to the records on students at the campus health clinics of such institutions. These records will be either education records or treatment records under FERPA, both of which are excluded from coverage under the HIPAA Privacy Rule, even if the school is a HIPAA covered entity." http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf

Simply, FERPA applies to all post-secondary schools receiving any funding from DOEd programs, which includes the vast majority of colleges in the country. As a result the records of campus health and counseling clinic records of college students are subject to FERPA, and, if the clinic is a Covered Entity, those of non-students are subject to HIPAA.

> "While the health records of students at postsecondary institutions may be subject to FERPA, if the institution is a HIPAA covered entity and provides health care to nonstudents, the individually identifiable health information of the clinic's nonstudent patients is subject to the HIPAA Privacy Rule. Thus, for example, postsecondary institutions that are subject to both HIPAA and FERPA and that operate clinics open to staff, or the public, or both (including family members of students) are required to comply with FERPA with respect to the health records of their student patients, and with the HIPAA Privacy Rule with respect to the health records of their nonstudent patients." http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf *Joint Guidance* FAQ 7.

Student medical information and records are exempt from HIPAA and are instead governed by FERPA. When used solely for treatment purposes, they are exempt from the coverage of FERPA and HIPAA and are subject to state law. When used for any other purpose within the university, such as academic decisions about medical withdrawal from class, discipline, financial assistance, school transfers, academic disability accommodation, etc., they are education records and FERPA rules apply. FERPA also allows the UC health and counseling clinics to release treatment records for various reasons. The most common exception to the requirement for a student's written authorization is to a "school official" who has a "legitimate educational interest." This disclosure may be made for any reason that allows the school official to carry out his/her professional responsibilities, which may be totally unrelated to the student's health or academics. Consequently, even clinic treatment records that have never been used for any other purpose may be released to a "school official" for a "legitimate educational purpose" converting it into an education record. Simply, under no circumstances is HIPAA ever applied to campus clinic student health records.

THE LACK OF COMPLIANCE BY THE UC WITH THE *JOINT GUIDANCE* - THE UC ILLEGALLY APPLIES HIPAA TO STUDENT HEALTH RECORDS

The review of the Virginia Tech tragedy clarified the responsibility colleges have in being proactive for clarifying the applicable health care and privacy laws for their employees to prevent a future tragedy

> "Today, it remains the burden of colleges and universities to educate their faculty, staff, and administrators on the requirements governing privacy law disclosures. **Equally important, however, is the responsibility of school administrators and faculty to seek clarification whenever a potential disclosure situation arises....[M]any in academia should educate themselves on the limitations and exceptions to student privacy laws. This act alone may help prevent another tragedy."** *A Failure to Communicate: Did Privacy Laws Contribute to the Virginia Tech Tragedy?* http://law.wlu.edu/deptimages/Journal%20of%20civil%20rights%20and%20social%20justice/Brusca%20&%20Ram.pdf *p. 167.*

The UC General Counsel Charlie Robinson, President Napolitano and other officials have knowingly and intentionally done the very opposite of the above findings and recommendations. They have knowing applied the wrong law and misrepresented their practices to campus clinic student/patients confusing many if not most of the campus and clinic officials as to what law, exceptions and limitations apply. At least at Virginia Tech there was only ignorance and

confusion about the applicable federal law; the UC has added the element of intentional misrepresentation by the University administration.

Despite the fact that in 2008 the *Joint Guidance* clarified and reiterated that the student health clinic records of all colleges receiving federal funds are subject to FERPA, the University of California student health clinics continue to improperly apply HIPAA to their student's health records. The University of California Santa Barbara, my alma matter, as recently as the date of this correspondence continues to disregard the *Joint Guidance* and UCSB's own HIPAA website states that it applies HIPAA to all of its health care clinic records for students and non-students alike. http://apps.sa.ucsb.edu/hipaa/summaryofprivacynotice.asp?page=generalinfo (ATTACHMENTS A & B)

> "UCSB has always had privacy and patient confidentiality standards in place to ensure appropriate access or disclosure of protected health information. A federal law called the Health Insurance Portability and Accountability Act (HIPAA) now provides additional safeguards for ensuring that your health information is adequately protected. HIPAA also requires UCSB to provide you with a Notice of Privacy Practices (Notice) which explains how your medical information may be used and disclosed and also explains your rights related to your medical information."

UC students are provided a HIPAA Notice, which details the standard provisions that most persons receive when they go to their doctors office. However, the provisions that do apply to student health records, as stated in the *Joint Guidance*, are FERPA's. One of the greatest fraudulent misrepresentations ever made on Californians has been made by the University of California to hundreds of thousands of UC students over the past 5 years since none of the provisions in the HIPAA Notice they receive actually apply. Rather the UC surreptitiously and as desired applies the provisions of FERPA rather than those contained in their HIPAA Notice. It applies HIPAA in violation of federal law, and its use of FERPA makes the HIPAA Notice an overt misrepresentation and fraudulent document.

While UCSB has maintained separate health and mental health HIPAA Notices, on September 13, 2013, 5 years after the mandate of the *Joint Guidance*, the UC Office Of the President issued a new fill-in the blank campus HIPAA Notice that the other campuses use. The same HIPAA heading and language is contained in the fill-in HIPAA Notice. http://www.ucop.edu/ethics-compliance-audit-services/_files/compliance/hipaa/NPP-english.pdf (ATTACHMENT C) Whatever format, separate or unified health center and counseling center HIPAA Notices, every UC health and counseling clinic, in one form or another, continues to violate the *Joint Guidance* and wrongfully applies HIPAA.

The Obama's Administration, despite the President's speeches condemning these mass shootings, his DOEd and DHHS have refused to step forward to enforce the applicable laws and hold the UC and its officials accountable. Presumably Napolitano as Homeland Director was aware of the causes of the tragedy at Virginia Tech. Despite several requests as early as October 2013 for Napolitano to address the issue of noncompliance with federal laws covering campus health clinics, along with specific information regarding the UC's misconduct, she did nothing but issue a few platitudes after the recent shootings of UCSB students in the nearby Isla Vista community in May 2014. Seven years after Robinson became the General Counsel he still doesn't even know what the applicable federal law is for the campus clinics. Given his lack of legal leadership, which contributed to the UC Davis Pepper Spray-Police Riot, the UC, the post-secondary icon of student occupations and police overreaction for the 60's, the UC's chief legal officer had no idea what to do. Robinson has created such a dangerous legal environment at the UC that the least Napolitano could do is raise the UC risk code color to red.

DHHS-OCR, THE ENFORCEMENT OFFICE FOR HIPAA REFUSED TO ENFORCE THE REQUIREMENTS OF THE *JOINT GUIDANCE*

In 2010, I wrote the local San Francisco Office, Department of Health and Human Services, Office of Civil Rights (OCR), the HIPAA enforcement agency, detailing how the UC was violating federal law and the *Joint Guidance* by applying HIPAA to its student clinic records.

I wrote Michael F. Kruley, OCR's Regional Manager in 2011, highlighting that FERPA applied to student health records and that HIPAA applied to the health records various groups of non-students:

> 1. Non-student patients, such as faculty, joint counseling partners, or family members, are treated at campus health and counseling clinics and are subject to HIPAA and not FERPA; and
> 2. Persons from the community who are not students are regularly treated at the student psychology training clinics, and their records were subject to HIPAA and not FERPA.

OCR Regional Manager Michael F. Kruley responded that the UC clinics should not have applied HIPAA to student health records since they were exempt from HIPAA and therefore OCR, the enforcement agency for HIPAA, would close my complaint:

> "OCR will not be able to accept your complaint for investigation. Your allegation that the University of California misrepresents its uses and disclosures of student records, even if fully substantiated, would not violate the Privacy and Security Rules. The Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity. The definition of this {Protected health information" held or transmitted by a covered entity. The definition of the "protected health information" in the HIPAA Rules specifically excludes education records covered by the Family Educational Rights an Privacy Act (FERPA). FERPA applies to most public and private postsecondary institutions and, thus to the records on students at the campus health clinics of such institutions. These records will be either education records or treatment records under FERPA, both which are excluded from coverage under the HIPAA Privacy Rule, even if the school is a HIPAA covered entity. So, although the entity itself may be covered by the Privacy Rule under HIPAA, the health information about students maintained by it is excluded from the definition of protected health information. Therefore, OCR is closing this complaint. (See Attachment D)

The only concern OCR had was to close the file on the complaint and to avoid any additional work which involved enforcing the federal law it was responsible for. Why would DHSS OCR the HIPAA enforcement agency close my complaint and:

1. Not tell the UC, a HIPAA Covered Entity, that the student clinic records it was treating as being subject to HIPAA were in fact not subject to HIPAA;

2. Not tell the many UC clinics, HIPAA Covered Entities, that the student records they were treating as being subject to HIPAA were in fact not subject to HIPAA;

3. Not tell the UC or its clinics, both HIPAA Covered Entities, that they were misrepresenting their practices to students by providing a HIPAA Notice, while various officials surreptitiously applied FERPA's provisions.

4. Not tell the UC or its clinics, both HIPAA Covered Entities, that they were misrepresenting their practices to students by inappropriately providing them with an

inapplicable HIPAA Notice, while various officials inappropriately applied HIPAA provisions.

5. Not tell the UC or its clinics, both HIPAA Covered Entities, that some of their patients are subject to HIPAA and and others are not. Kruley, the Regional Manager for OCR did quote the language from *Joint Guidance* FAQ 7 regarding students not being subject to HIPAA to support the closing of my complaint, but he did not quote the language from FAQ 7 regarding nonstudents who were subject to HIPAA since that language would have forced him to keep my complaint open and investigate it. ("If the institution is a HIPAA covered entity and provides health care to nonstudents, the individually identifiable health information of the clinic's nonstudent patients is subject to the HIPAA Privacy Rule")

6. Not notify its sister federal agency, the DOEd FPCO, the FERPA enforcement agency, that the UC and its clinics were improperly providing FERPA students with a HIPAA Notice and that the UC was not properly following the requirements of FERPA and the *Joint Guidance* regarding the confidentiality of student clinic records;

7. Not notify its sister federal agency, the DOEd FPCO, that OCR was going to close my complaint and that OCR was not going to investigate whether the UC or its clinics were violating federal law - so that FPCO could investigate the violation of student FERPA rights.

DOEd FPCO, THE ENFORCEMENT OFFICE FOR FERPA REFUSED TO ENFORCE THE REQUIREMENTS OF THE *JOINT GUIDANCE*

Michael Kruley, the Regional Manager for OCR's San Francisco HIPAA enforcement agency stated in his letter of May 9, 2011, "For information about FERPA, please contact (FPCO)...." I then contacted FPCO detailing how the UC violated the *Joint Guidance* by apply HIPAA and violated federal law by not applying FERPA. The FERPA enforcement agency, FPCO refused to take any action to enforce FERPA because I was not a student.

> "FERPA vests the rights it affords in the eligible student. The statute DOEds not provide for these rights to be vested in a third party who has not suffered an alleged violation of their rights under FERPA. Thus, we require that a student have "standing," i.e., have suffered an alleged violation of his or her rights under FERPA, in order to file a complaint." http://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html

The problem with restricting enforcement to complaints by students is that within the UC's context of its fraudulent misrepresentation that the UC is providing confidentiality for student/ patient records under HIPAA, there is no way a student would know that his/her FERPA rights were being violated because the UC keeps telling him/her that HIPAA was the applicable law. Further, not only did the UC fail to advise the student/patient that FERPA applied to his/her medical records, it specifically advised the student that it did not. UCSB on its website captioned "FERPA for Students" specifically states:

> "Education records do not include ...Medical records...." https://registrar.sa.ucsb.edu/FERPAstu.aspx

This language is in direct conflict with FAQ of the *Joint Guidance:*

> These records will be either education records or treatment records under FERPA, both of which are excluded from coverage under the HIPAA Privacy

> Rule, even if the school is a HIPAA covered entity." http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf

There would be no reason for a student to even know about the existence of FERPA, and if s/he did, no reason to connect issues involving his/her medical records to FERPA since s/he received repeated HIPAA Notices of Privacy Practices and an advisement on the FERPA page that FERPA's education records did not include medical records. As a result it would be unlikely that FERPA complaints would be filed with the FPCO by a student regarding his/her medical records.

FERPRA USE AND DISCLOSURE EXCEPTIONS NOT REQUIRING STUDENT CONSENT ARE VERY DIFFERENT THAN THOSE FOR HIPAA

FERPA, the applicable federal law, has very different restrictions and exceptions, with only a few being similar to those in HIPAA. For example, under FERPA a student's health care information may be disclosed without the student's consent or knowledge to another UC "school official" for a "legitimate educational purpose."

> "[T]he term "school official" ... (includes) professors; instructors; administrators; health staff; counselors; attorneys; clerical staff; trustees; members of committees and disciplinary boards; and a contractor, volunteer or other party to whom the school has outsourced institutional services or functions." http://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html

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 responsibilities. This responsibility does need not be an academic or health care interest, it could include disciple, financial aid, information to a school the student has applied to, etc. http://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html

There is absolutely nothing in the myriad provisions of the HIPAA Notice of Privacy Practices that the student is provided which details the ways in which the student's health care information may be used or disclosed that would cause any student/patient to believe that his/her medical information could be provided under FERPA to a school official for a "legitimate educational interest" totally unrelated to the patient's treatment, without the patient's consent and over the patient's objection. The UC's HIPAA Notice is an absolute fraud and misrepresentation when the student is told that his/her health care information will only be disclosed for (HIPAA) reasons A, B, C and the UC actually releases information for (FERPA) reasons C, D, and E - E being a legitimate educational interest.

The UC falsely tells the student/patient that her/his health information is protected, and completely fails to carry out its legal duties and privacy practices providing a bait and switch of laws, citing HIPAA and following FERPA. Obviously, the UC does not follow the restrictions and exceptions contained in current HIPAA Notice, since the current Notice is a HIPAA Notice and by law the records of student/patients are excluded from HIPAA's coverage and subject to FERPA and state laws different restrictions and exceptions.

LIES, FALSEHOODS, DECEPTIONS, IGNORANCE AT THE UNIVERSITY OF CALIFORNIA IS GREATER THAN CONFUSION AT VIRGINIA TECH

As a result of General Counsel Robinson's lack of legal leadership in this area, and President Napolitano's lack of administrative oversight the UC remains a permutation of multiple discordant legal theories when it comes to the issue of how to handle the disclosure and use of UC clinic health care and mental health information of student/patients.

1. Many campus and some clinic officials are advised that the provisions of FERPA control all student educational records, including their clinic medical records.

2. Other campus and clinic officials are told that the HIPAA Notice that students receive controls the use and disclosure of their health care information.

3. For various reasons, some personnel are told to give out the HIPAA Notice, but to follow FERPA when disclosing information.

4. Some staff believe they are not providing a true HIPAA notice but what they call a "virtual" or "faux" Notice. They believe it is a Notice of their practices and not a "HIPAA Notice" because the heading doesn't say "HIPAA" on it. The UC staff don't realize that a HIPAA Notice of Privacy Practices DOEds not include the word "HIPAA" in its heading.

   "THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY." http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/prdecember2000all8parts.pdf

5. Others, especially some health care providers, continue to use a HIPAA Notice because they don't want to tell students that FERPA applies because if students find out that their health care records could be disclosed to a school official they fear students may quit using the campus clinic and go elsewhere for medical services.

Simply the UC staff and officials are so confused as to whether they follow HIPAA, FERPA, both, neither, say one and use the other - much less which state law applies or what to do if a state law conflicts with FERPA or HIPAA. Even when they realize that the UC attorneys and General Counsel have no idea what law should be followed, the staff follow their lawyers who are as confused and sometimes just plain disingenuous. Saying that their lawyer told them to follow HIPAA, even knowing it is improper allows officials and clinic directors to avoid conflicts. Unfortunately, because there is so much confusion among the UC's legal counsel, that same confusion is transferred to UC staff which explains the variety of conflicting beliefs stated above - shades of Virginia Tech.

IN ADDITION TO THE UC'S MISREPRESENTATION OF ITS PRACTICES AND THE FEDERAL AGENCIES REFUSAL TO ENFORCE FEDERAL LAW, DEPARTMENT OF EDUCATION APPROVED ACCREDITATION AGENCIES FAIL TO ENFORCE THEIR ACCREDITATION STANDARDS

Ideally the UC should comply with UC policies, federal and state law. It has close to 20 HIPAA Privacy Officers in the university system yet not a single one, including those at each campus had the expertise (or perhaps courage) to state that the campus clinics are in violation federal law by applying HIPAA to the student clinic records. The two federal agencies are unwilling to enforce HIPAA and FERPA. This leaves essentially Accreditation entities such as the WASC Senior College and University Commission (WSCUC). WSCUC has the obligation to enforce its standards especially in the area of institutional integrity for which it has specific provisions for summary investigations and show cause orders. I provided WSCUC with a lengthy analysis of the UC violations of state and federal law and its own policies. However, I tried to simplify the problem for their review by providing the URL for the *Joint Guidance*, which states FERPA and not HIPAA applies to student clinic records and the URL for UCSB stating that UCSB followed HIPAA, and for the UC's HIPAA Notices. Given that clear dichotomy of what was legal and what was being illegally done, WSCUC responded in a letter dated June 2, 2014 stated:

"The concerns you cite relation (sic) to UC system-wide adherence to federal laws and regulations in HIPPA and FERPA are considered to be a third party comment, not a formal complaint, since they do not directly involve you. By Commission policy, third party comments are maintained in WSCUC records, but do not require a response or further action."

Every college WSCUC accredits is subject to the Joint Guidance, and virtually ever college they accredit is subject to the rule that HIPAA does not apply to student clinic records. WSCUC is also very familiar with the findings of the Virginia Tech shootings and role confusion regarding HIPAA and FERPA played. I provided WSCUC with the same URLS for the *Joint Guidance* and UCSB's HIPAA page and HIPAA Notice. WSCUC knows from reading those 3 URLS that the UC is in violation of federal law and has created a confusion similar to that at Virginia Tech. WSCUC knows this; it doesn't have to investigate to know this - the federal and UC URLs definitely show the illegality. And even knowing this prior to any type of formal investigation WSCUC is willing to ignore it and allow 1) the misrepresentation of hundreds of thousands of students regarding their health care information over the past 5+years and 2) these campuses to be as confused about the federal law as Virginia Tech and risk the same potential for harm. The DOEd needs to be investigated as to why it accepts the accreditation of WSCUC.

CONCLUSION

The Department of Health and Human Services, Office of Civil Rights and Department of Education, Family Protection Compliance Office, the two enforcement agencies of the *Joint Guidance*, should be investigated for their misfeasance and nonfeasance in failing to enforce the HIPAA and the FERPA:

1. In 2008 the US Departments of Education and Health and Human Services issued the *Joint Guidance* stating that student health care records were subject to FERPA and excluded from coverage by HIPAA;
2. The *Joint Guidance* stated that HIPAA did cover non-student patients at clinics of Covered Entities;
3. In 2011, Michael F. Kruley, Regional Manager of the San Francisco DHHS OCR office, the HIPAA enforcement agency, issued a letter reiterating that student health records were subject to FERPA and not HIPAA and would not investigate my complaint regarding the UC's clinics applying the wrong federal law - even though he assumed I was correct - because the clinics were not covered by HIPAA;
4. In 2003, with the initiation of HIPAA, the UC applied HIPAA to all of its health and counseling clinics and has continued to do so up to the present day, even after the issuance of the *Joint Guidance* in 2008 and OCR's letter that HIPAA did not apply in 2011;
5. In September 2013, 5 years after the *Joint Guidance*'s statement that student health care records were excluded from HIPAA, and 2 years after Kruley's letter, the UC Office of the President issued a new HIPAA Notice to be used by all campus clinics, a HIPAA hospital form to replace the tailored and more appropriate clinic form - continuing to illegally apply HIPPA to this very day;
6. In the 2013 HIPAA Notice, the UC clinics continued to advise their patients to contact DHSS OCR if they had a complaint, 2 years after Kruley stated his office would not accept any HIPAA complaints regarding campus clinics.
7. There is a general consensus among those who reviewed the Virginia Tech massacre that confusion of the Virginia Tech college officials regarding applicable health care and privacy law may have contributed to the shooting massacre;
8. Under the *Joint Guidance*, FERPA, HIPAA and the letter of Michael F. Kruley, Regional Manager for DHHS OCR, campus clinic health care records of students are subject to FERPA and excluded from HIPAA.

9. Despite the fact that all of these federal entities state FERPA applies to the UC clinics, General Counsel Robinson, who has no health care legal experience continues to assert and knowingly misrepresent to UC student patients that HIPAA applies to their records;
10. President Napolitano, having been advised in detail that as a result of the language of the *Joint Guidance*, and FERPA and HIPAA, the UC is in violation of federal law by applying HIPAA to its student health records. She has failed to investigate or have someone investigate as to whether the UC is in violation of federal law - failing to do so, her nonfeasance permits the continued misrepresentation of thousands of students regarding their clinic health care information and privacy;
11. UC General Counsel Robinson through his attorneys inconsistent, inaccurate and total lack of legal guidance has knowingly created an environment of legal confusion for students and staff as great as that at Virginia Tech;
12. The refusal of OCR and FPOC to investigate the UC's practices, despite being requested to do so, and having full knowledge that the UC is in noncompliance with federal law have allowed hundreds of thousands of UC students to be misrepresented as to their health care and privacy rights;
13. Despite Virginia Tech's lesson that confusion regarding FERPA and HIPAA may have facilitated the shootings, and could happen again at any other confused college, the two federal enforcement agencies, FPCO and OCR failed to take any action, provide any notice to the UC, provide any information to each other, do anything except to avoid doing any work which only led to greater confusion and an increased likelihood of harm within the University of California system;
14. Appropriate enforcement by federal officers to protect students from the factors that led to the Virginia Tech tragedy is much more important than condolences from officials after such a tragedy in which they or their agencies failed to act.

The UC may be the most legally confused educational institution in the country, and it is unbelievable that the US Departments of Education and Health and Human Services failed to carry out their duties, permitting the UC's confusion to grow and prosper, violating the student/ patients healthcare and privacy rights and placing them at increased risk of harm or even death.

CORRECTIVE ACTION

A corrective plan has to be created to advise students of any improper uses and disclosures of their health records that were made under HIPAA since 2008 that did not comply with the requirements of FERPA. Are payment, treatment and healthcare operations disclosures and uses are permitted under HIPAA without a signed authorization of the patient valid under the applicable law, FERPA. If not what notice must be provided clinic patients to advise them of the improper disclosures11? More importantly what remedies do student patients have for these illegal uses and disclosures. Legal services for patients should be paid for by the UC regarding the rights the student may have, especially if HIPAA and FERPA did not apply but state law did and it was not complied with.

Cordially,

(b)(6); (b)(7)(C)

Bloomsburg UNIVERSITY

RECEIVED
BY:

Office of the President

June 26, 2014

Dale King
Director
Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5920

Re: Exposure of non-directory Information at Bloomsburg University of Pennsylvania

Dear Mr. King:

As a courtesy notice to the Family Policy Compliance Office (FPCO), Bloomsburg University of Pennsylvania is voluntarily notifying the FPCO of a recent incident of inadvertent disclosure of student information. The following information outlines the disclosure and how it occurred, what steps were taken in response to the incident and steps planned or in progress to prevent future similar incidents from occurring.

On June 7, 2014, a Bloomsburg University alumnus contacted (b)(6); (b)(7(C) professor of (b)(6); (b)(7(C) (b)(6); (b)(7(C) He indicated that he had found two documents that contained what he assumed were current BU student names, Social Security numbers and assessment scores from an instrument administered to incoming education majors. On June 9, 2014, members of the information technology staff were able to confirm the availability of the documents and verify that the names and other personal information belonged to 46 current or former BU students. The two documents were web-linked as exhibits to the institution's National Council for Accreditation of Teacher Education (NCATE) Institutional Report that was posted to a password-protected website in November 2012.

