(b)(6)

FEB 23 2010

Dear (b)(6)

This is to respond to your December 28, 2008, complaint form to this Office in which you allege that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it did not provide you access to certain of the education records of your son, (b)(6) (Student), in response to your written request to the District. Specifically, you state that you requested beginning July 1, 2008, that various District officials provide you access to the Student's education records. In a July 18, 2008, response from (b)(6) dean of students at Student's school in the District, (b)(6) stated that "all of [the Student's education records] that were in [the District's] possession have been forwarded to you" and that no additional education records exist. You also provided this Office with a copy of an October 2, 2008, unsigned letter from (b)(6), assistant superintendent of the District, in which he states that the Student's education records were either provided to the Student or no longer exist. 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. 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. Enclosed is a copy of a FERPA fact sheet.

Under FERPA, a school must provide a parent or eligible student 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 or eligible student with copies of education records or make other arrangements when a failure to do so would effectively prevent the parent or 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 you live within commuting distance to the District. As such, it is required only to provide you with an opportunity to inspect and review the Student's education records, although it is permitted to provide you with copies. Under the circumstance that you describe, it appears that the District complied with FERPA when it provided the Student with a copy of certain of his education records.

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 parent, unless there is an outstanding request from the parent to inspect and review such records.

As stated above, the District is not required to provide you with copies of the Student's education records nor is it required to re-create education records that it does not maintain. You have not provided sufficient information for this Office to determine whether or not certain education records existed at the time you made your July 2008 request. Without such information, this Office is unable to investigate your allegation that the District failed to provide you access to the Student's education records. Accordingly, no basis exists for this Office to investigate your allegation that the District failed to provide you with access to the Student's education records.

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:

Ms. Marcia Mittnacht
State Director of Special Education
Massachusetts State Department of Education
350 Main Street
Malden, Massachusetts 02148-5023
Telephone: (781) 338-3375

I trust this information is helpful to address the scope and limitations of FERPA as it relates to your concern.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures