

September 7, 2004

Parent

Dear Parent:

This is in response to the complaint that you submitted to this Office on June 29, 2004. This Office administers the Family Educational Rights and Privacy Act (FERPA), which addresses issues that relate to students' education records.

You allege that the School District (District) violated your rights under FERPA by improperly disclosing information from your e-mail request requesting that the District evaluate your son for a possible disability. You alleged that the District disclosed the information to its attorney, who then sent a letter to you regarding your request. In addition, you stated that you are currently involved in two separate due process hearings against the District concerning services for your daughter. The attorney's letter indicates that she is also representing the District in that matter.

Educational agencies and institutions subject to FERPA may not have a policy or practice of disclosing education records, or personally identifiable information from education records, without consent except as authorized by law. Specifically, FERPA provides that a school generally may not disclose personally identifiable information from a student's education records to a third party unless the student has provided prior written consent. 34 CFR § 99.30. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records."

There are a number of exceptions to FERPA's prohibition on nonconsensual disclosure of education records. One exception permits institutions to disclose education records without consent to parties such as outside legal counsel, psychologists, or collection agents because they are providing the types of services that would allow them to obtain access to education records without consent as if they were in fact "other school officials" under FERPA. 34 CFR § 99.31(a)(1). In other words, these parties have a "legitimate educational interest" in the information or records. This would be the case whether or not the school has specifically identified a particular contractor or type of contractor in its criteria for determining who are school officials. That is, given the construction of the definition of "education records," we believe that FERPA was not intended to prevent schools from seeking outside assistance in performing certain tasks that it would otherwise have to provide for itself. So long as the task does not exceed the school's

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criteria for determining what is a legitimate educational interest, then disclosures of education records to an agent under contract with the school to provide certain services would not be outside the scope of FERPA.

The information you provided indicates that the District's disclosure of your education records was to an attorney who was representing the District at the time she received the education records. As discussed above, FERPA permits such disclosures. Accordingly, there is no basis on which to investigate your allegations that your rights under FERPA were violated.

I trust that the above information is helpful in explaining FERPA as it relates to your complaint.

Sincerely,

/s/

LeRoy S. Rooker

Director

Family Policy Compliance Office