(b)(6)

FEB 1 2 2010

Dear (b)(6)

This is in response to your May 27, 2008, letter 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 all of the education records of your daughter (b)(6) (Student), in response to your requests, and when it failed to amend the Student's education records in response to your request or offer you the opportunity for a hearing on the matter. 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 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. 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.

Under FERPA, a school is 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 record 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 student's school. Based on the information in your letter, it appears you live within commuting distance of the Student's school. Therefore, the school is required by FERPA to provide you with an opportunity to inspect and review the Student's education records, though it is permitted to provide you with copies of the records instead.

Under FERPA, a school is not required to comply with a request for access to records that do not exist or to create education records in response to a parent's request. Accordingly, a school is not required to comply with a request for access to a test that it does not maintain at the time of the request. Also, a school is not required to comply with a standing request for access to education records. Rather, the school must comply with each individual request for such access.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. If you wish this Office to further consider your allegation, we need to receive additional information from you.

As stated above, the District would not be required by FERPA to provide you access to the Student's "test scores" or any other education records that it did not maintain at the time of your request. Based on the information in your letter, it is not clear that the District maintained the Student's test scores at the time of your original requests on February 6 and 7, 2008. If that is true, February 6 would not be the date from which the 45 days would be calculated regarding your request for the test scores. Are the test scores the only education record to which you are alleging you were not provided access within 45 days? If not, what are the other education records to which you believe you were not provided access by the District?

In order to exercise your rights under FERPA, I suggest you write again to the appropriate official in the District requesting an opportunity to inspect and review all of the Student's education records or any subset of the Student's education records. Although it is not required, I suggest you include a copy of this letter along with your request. If the District fails to provide you access to the requested education records, or fails to contact you within 45 days, you may contact this Office again. At such time, please provide us with a dated copy of your letter to the District, any response from the District, and a completed copy of the enclosed complaint form. 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.

Also, please note that FERPA does not generally require a school to maintain particular education records or education records that contain specific information. Rather, the school is required to provide FERPA's privacy protections to those education records that the school selects to maintain. From the information in your letter, it is not clear whether you are seeking to amend certain of the student's grades -- the test scores. As stated above, you may not seek to amend a student's grades under FERPA. Also, a school is not required by FERPA to respond to a request by a parent seeking to amend a student's grade under FERPA.

If you are seeking amendment of inaccurately recorded information in the Student's education records, you should write to the appropriate official in the District and request amendment of the specific information which you believe is inaccurately recorded, and provide the District with evidence to support your assertion that such information is inaccurately recorded. If the District fails to amend the record as you requested or offer you the opportunity for a hearing on the matter, you may contact this Office again. At such time, please provide us with a dated copy of your letter to the District, any response from the District, and a completed copy of the enclosed complaint form. 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