(b)(6)

DEC 15 2009

Dear (b)(6)

This is to respond to your April 20, 2009, and July 13, 2009, letter of complaint filed on behalf of your client, (b)(6) (Parent). The Parent alleges that rights afforded her under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (b)(6) (District) when it did not comply with requests made on her behalf by your staff to amend the education records of her son (b)(6) (Student). This Office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed is a copy of a FERPA fact sheet.

Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is required to provide the parent with copies of education records or make other arrangements when a failure to do so would effectively prevent the student from obtaining access to the education records. A case in point would be a situation in which the parent does not live within commuting distance of the school. Based on the information in your correspondence, it appears that the parent lives within commuting distance to the District. As such, the District is required only to provide the Parent with an opportunity to inspect and review the Student's education records, although it is permitted to provide her with copies.

FERPA vests the rights it affords with the parent or eligible student. The statute does not provide for these rights to be vested in a third party that has not suffered an alleged violation. Thus, we have determined that an individual must have "standing," i.e., have suffered an alleged violation, in order to file a complaint under FERPA. In this instance, the District would be permitted, though not required to respond to a complaint or provide information from the Student's education records to you, a third party, even when the parent provided written consent for you to act on her behalf.

FERPA affords parents the opportunity to seek amendment of their child's education records which the parents believe contain information that is inaccurate or misleading. While a school is not required to amend a record in accordance with a parent's request, it is required to consider the request for amendment of an education record, to inform the parent of its decision, and if the request is denied, to advise the parent of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the parent has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

This right is not unlimited, however, and a school is not required by FERPA to afford a parent the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student. This fact is indicated in the legislative history of FERPA. The primary source of legislative history regarding FERPA is contained in the "Joint Statement in Explanation of Buckley/Pell Amendment," Volume 120 of the Congressional Record, pages 39862-39866. The Joint Statement states that FERPA was "not intended to overturn established standards and procedures for the challenge of substantive decisions made by an educational institution." (Emphasis added.) FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. Thus, while FERPA affords parents the right to seek to amend education records which contain inaccurate information, this right cannot be used to challenge a grade or an individual's opinion.

Because the records you are seeking to expunge were accurately recorded by the District, FERPA's amendment provision does not apply in this instance. Accordingly, no basis exists for this Office to investigate the Parent's allegation that the District failed to consider your Office's request to amend or otherwise destroy the Student's education records related to his December 20, 2007, disciplinary matter. While not required to do so under FERPA, the District is not prevented from destroying the records you are seeking to expunge upon mutual consent between the Parent and District.

I trust this information is helpful to address the scope and limitations of FERPA as it relates to the Parent's concerns.

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

Enclosure
cc: Parent