UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

(b)(6)

OCT 29 2010

Dear (b)(6)

This is to respond to your May 19, 2010, email correspondence and September 7, 2010, complaint form to this office in which you allege that rights afforded you under the Family Educational Rights and Privacy Act (FERPA) were violated by the (b)(6) (District). Specifically, you allege that the District violated FERPA when it denied you access to education records of your child (b)(6) Student) and when it failed to amend certain of her education records in response to your written requests. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents, custodial and non-custodial alike, the right to have access to his or her child'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, unless there is a court order or State law that specifically provides to the contrary. The school may ask for legal certification denoting parenthood, such as a court order or birth certificate, from the parent requesting access to education records. The term "education records" is defined as 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.

Under FERPA, a school must 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 required to provide a parent with copies of education records, or make other arrangements, only if 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.

While a school is required to comply within 45 days with each individual request for access, it is not required by FERPA to honor standing requests, to provide immediate access to records, or to send out grades to parents at the end of marking periods. Further, a school is not required to provide information that is not maintained or to create records that do not exist.

Additionally, FERPA would not require a school to provide parents documents such as school calendars, updates, or notices of parent/teacher conferences because such documents are generally not directly related to individual students. Also, FERPA does not address who will attend parent/teacher conferences or provide a parent with access to teachers – such decisions are made at the discretion of local and State officials.

FERPA affords parents the opportunity to seek amendment of their child's education records which they believe contain information that is inaccurate or misleading. While a school is not required to amend a record in accordance with a parent's request, it is required to consider the request for amendment of an education record, to inform the parent of its decision, and if the request is denied, to advise the parent of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the parent has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

This right is not unlimited, however, and a school is not required by FERPA to afford a parent the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student. This fact is indicated in the legislative history of FERPA. The primary source of legislative history regarding FERPA is contained in the "Joint Statement in Explanation of Buckley/Pell Amendment," Volume 120 of the Congressional Record, pages 39862-39866. The Joint Statement states that FERPA was "not intended to overturn established standards and procedures for the challenge of substantive decisions made by an educational institution." (Emphasis added.) 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, disciplinary rulings, or placement determinations. Thus, while FERPA affords parents the right to seek to amend education records which contain inaccurate information, this right cannot be used to challenge a grade, an individual's opinion, or a substantive decision.

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 the May 19, 2010, date when this office received your original inquiry, any allegations you made regarding violations of FERPA which occurred prior to November 20, 2009, are untimely. Allegations that are not timely are not investigated.

In response to your allegation that the District denied you access to the student's education records, you provided information which indicates that the District's stated policy requires parents who request copies of education records to provide it with a self-addressed, stamped envelope before the District forwards such copies to parents. Such a policy does not violate FERPA, unless a failure to do so would effectively prevent the parent from obtaining access to the records. You have not provided information to this office to demonstrate that the District's policy effectively denied you access to the Student's education records when it required you to comply with its access policy. In fact, you acknowledged the District's policy and agreed to

comply with the District's access policy, and did not further clarify to the District your February 9, 2010, request. Based on copies of your correspondence you provided this office, District officials, including (b)(6) assistant superintendent of educational services, offered you access to the Student's education records in compliance with FERPA. Accordingly, no basis exists for this office to investigate your allegation that the District denied you access to the Student's education records.

In response to your allegation that the District failed to amend the Student's education records in response to your specific request to modify her education records to reflect the Student's birth name as it appears on her birth certificate, the District held a hearing on July 22, 2010. At that hearing, the District considered your request for amendment, denied your request to modify her records and complied with your request to insert your statement in the records in regard to your request for amendment in compliance with FERPA. Accordingly, no basis exists for this office to investigate your allegation that the District failed to afford you an opportunity to seek an amendment of the Student's records as you alleged.

I trust this information addresses the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

(b)(6)

Ellen Campbell
Acting Director
Family Policy Compliance Office