While the NCATE Institutional Report itself was accessible only by using a password known to a few BU employees and NCATE reviewers, the linked documents would appear if an individual conducted a Google search with very specific search criteria, thereby making the documents publicly available. It is important to note that the Social Security numbers that appeared on the documents were entered by the students themselves despite explicit instructions not to use them as a log-in credential.

I sent a message of apology and concern to all 46 students and alumni identified as being affected by this incident. In this message, the university informed the students and alumni that certain personal information regarding them was contained in documents available on a BU website. As part of that message, the university apologized for the error and explained that the university is committed to maintaining the privacy of student information and will assess its practices for protection of personal information. I also authorized the purchase of credit monitoring services for one year. Contact information for Wayne Mohr, associate vice president for technology, was listed for students to ask questions or voice concerns.

Carver Hall • Bloomsburg University • 400 East Second Street • Bloomsburg, PA 17815-1301
Phone: (570) 389-4526 • FAX: (570) 389-3899
A Member of the Pennsylvania State System of Higher Education

Bloomsburg UNIVERSITY

Office of the President

The university has protocols in place to protect confidential information. In this particular case, a few students out of many hundreds self-entered Social Security numbers into an online assessment instrument despite clear and explicit instructions not to do so. This personal information was then transferred to the documents that were exposed. Prior to this incident, the university had initiated a process to check for, and eliminate, personal information from this and other data sources.

We hope this explanation of the recent event is helpful to you if any inquiries are made to the FPCO regarding the exposure of the information on these documents. Please let me know if there are any further steps that you might suggest we take to address this incident.

Very truly yours,

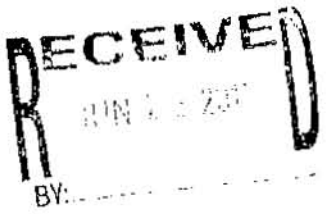
(b)(6); (b)(7(C)

David L. Soltz, President

Carver Hall • Bloomsburg University • 400 East Second Street • Bloomsburg, PA 17815-1301
Phone: (570) 389-4526 • FAX: (570) 389-3899
A Member of the Pennsylvania State System of Higher Education

6/15/14

(b)(6); (b)(7(C)



Attn: Family Policy Compliance Office/FERPA

US Dept. of Education

400 Maryland AVE SW

Washington DC 20202

To whom it may concern

A teacher within the Lakewood School District ((b)(6); (b)(7(C)) abused her authority, gained access to a confidential district document, and presented it for personal use in her argument for a civil court hearing (11/4/13) to the Snohomish County District Court Cascade Division. This document was not subpoenaed but given by the teacher ((b)(6); (b)(7(C)) as evidence of a sample of my handwriting in a civil matter. Now, this document is public record.

The teacher ((b)(6); (b)(7(C)) collected this information in her professional role as my son's teacher, explaining in writing at the top of the document that the information provided would be "kept together in a file to assure confidentiality". She was not given permission to share this information. In fact, I signed a privacy contract with the (b)(6); (b)(7(C) School office protecting these types of documents.

This document includes my son's legal name, date of birth, medical allergy information, parent addresses, and where parents can be contacted in case of emergency. The document also includes the school name, teacher name, and class making it easy to identify our son and find him within the school.

The Lakewood School District was made aware of my concern on various occasions verbally (Mrs. (b)(6); (b)(7(C)) – Principal and (b)(6); (b)(7(C) – (b)(6); (b)(7(C)) and in a formal written citizen's complaint dated 11/12/13 (Superintendent Dennis Haddock). These complaints were not taken seriously. In fact, the latest set of publically disclosed records I received from the district (6/4/14) shows (b)(6); (b)(7(C)) suggesting that the teacher ((b)(6); (b)(7(C)) "could have provided" this document in court if she did so as a "sealed entry" thus protecting the document from becoming "public record".

Please consider this an official complaint against the Lakewood School District, specifically (b)(6); (b)(7(C) and the violation of our FERPA rights.

Sincerely,

(b)(6); (b)(7(C)

School District: Lakewood School District # 306

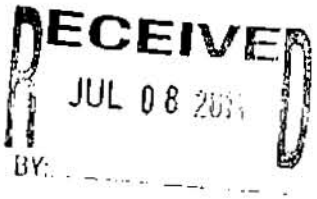
Superintendent Michael P. Mack (Dennis Haddock)

PO Box 220

N. Lakewood, WA 98259

(360)652-4500

Family Policy Compliance Office
Department of Education
400 Maryland Ave, S.W.
Washington, D.C. 20202



June 24, 2014

Please except the following copy of emails and this letter as a formal complaint against [(b)(6); (b)(7(C)] School, [(b)(6); (b)(7(C)] ME. I have tried to communicate with the administration there to no avail. They have ignored my emails and now I am sending them to you and the Board of Directors at [(b)(6); (b)(7(C)] School in hopes that they will no longer be ignored and something will be done about this serious complaint of lawlessness in this school system. If you need anything further from me you can call me at [(b)(6); (b)(7(C)] or email me at [(b)(6); (b)(7(C)] or the address below. Thank you for your help.

[(b)(6); (b)(7(C)]

THE LEGAL AID SOCIETY

(b)(6); (b)(7(C)

(b)(6); (b)(7(C)

June 3, 2014

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

To Whom It May Concern:

I am writing to you on behalf my client (b)(6); (b)(7(C) and his mother, (b)(6); (b)(7(C). The Legal Aid Society represents (b)(6); (b)(7(C) in an on-going Family Court matter.

I have attached a letter from (b)(6); (b)(7(C) detailing a violation of confidentiality of (b)(6); (b)(7(C) school records by a dean at (b)(6); (b)(7(C) in the Bronx. As (b)(6); (b)(7(C) letter explains, in March 2014 the dean searched (b)(6); (b)(cell phone and called a person listed in the cell phone contacts as "Dad." "Dad" is (b)(6); (b) maternal grandfather, with whom (b)(6); (b)(7 has a strained relationship. He is not listed as contact for (b)(6); in any of (b)(6); (b) school records. Nonetheless, the dean invited the grandfather to the school and subsequently met with him and discussed (b)(6); (b) school performance with him. I should note that (b)(6); (b)(7(C) is easily available by cell phone and e-mail and has been responsive to the school in the past.

The actions of the dean in this matter are a clear and serious violation of FERPA. The school's disclosure of (b)(6); (b) confidential educational information did not fall under any of the exceptions delineated in FERPA. We are asking that appropriate actions be taken to reprimand (b)(6); (b)(7(C) and instruct them on proper handling of student information.

I can be contacted at (b)(6); (b)(7(C) @legal-aid.org. (b)(6); (b)(7(C) can be reached at (b)(6); (b)(7(C) @montefiore.org. We would appreciate a response.

Thank you for your attention to this matter.

Sincerely,

(b)(6); (b)(7(C)

(b)(6); (b)(7(C) Educational Advocacy Project

cc: (b)(6); (b)(7(C) Principal, (b)(6); (b)(7(C)
NYC Dept. of Education, Office of Equal Opportunity
(b)(6); (b)(7(C)

COMPLAINT UNDER THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

June 18, 2014

TO: Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue. S.W.
Washington, D.C. 20202-4605

RE: **School In Violation Of FERPA**

I hereby lodge an official complaint against the School District of Gaston County, North Carolina on behalf of (b)(6); (b)(7(C) who attends (b)(6); (b)(7(C) School for what I believe to be:

[X] Inappropriate maintenance of records/content
[X] A violation of the Family Educational Rights and Privacy Act of 1974.

The nature of the complaint is as checked:

[ ] Challenge to Record or Content

____ Inaccurate
____ Misleading
____ Incomplete
___X_ Inappropriate

Record challenged may be identified as:

Title: Lunchroom Video from School Surveillance Cameras on May 5, 2014 and May 6, 2014 from daughter's mealtimes at (b)(6); (b)(7(C) School.
Date: First request made May 8, 2014
Person responsible for Entry or person currently maintaining record: (b)(6); (b)(7(C) School or Gaston County Schools
Date challenged content discovered: May 9, 2014

[ ] Alleged Violations of Act or Regulations

____ Failure to provide notification of all rights (totally or in needed language)
____ Failure to publish local access and hearing procedures
____ Inappropriate person(s) grant denied access
____ Failure to provide interpretation assistance as requested
____ Failure to provide requested hearing

____ Failure to provide uninvolved hearing officer
____ Failure of hearing officer to provide written opinion within reasonable time
____ Inappropriate sharing of confidential information
__X__ Other: Refusal to provide access to and copies of education records

Date of Violation: May 8, 2014, May 9, 2014, May 27, 2014 and June 17, 2014
Date Violation Discovered if different from above:_____

Other Relevant Information:
(Use this section to add any additional explanatory comments)

On May 8th,I made a verbal request for copies of these videos to (b)(6); (b)(7(C) member of the Gaston County Board of Education and was told that in order to receive a copy, that according to the school's attorney, I would be required to get a court order.

On May 9, 2014 I made a verbal request to the principal of (b)(6); (b)(7(C) for copies of these video's and again was told that according to the school's attorney, that I would be required to get a court order in order to obtain a copy of these education records.

On May 23, 2014, I made a second verbal request to (b)(6); (b)(7(C) asking to view videos from 2 random days a month and was told on May 27th that the Department of Exceptional Children had done all they HAD to to by ALLOWING my child to be homebound and that I would not be allowed to view or obtain copies of any videos without a court order.

On June 2, 2014, I file a freedom of information request asking for copies of all mealtime videos for the days that my child attended school and received the enclosed letter in response.

My daughter was not being fed at school as she is unable to feed herself. The videos will help us determine when this started and if this has anything to do with some recent serious health issues that she has been experiencing. I am now concerned that the videos will be destroyed before I can get the money raised to hire an attorney to file a suit in order to get the court order so that we may obtain copies of at least the 2 videos that I have watched with the school's principal and a representative of the DEC.

Yours Truly,

(b)(6); (b)(7(C)

HSLD&G

RECEIVED
JUN 20 2014
BY:

(b)(6); (b)(7(C)

June 18, 2014

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

RE: (b)(6); (b)(7(C) **FERPA Complaint**

I am a licensed attorney practicing law in New York State and I work at the law firm of Hogan, Sarzynski, Lynch, DeWind & Gregory, LLP. This office represents (b)(6); (b)(7(C)

(b)(6); (b)(7(C) was a student at (b)(6); (b)(7(C) of Community and Public Affairs in the Masters in Social Work Program, but she was expelled from (b)(6); (b)(7(C) (b)(6); (b)(7(C) on December 17, 2013. (b)(6); (b)(7(C) retained this office as counsel in appealing her unjustified expulsion from (b)(6); (b)(7(C)

This office contacted (b)(6); (b)(7(C), via a letter, on January 24, 2014, requesting an appeal of her expulsion from the social work program and requesting all of (b)(6); (b)(7(C) education records. Exhibit 1. (b)(6); counsel, (b)(6); (b)(7(C) Scarlett, Esq., responded to our request by stating that all further communications to (b)(6 go through her office and she included a records release form that needed to be signed by (b)(6); (b)(7(C) in order for (b) to release her records to this office. Exhibit 2. On February 6, 2014, a letter was sent requesting (b)(6); (b)(7(C) records, along with an original, signed records release form that (b)(6); counsel provided. Exhibit 3. Sometime between February 6 and February 27, 2014, (b) s counsel contacted this office stating that she needed an original, signed records release form in order to release the documents. This office explained that she already received an original, signed records release form. However, for convenience, on February 27, 2014, a second letter was sent requesting Ms. (b)(6); (b)(7 records, with a second, original, signed records release form. Exhibit 4.

On March 10, 2014, (b) s counsel was contacted to determine where (b)(6); (b)(7(C) records were and why a copy had not been provided. Counsel stated that because there is litigation (b)(will not release the records without authorization from the New York Attorney General's Office. A Notice of Claim was served and filed, on February 21, 2014, but a Complaint has not yet been filed. A letter was then sent to the Attorney General's Office on March 13, 2014, requesting that office to give (b) consent to release the records. Exhibit 5.

(b)(6); (b)(7(C) Esq.
E-mail: (b)(6); (@hs dg.com

On April 10, 2014, this office received records from (b)(6); counsel, however, the records are incomplete. There is no record of (b)(6); (b)(7(C) final evaluation nor is there a record of Ms. (b)(6); (b)(7 transcript. On April 11, 2014, this office sent a letter to (b)(6); counsel requesting the missing final evaluation and (b)(6); (b)(7(C) transcript. Exhibit 6. To date, neither this office nor (b)(6); (b)(7(C) has seen the final evaluation or transcript. Also, on April 11, 2014, this office filed a complaint to your office for this same matter. Exhibit 7.

After filing the previous complaint, this office was informed that because the request to view documents was from this office rather than from (b)(6); (b)(7(C) was not in violation of FERPA and was not required to allow this office to access her records.

On April 29, 2014, in light of your previous findings, (b)(6); (b)(7(C) requested access to all of her educational records held by (b)(6); (b)(6); (b)(7(C) submitted the request in writing and personally delivered the request, as required by (b)(6)'s student handbook, to (b) 's Registrar's Office. Exhibit 8. In addition, (b)(6); (b)(7(C) submitted a request, in writing, to (b) 's counsel. Exhibit 9.

As of today, (b)(6); (b)(7(C) has had no response from (b)(to accommodate and allow access to her educational records as required by FERPA. This complaint is now submitted, on (b)(6); (b)(7(C) behalf, as (b) has continued to deny (b)(6); (b)(7(C) the right to access her educational records. We respectfully ask your office to investigate (b) 's conduct and help (b)(6); (b)(7(C) access her educational records so that she may evaluate her expulsion from (b)(6); (b)(7(C) .

If you have any questions please contact this office.

(b)(6); (b)(7(C)

ADC:sma

cc: (b)(6); (b)(7(C)

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave, SW
Washington, D.C. 20202-5920

June 19, 2014

RECEIVED
BY:

Dear Compliance Office,

My husband and I are parents in the Cass Midway R-1 School District in Freeman, MO. This is a small rural school servicing grades K-12. For two years we have been trying to work with the school to unsuccessfully resolve multiple issues. We have reached the end of the grievance process with the school and are currently pursuing intervention from various state organizations. We have given considerable thought to the allegations contained in the following documentation, so our decision to bring these issues to your attention was not made lightly. We feel that, through our own experience, we have identified the root issues with which many families in our community are currently struggling.

Enclosed is the packet of information we are distributing to the different jurisdictional authorities per the included letter from (b)(6); (b)(7(C) with the Special Education Compliance Office. We have already filed this complaint packet with the Office of Civil Rights, Office of Quality Schools, the School Violence Hotline, and Tony Stansberry, State Area Supervisor. Unfortunately, no state agency that we've contacted has claimed jurisdiction over any of the issue brought forth in the following documentation. Being a small community, certain behaviors have become unprofessionally and unethically relaxed. The issue we hope your department can help with is the violation of our son's HIPPA rights.

We have spoken to many of the other parents that are experiencing the same issues and some much worse. They are reluctant to lodge formal complaints for fear of retaliation as several of these individuals work at the school. Our own children have suffered for our continued pursuit of a resolution, which has been reported in the attached document. Given this, it is our moral responsibility to take all possible actions to secure a better educational future for the children in our community. If your agency is unable to help, could you please provide information on any recommendation or additional organizations we can contact. I have enclosed a well drafted email reply from Mr. Stansberry. I find it unfortunate and disturbing that parents would have to take legal action against an educational institution in order for them to comply with the writings of their own handbook. It is a gross lack of integrity in the Educational System.

Please consider this as a complaint filed with your office. Any help or information you can provide would be greatly appreciated as we have never before pursued anything to this level. We are striving for a solution that best serves and protects all children in our community. Further explanation is provided in the following documentation.

Thank you for your time and consideration.

Respectfully,
(b)(6); (b)(7(C)

SRAGA HAUSER, LLC
ATTORNEYS AT LAW
(b)(6); (b)(7(C)

(b)(6); (b)(7(C)

May 19, 2014

RECEIVED
BY:

SENT BY CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Mr. Dale King, Director
Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-5920

Re: *FERPA* and Related *IDEA* Questions

Dear Mr. King:

I am an Illinois school attorney who regularly counsels our public school district and special education cooperative clients about *FERPA* and related *IDEA* issues. Over the past few years, we have experienced a marked increase in the frequency and scope of parent requests for students' education records, and I am therefore writing at this time to seek an official FPCO opinion with respect to the following issues:

1. In determining what constitutes an **education record** under 20 U.S.C. §1232g(a)(4)(A) and 34 C.F.R. §99.3, is the phrase "directly related to a student" to be construed as recorded information that contains "personally identifiable information" about a student? Case law and FPCO rulings appear to use these terms interchangeably; however, if that is not the case, what constitutes information that is "directly related to a student"?

2. **"Sole possession" v. education records** ~ Under 20 U.S.C. §1232g(a)(4)(B) and 34 C.F.R. §99.3, when is a record construed to be "accessible or revealed" to a person other than the maker's temporary substitute? Would this include, for example:

   (a) When the maker/school employee leaves his/her employment in a district, or transfers his/her professional responsibilities for a student to another employee within the district when a new school year commences, and the maker's sole possession records are left in a folder or file cabinet that is accessible to other district employees thereafter?

(b) When the maker (*e.g.*, school employee or official, such as an independent evaluator hired by a district) confers with a school district professional about a student and the information discussed also happens to be in the maker's sole possession records?

(c) When the maker (*e.g.*, school employee or official, such as an independent evaluator hired by a district) takes notes (*e.g.*, of student, parent, or staff interviews, school observations, etc.) in the course of his/her evaluation of a student or otherwise, and some or all of the information in these notes is included in the maker's evaluation report? We believe that, as in *Board of Education of the Toldeo City School District v. Horen*, 2010 WL 3522373 (N.D. Ohio), the final reports, and not the evaluations' underlying "memory jogging" notes, are education records. Does FPCO concur?

3. **Intra-district and home-school e-mails** ~ In light of the rulings in *Owasso Independent School District No. I-011 v. Falvo* 534 U.S. 426 (2002) and *S.A. v. Tulare County Office of Education*, 2009 WL 3126322 and 2009 WL 3296653, does FPCO concur that e-mails in which a student may be personally identified are only "maintained" by a district if they are intentionally stored by a single, central custodian (i) after printing, in a filing cabinet, in a records room, or (ii) on a permanent database such as a "Google documents" file folder or other database installed by a district for this purpose – *e.g.*, the IMPACT or Oracle databases, as in *Jaccari J. v. Board of Education of the City of Chicago District 299*, 109 LRP 46996 (N.D. Ill. (2009) -- as distinguished from e-mails in staffs' individual school e-mail accounts or deleted e-mails that could be retrieved from a district's server with some technical assistance, but are not intentionally stored/maintained by a district?

4. **Preliminary drafts of items such as evaluation reports** ~ Are preliminary drafts of items such as evaluation reports, draft IEP goals, etc. "education records" at all, or after the final document is generated? Here, too, we believe that the court's analysis in the *Toledo City School District* case, *supra*, is applicable and correct. Does FPCO concur? If not, is it permissible for an evaluator or district to determine that such preliminary drafts will not be maintained by a district?

5. **Transmission of education records to a school outside of the district** ~ Does FPCO's ruling in *Letter to Anonymous*, 112 LRP 47381 (08/22/12) extend to situations where a private (vs. public sector) special education placement is being considered as a possible placement for a student with a disability?

Thank you in advance for any clarification or guidance that your office can provide on these issues, as it will greatly assist public schools in meeting their *FERPA* and related *IDEA* obligations.

Very truly yours,

SRAGA HAUSER, LLC

(b)(6); (b)(7(C)

The Ledbetter

LLF

Law Firm, P.L.C.

June 3, 2014

RECEIVED

BY:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520

Re: Best Practices Breach Notification

Dear Family Policy Compliance Office:

This office represents the Lake Havasu Unified School District No. 1. We write to provide a best practices Breach Notification, to report and document a recent isolated breach of student information at the District.

During the period of May 5-6, 2014, a total of eighty electronic messages, with attachments, were unlawfully accessed and forwarded from a District-owned iPad device, to a private email address of a parent of a student in the District. This was a violation of the device-use agreement, executed by the parent in question.

The documents contained the following information:

- District Name
- School Name
- Student first and last name
- Student date of birth
- Student gender
- Date and length of time of services provided, along with service code
- Student Specific Consultation Notes for five students

As soon as it learned of the breach, the District took immediate steps to notify the affected parents and/or guardians, as well as law enforcement officials. The District also took immediate steps to ensure that this type of unlawful access does not occur in the future.

1003 North Main Street, Cottonwood, AZ 86326
(928)649-8777 ◆ www.ledbetter-law.com

The iPad was removed from service, and all compromised information was inventoried. All other iPad devices within the Special Education Department were reviewed by the Department, to verify that no protected information was present on any other iPad device. Safeguards are being implemented to ensure that this incident, although isolated, does not repeat.

This concludes our reporting of this breach. Should you have questions or comments, please contact our office.

Thank you.

Sincerely,

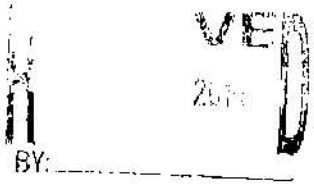
THE LEDBETTER LAW FIRM, P.L.C.

(b)(6); (b)(7(C)

(b)(6); (b)(7(C)pap

cc: Client

(b)(6); (b)(7(C)



June 25, 2014

RE: Freshman Student (b)(6); (b)(7(C) School Fairfax County

Hello,

On March 11, 2014 or days earlier I requested a public records request for all the emails from specific people working in Fairfax County Public Schools that regard or relate to my child (b)(6); (b)(7(C)

To date I have yet to receive the documents requested. This violates FERPA law.

Please assist me in submitting a complaint as well as receiving the requested documents.

Thank you,

(b)(6); (b)(7(C)

Family Policy Compliance Office
US Dept of Education
400 Maryland Ave SW
Washington DC 20202-8520

(b)(6); (b)(7(C)

RECEIVED
BY:

June 19, 2014

Dear FERPA

I'm writing to you after speaking to (b)(6); (b)(7(C) two attorneys with the Department of Education, about their Title IX investigation of the (b)(6); (b)(7(C) (b)(6); I am a person affected by the (b)(6); (b)(7(C) lack of protection and sexually harassed by my advisor.

I am writing now because of two issues.

1. I would like to report that in May 2014, the (b)(6); (b)(7(C) legal council suggested I show up to mediation to settle my concerns in Idaho and without legal council. I would like to report this harassment and manipulation as in violation to my student rights.

2. I would like to report that in July 2012, after I filed a complaint with the Associate Dean of Students, the legal council went through my emails and deleted some that showed my concerns about my advisor. I would like to report this harassment and manipulation as in violation to my student rights.

I have included my initial complaint to the Idaho Human Rights Commission, which I filed in January 2014. Though it is long · It might help in opening a complaint within your office. My complaint involves the two concerns I have listed above. I have been informed by the Department of Education that this is a complaint that should be filed with your office.

Please feel free to call me at any time. Thank you.

Respectfully (b)(6); (b)(7(C)

(b)(6); (b)(7(C)

FERPA:

June 2014

I, (b)(6); (b)(7(C) state that in the Spring of 2012, (b)(6); (b)(7(C) created a hostile work environment through retaliation of my grades and my continuation of my MFA work. In the Summer of 2012 to April 2013, I state that the (b)(6); (b)(7(C) created a retaliatory environment by a continual push to remove me from the program because of information which I shared.

I believe that both of these actions were the result of information I shared with (b)(6); (b)(7(C and (b)(6); (b)(7(C) at the Office of Human Rights. My first instance was that I shared Mr. (b)(6); (b)(7 protection of a professor who had suggested students get off of their medications. The second instance is that I shared that (b)(6); (b)(7(had tried to start a sexual relationship with me. It is my belief that in sharing these instances, the (b)(6); (b)(7(C) moved to retaliate against my claims.

(b)(6); (b)(7(C has intimidated, threatened, and retaliated with my Spring 2012 grades and my continuation of the program. As most of my activities at this university are related to him - he has made it clear on numerous occasions that if I upset him - I would hurt "my academic career." During our May 13th, 2012 meeting I found out that what (b) was concerned about was the gossip about a fellow professor, (b)(6); (b)(7(C) In Fall 2010, (b)(6); (b)(7(C) has recommended that three undergraduate students get off their bipolar/mental health medication in order to improve their acting. This is illegal and unethical. I came across a student in the theatre department who had tried to harm himself after being told by (b)(6) to "get off his medication." I encouraged this student to go to the counseling office and I filed an addendum. When I found (b)(6); had violated FERPA in Spring 2012 - I went to (b)(6); (b)(7(C) In doing so I followed both my conscious and the law.

In the Fall 2010:

- I arrived at the (b)(6); (b)(7(C) though (b)(6); (b)(7(C) was on sabbatical, he made a point to meet with the playwrights throughout the first semester. (b)(6); (b)(7(C) made a point of telling me of his breakup with a student who worked at One World Cafe. I did not respond to his suggestion of having a sexual relationship.
- In December 2010 when (b)(6); (b)(7 insisted on a party for the Graduate Student Playwrights. I asked several playwrights if this had ever happened before and they said it had not. We went to the restaurant Nosh. At the end of the evening, (b)(6); (b)(7(C asked me who I was going home with. This made me very uncomfortable so I joked that it would be a fellow playwright, (b)(6); (b)(6); (then I quickly made (b)(6); take me home.

In the Spring 2011:

- (b)(6); (b)(7(C)

(b)(6); (b)(7(C)

- During our 2nd meeting, (b)(6); (b)(7(made a point to ask me about my experiences with Mr. (b)(6); (b) I stated that I didn't care for (b)(6); (b)(7(nor he for me. I expressed my concern of Mr. (b)(6); (dating his student, (b)(6); (b)(7(C) during that time. I mentioned that I thought someone should talk to upper administration. (b)(6); (b)(7 remarked "Theatre is a family and family shouldn't tell on each other." (b)(6); (b)(7(then asked me to "drop" this subject when I again mentioned it was against university policy. This was my first red flag. I later learned that Professor (b)(6); (b)(7(C) not only knew of (b)(6); (b)(7(C) romantic involvement with a student but was helping (b)(6); (b)(7(navigate these waters so (b)(6); (b)(7(wouldn't be noticed. Because of these two incidents, it became a VERY clear indicator to me that any complaints I raised about (b)(6); (b)(7(C) actions would not be recognized.
- It should be noted that (b)(6); (b)(7(was fired in the Spring 2011 from the University and Mr. (b)(6); (b)(7(C) felt disappointed in the outcome. Both men knew of his involvement yet continued to protect him. At this time I also learned that (b)(6); (b)(7(C) had been asked to step down as department chair because of hiring a graduate student who was a sex offender. The action of these professors trying to protect each other seemed to be very common for this department.

In the Fall 2011:

- (b)(6); (b)(7(became more aggressive. He began tracking all events that I would attend. Though he had asked that we as graduate students attend events before – he now became very very aggressive of any of my request for absences. I noted a marked difference from his insistence so I finally asked a fellow writer, (b)(6); (b)(7(C). (b)(6) was unable to attend many of the New Play Wednesdays. I asked her what she ones she was required to attend and she stated that she came to the ones that she could and didn't worry about the others. I stated that this was never an option for me. (b)(6 said this didn't seem right but I was too alarmed to bring this forward, fearing that it would threaten my position as a graduate student.
- The opening night of (b)(6 I happened by the (b)(6); (b)(7(C to see (b)(6); (b)(7 drinking with the members of his cast. The three cast members I remember were (b)(6); (b)(7(C) and (b)(6); (b)(7(C) All three of these student actresses will testify of this event.
- At one point, (b)(6); (b)(7(C) car keys and stuck them down her shirt front then challenged him to come get them. When I asked (b)(6); (b)(7(C) about these events the next day, she said (b)(6); (b)(7(C) actions were less than appropriate but that she got too drunk to remember the rest. I also asked (b)(6); (b)(7(C about these instances. It was both odd and a relief to see (b)(6); (b)(7(C begin to take such an interest in (b)(6); (b)(7(C) seemed to enjoy the attention and seemed comfortable with their "friendship." I avoided (b)(6); (b)(7 as much as possible during this semester.
- In December 2011, (b)(6); (b)(7(C suggested that I should add an additional semester to my program. I was not comfortable and asked him "What would I need to do to graduate on time?" (b)(6); (b)(7(C suggested we might share something more intimate but luckily another student arrived and I was able to leave quickly.

In the Spring 2012:

- When I returned in January, I was careful to avoid (b)(6); (b)(7(C) In our meetings, (b)(6); (b)(7(C) now began to make comments about his ex-wife plans of returning to Chicago. I found this

outside the scope of an advisor's need to share and did not comment. At this point he suggested that my extra semester might all "go away". I did not respond.

- It was at this time that I asked my friend, (b)(6); (b)(7(C) to attend one of the New Play Wednesdays. The reason I asked was that these took place in the evening and (b)(6); (b)(7 would often make suggestions as the evening would end. My hope was that with (b)(6); there Mr. (b)(6); (would leave me alone. I sent him two emails in regards to this matter. I have requested these emails from the University twice and yet they claim they cannot be found. I have (b)(6); (b)(6); (b)(7(information if you would like to contact him about this exchange.
- In early April, (b)(6); (b)(7 saw the theatre department secretary, (b)(6); (b)(7(C) and I were out at the (b)(6); (for drinks. ((b)(6); (b) and I are friends) He was there with my English professor, (b)(6 (b)(6); (b They came over to talk and then went away.
- But in April 10th, I emailed (b)(6); (b)(7 that I could not attend class for playwriting final because of a doctor's appointment. Because he was upset, I rescheduled the appointment for a different day after seeing my doctor.
- I rescheduled my appointment for May 10th, (performance day of the one acts) so that I could attend the final. I then sent an email **(May 8, 2012)** to my director explaining that I had kidney appointment and would be unable to attend. I also spoke to (b)(6); (b)(7(C about being gone. He was also upset but I decided to just lump it. It was after this email was sent that I found that Mr. (b)(6); went to (b)(6); (to ask her "What is really going on with (b)(6); ?" THIS IS MY BIGGEST CONCERN. If I emailed **and** spoke to (b)(6); (b)(7 about my doctor's appointments then he should have NO reason to ask my friend. My prior commitments are neither a concern nor the business of my advisor. This is another case of his monitoring my life. (b)(6); (b)(was careful not to tell (b)(6); (b)(7(C anything. I'm happy to provide (b)(6); (b)(7(C) number if necessary.

May 13, 2012:

During our final meeting, (b)(6); (b)(7(C) expressed a concern that I not discuss our conversation with anyone. He also made several threats to my person and continuation of the MFA program. In this meeting (b)(6); (b)(7(C stated that he believes that I've been a "threat to the department." This is an allusion to my decision to contact the Associate Dean of Students when I found (b)(6); (b)(7(C had violated FERPA. I do not hold any written acknowledgement from the department stating that I have acted out of turn.

From his own omission, (b)(6); (b)(7(C) agrees that he was furious. This was taken from his response to my retaliation complaint August 2012.

From (b)(6); (b)(7(C) *reply:*

"I will admit that by the time of this meeting I was frustrated with (b)(6); (b)(7 *because in the intervening time between our 5/7/12 meeting and our 5/13/12 meeting the department had produced the One Act Festival in which* (b)(6); (b)(7(*had a play being produced.* Frustrated is an understatement of what he said. If (b)(6); (b)(7(had been confident in what he was to say – He would have included one or more members of my committee. Yet he insisted that the meeting be in private.

June 2012:

Based on my conversations with (b) of the Ombuds, I decided to take a year off and establish a safe distance from (b)(6); (b)(7(C)

July 2012:

I was advised to get a new phone number. I also emailed (b)(6); (b)(7(C) my concerns about returning to Idaho for my belongings and that I felt unsafe of having any contact from (b)(6); (b)(7(C)

August 2012

I had to return to Idaho to clean out my old apartment and office. At that time, I requested that the campus police escort me to my office so I would be safe from (b)(6); (b)(7(C) It was because of his threats of the May 13, 2012 meeting that I made this decision. I also contacted (b)(6); of the Ombuds to meet. Because most of our conversation took place via the phone I have included my response to her questions. **(See August 8, 2012)**

September 2013

I finally emailed (b) of the Ombuds my new #. I had to change my number because I was afraid of future contact from (b)(6); (b)(7 **(See September 12, 2012)**

In the Spring 2013

- January 2013, (b)(6); of the Ombuds asked to meet with Dean (b)(6); to reflect on some of my concerns about the proposed study plan. As my conversation took place via the phone with (b)(6) - I have my response to her questions. **(See emails January 2013)**

- During this time I presented a new study plan to (b)(6); (b)(7(C) One of the oddest rejections came when I suggested a screenwriting course taught by Professor (b)(6); (b)(7(C) said it would be unacceptable. But I found out that he has two of his students, (b)(6); (b)(7(C) and (b) (b)(6); (b)(taking this class as a part of their MFA program. This behavior by (b)(6); (b)(7(C) is viewed as obstruction of my degree. To allow two male students to take the class and not a female is also discrimination by gender. **(See emails from March 18th, 2013)**

- In April 2013, I contacted (b)(6); (b)(7(C) in regards to my proposed internship 2013 with ARK Regional Services. I was horrified to learn that my boss had contacted (b)(6); (b)(7(with my work information. As it was only an internship possibility, I was amazed to find (b)(6); (b)(7(C) insistence for more information from my employer. To have him receive more personal information made me feel unsafe. **(See emails April 18, 2013)**

In conclusion:

Based on these instances, I have always striven to put myself at a safe distance from (b)(6); (b)(7(C I cannot count the times which (b)(6); (b)(7(C reminded me that I was HIS student and that he had that authority over my life. He continually made checkups on my personal life. This amount of control was overwhelming and unhealthy. I have seen five other playwriting MFA's graduate from this program without a fraction of involvement in their lives as (b)(6); (b)(7 has tried to take in mine. Those students are (b)(6); (b)(7(C)
continual insistence that I return has made me feel terrified of his future plans. I will not compromise my safety for any reason. His insistence that I return moves beyond concern. He frightens me.

I would like to request that this University be investigated. By working through the Ombuds office since April 2012 – I have striven to find a reasonable outcome. Yet (b)(6); (b)(7(C) has not been willing to facilitate this option.

(b)(6); (b)(7(C) will try to deny this claim on the grounds of insufficient evidence. If it is indeed true, I do not feel I should have been made privy to such intimate details of his life.

I certify that this complaint is true and complete to the best of my recollection and knowledge.

Respectfully,

(b)(6); (b)(7(C)

June 4, 2014

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202-8520

To Whom it May Concern:

I write to file a formal complaint against the (b)(6); (b)(7(C) for violation of my rights under the Family Education Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g; 34 C.F.R. Part 99. I submit this complaint as it has very recently come to my attention that the (b)(6); (b)(7(C) has released my personal identifying information (PII) to a party without written consent authorizing such release as required by federal law.

I am a student at the (b)(6); (b)(7(C) I submit this complaint as a student of said higher educational institution as defined in 20 U.S.C. § 1232g.

Some time ago, I received an unauthorized and unsolicited (b)(6); (b)(7(C) Debit Card linked to a Higher One FDIC-backed checking account in the mail. This account satisfies the definitional requirements of a bank account as defined in 34 C.F.R. § 668.164. I received this bank account-linked debit card directly from Higher One via the U.S. postal service at my home address.

To establish this account, the (b)(6); (b)(7(C) at some time prior unknown to me, transferred my PII, including my social security number, address, and other unknown details to a for-profit banking firm to establish this bank account on my behalf. As you may be aware, this firm has a suspect history of compliance with many legal requirements regarding student accounts.

I, at no time, authorized this release of information, nor did I provide written consent prior to the establishment of this account. I was instructed that this was the method by which direct payment of my federal education funds would be transmitted to me upon receipt by my university. While alternatives have since been provided me, no alternatives were mentioned or offered at the time. Thus, my discovery of this improper release of my PII occurred just recently.

I was informed by Business Services staff at the (b)(6); (b)(7(C) that each student in attendance at the (b)(6); (b)(7(C) receives an unsolicited and unauthorized (b)(6); Higher One Debit Card in this fashion.

At no time *prior to* releasing my information or establishing this FDIC-backed checking account on my behalf did the (b)(6); (b)(7(C) at (b)(6); (b)(7 as required by 34 C.F.R. § 668.164, obtain written affirmative consent from either myself or my parents to open this account.

While the (b)(6); (b)(7(C) may establish relationships with third-party vendors and other contractors to engage in permitted University business, including for financial aid purposes, at no time may they transmit my PII or other information to said vendors or contractors in a fashion inconsistent with federal law. The (b)(6); (b)(7(C) was required to seek and receive my affirmative written consent to establish a Higher One bank account *prior to* doing so. While their failure to request and receive written consent to open a bank account in my name initially violated federal law, releasing my PII in violation of federal law is a further violation of FERPA as outlined in 20 U.S.C. § 1232g.

I respectfully submit this formal complaint and request the assistance of the Secretary of the U.S. Department of Education in this matter. I have repeatedly requested assistance from the Director of Business Services at the (b)(6); (b)(7(C) (b)(6); (b)(7(C) to no avail. Ms. (b)(6); (b)(7 continues to take the position that the (b)(6); (b)(7(C) may, at its discretion, transmit the PII of its students to the Higher One entity to establish an FDIC bank account on behalf of a student without *first* obtaining written consent from the student and/or his/her parents. This is a clear violation of 34 C.F.R. § 668.164.

Thank you for your time and consideration in assisting me with this matter. I may be reached by mail at: (b)(6); (b)(7(C), by email at (b)(6); (b)(7(C) @yahoo.com, or by telephone at (b)(6); (b)(7(C)

Respectfully,

(b)(6); (b)(7(C)

7(a). *If you have been denied access to education records*: Provide the specific nature of the records, the date on which you requested access, the name of the official to whom you made the request, and any responses received.

(b). *If your or your child's education records have been improperly disclosed*: Provide the date on which the records were disclosed or the date you learned the records were disclosed, the name of the school official who disclosed the records (if known), the specific nature of the records disclosed, and to whom the records were disclosed. Please see attached letter

(c). *If you are seeking to amend education records*: Provide the nature of the record you are seeking to amend, what exact information in the record you wish to amend, the date you submitted a request to amend, the name of the official to whom you made the request, and any responses received.

8. **Describe briefly what steps you have taken, if any, to resolve your complaints with school officials and their response, if any:**

9. Complainant's signatur (b)(6); (b)(7(C) Date 6/6/14

(b)(6); (b)(7(C)

August 29, 2014

U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

To whom it may concern,

I am writing in regard to a letter I sent in June 2014 notifying the Department of Education that my grade information from (b)(6); (b)(7(C) had been included without my permission in the pleadings of a lawsuit filed against me. I asked the DOE to determine if my FERPA rights had been violated. Please be advised that I no longer wish to pursue the issue with DOE.

Thank You,

(b)(6); (b)(7(C)