(b)(6)

SEP 16 2009

Dear (b)(6)

This is to respond to correspondence received from you dated February 25, 2008, and May 3, 2009, in which you allege that rights once afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated when the (b)(6) (District) failed to provide you with complete access to the education records of your son (b)(6) (Student) in response to your requests. We note that your rights under FERPA have since transferred to your son when he turned 18 years of age and became an "eligible student." Accordingly, you have provided this Office with signed consent from your son which permits this Office to respond to you. This Office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives a student the right to have access to his or her 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. When a student reaches the age of 18 or attends an institution of postsecondary education, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the student. The term "education records" is defined as those records that are 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. Since the time of your son's 18th birthday, your son was deemed "eligible" and all FERPA rights transferred to him. Currently, the District would be required to provide only your son with an opportunity to inspect and review his education records as discussed above. Enclosed for your information is a FERPA fact sheet.

Under FERPA, a school must provide the eligible student with an opportunity to inspect and review his or her education records within 45 days of the receipt of a request. A school is required to provide the eligible student 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 student does not live within commuting distance of the school. Based on the information in your correspondence, it appears that the student lives within commuting distance to the District and it is required only to provide him with an opportunity to inspect and review his education records, although it is permitted to provide him with copies.

In accordance with FERPA, a school generally is not required to maintain particular education records or education records that contain specific information. Rather, a school is required to provide certain privacy protections relative to those records it selects to maintain. Nor does FERPA require schools to create or to re-create lost or destroyed education records. It may destroy education records without notice to the student, unless there is an outstanding request from the student to inspect and review such records.

Under FERPA, a school may not generally disclose personally identifiable information from the education records of a student to a third party unless the student has provided written consent. However, there are several exceptions to FERPA's prohibition against nonconsensual disclosure of education records. One of FERPA's exceptions to its disclosure provision permits but does not require schools to disclose education records to parents when the parent claims the student as a dependent for tax purposes. Accordingly, a school is not required to provide any third party with access to a student's education records, even when the student has provided prior written consent for such records to be disclosed to that third party. In this instance, although the District is permitted to do so, it is not required to provide you with access to, or copies of, your son's education records in response to a request from you.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has failed to comply with 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 failure to comply with FERPA.

Based on information you provided this Office, including copies of the District's written responses to your requests for access to your son's education records at the time you held the rights, the District complied with your requests for access when it offered you opportunities to inspect and review your child's education records. Additionally, you have not provided sufficient evidence for this Office to determine that additional records exist to which you have not been provided access by the District. Accordingly, no basis exists for this Office to investigate your allegation that the District denied you access to your son's complete education records at the time when you held rights under FERPA.

Also, it appears that some of the issues you raise may be addressed under the Individuals With Disabilities Education Act (IDEA), Part B, which, although a Federal law, is administered by the States. The contact information for your State is as follows:

Dr. Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201-2595
Telephone: (410) 767-0238

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

Sincerely,

Paul Gammill
Director
Family Policy Compliance Office

cc: Student

Enclosure