DEC 20 2010

(b)(6)

Dear (b)(6)

This is in response to your letter dated July 21, 2009, in which you allege that Harrison Township School District (District) violated the Family Educational Rights and Privacy Act (FERPA) when on February 2, 2009, a physical therapist from your child's school, Ms. Vicki Walters, contacted your child's private physician, Dr. Mihir Thacker, and shared information from your child's education records with Dr. Mihir without your prior written consent. In this regard, you provided a copy of the February 2 letter from Ms. Walters to Dr. Thacker and you provided a copy of a February 9, 2009, letter to you from the Superintendent, Dr. Patircia Hoey, explaining why information from your child's education records was shared with Dr. Mihir. This office administers FERPA which pertains to education records.

FERPA is a Federal law that affords parents the right to have access to their 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. Education records are those records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for the agency or institution.

One of the exceptions to FERPA's general consent rule is for disclosures that are in connection with a health or safety emergency. FERPA permits school officials to disclose, without consent, education records, or personally identifiable information from education records, to appropriate parties in connection with an emergency, if knowledge of that information is necessary to protect the health or safety of the student or other individuals. See 34 CFR §§ 99.31(a)(10) and 99.36. Typically, law enforcement officials, public health officials, trained medical personnel, and parents (including parents of an eligible student) are the types of appropriate parties to whom information may be disclosed under this FERPA exception. This exception to FERPA's general prior consent requirement is temporally limited to the period of the emergency and generally does not allow for a blanket release of personally identifiable information from the student's education records.

Under the health or safety emergency provision, an educational agency or institution is responsible for making a determination whether to make a disclosure of personally identifiable information on a case-by-case basis, taking into account the totality of the circumstances pertaining to the threat. If the school district or school determines that there is an articulable and significant threat to the health or safety of the student or other individuals and that a party needs personally identifiable information from education records to protect the health or safety of the student or other individuals, it may disclose that information to such appropriate party without consent. 34 CFR § 99.36. This is a flexible standard under which the Department defers to school administrators so that they may bring appropriate resources to bear on the situation, provided that there is a rational basis for the educational agency's or institution's decisions about the nature of the emergency and the appropriate parties to whom information should be disclosed. FERPA requires that, within a reasonable period of time after a disclosure is made under this exception, an educational agency or institution must record in the student's education records the articulable and significant threat that formed the basis for the disclosure and the parties to whom information was disclosed. 34 CFR § 99.32(a)(5).

The letter from the Superintendent to you states that the disclosure was made under FERPA's health and safety exception and that contact was made because the child had had hand surgery by Dr. Thacker who subsequently contacted the school district to discuss his post-surgical care. According to the District, Ms. Walter's subsequent contact with Dr. Thacker was to protect the health and safety of your child. Please refer to the relevant highlighted portions of the two letters you provided which we will include in this response to you. Accordingly, there is no basis on which to initiate an investigation into your allegation. The District relied on FERPA's health and safety exception to disclose your child's education records and as such the disclosure was permissible under FERPA.

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

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures