(b)(6)

JAN 0 8 2008

Dear (b)(6)

This is in response to your June 12, 2007, complaint form to this Office in which you allege that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it failed to provide you access to the education record of your children, (b)(6) (Students), in response to your requests. You also allege that the District violated FERPA when it failed to amend the Students' education records in response to your requests or offer you an opportunity for a hearing on the matter, and when it disclosed personally identifiable information from your children's education records to a third party without your prior written consent. This Office administers FERPA which addresses issues that pertain to education records.

FERPA is a Federal law that gives parents the right to have access to their minor children's 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. Once a student turns 18 years of age or attends a postsecondary institution, he or she becomes an "eligible student," and all rights under FERPA transfer from the parent to the student. The term "education records" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Enclosed for your information are a FERPA fact sheet, guidance document, and complaint form.

Please note that a school is not generally required by FERPA to provide a parent with "records regarding school policy, board policy . . . employees, and other records" to which it appears you are also seeking access. This is because those types of records age not generally directly related to an individual student and, therefore, do not meet the definition of education records under FERPA.

Under FERPA, a school is generally required to 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 not, however, required to provide a parent with copies of education records unless a failure to do so would effectively prevent the parent from obtaining access to the 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 letter, it

appears you live within commuting distance of the Students' school. Therefore, the District is required to provide you with the opportunity to inspect and review the Students' education records, though the school is permitted by FERPA to provide you with copies of the records instead.

Also please note that a school is not generally required to maintain particular education records or education records that contain specific information. Rather, a school is required to provide the privacy protections of FERPA to those education records that the school selects to maintain.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. A timely complaint is defined as one that is submitted to this Office within 180 days of the date that the complainant knew or reasonably should have known of the alleged violation. Based on the information in your letter, it appears you have made a number of requests to the District for access to the Students' education records. While the District has provided you with access to certain education records, you do not believe it has provided you with access to all of the education records that it maintains.

In order to exercise your rights to access education records under FERPA, I suggest you write to the appropriate official in the District again and request all of the education records to which you believe the District has not provided you access. You should provide the District with any evidence you may have that it maintains such education records. If the District fails to provide you access to the requested education records or fails to contact you within 45 days, you may write to this Office again. At such time, please provide us with a dated copy of your letter to the District and any response from the District. We will review the information you submit and take any appropriate action.

Under FERPA, a parent has the right to request that inaccurate or misleading information in his or her child's education records be amended. While a school is not required to amend education records in accordance with a parent's request, the school is required to consider the request. If the school decides not to amend the record in accordance with the parent's request, the school must inform the parent of the right to a hearing on the matter. If, as a result of the hearing, the school still decides not to amend the record, the parent has the right to insert a statement in the record setting forth his or her views. That statement must be maintained with the record for as long as the record is maintained.

However, while the amendment procedure may be used to challenge facts that are inaccurately recorded, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about a student. 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.

If you believe there is inaccurately recorded information in education records, you should write to the appropriate official in the District and request that the inaccurately recorded information be amended. Also, along with your request to the District, you should provide evidence to support your claim that information in the education records is inaccurately recorded. If the District does not amend the inaccurately recorded information or offer you the opportunity for a hearing on the matter, you may write to this Office again. At such time, please provide us with a dated copy of your request (including your evidence) to the District and any response from the District. We will review the information you submit and take any appropriate action. However, please note that the District is not required by FERPA to respond to you if you request amendment of information that is not amendable under FERPA (such as a grade, an opinion, or a substantive decision made by the District).

Under FERPA, a school may not generally disclose personally identifiable information from a minor student's education records to a third party unless the student's parent has provided written consent. However, there are several exceptions to FERPA's general provision against nonconsensual disclosure of education records.

One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to education records provided the school has determined that they have a "legitimate educational interest" in the information. Although the term "school official" is not defined in the statute or regulations, this Office has interpreted the term broadly to include a teacher, administrator, board member, support or clerical staff, nurse and health staff, counselor; human resources staff, information systems specialist, and attorney. Generally, a school official has a legitimate educational interest if he or she needs access to information in education records to fulfill his or her professional responsibility.

A school may disclose education records without consent to a "school official" under this exception only if the school has first determined that the official has a "legitimate educational interest" in obtaining access to the information for the school. A school that allows school officials to obtain access to education records under this exception must include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interest."

FERPA does not specifically address disclosure of education records to contractors, consultants, volunteers, and service providers who are not employees at a school. However, the statutory definition of education records appears to recognize the use of outside service providers in calling for the protection of education records maintained by "a person acting for the agency or institution." Accordingly, this Office has advised that schools subject to FERPA are not precluded from disclosing education records to parties to whom they have outsourced services so long as they do so under the same conditions applicable to other school officials.

In your letter, you allege that the District disclosed information from education records to the "general counsel for no 'legitimate educational interest'." In order for this Office to further consider this request, we need to receive additional information from you. Please provide this Office with the date of the alleged disclosure of information from the Student's education records; the name of the official who made the disclosure, if that is known; and the specific nature of the information disclosed. Also, please provide us with information regarding the "general counsel" and his or her relationship to the District. Please note that if the general counsel is an employee or contractor of the District, the District may by permitted by FERPA to nonconsensually disclose to him or her information from the Students' education records. We will review the information you submit and take any appropriate action.

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

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures