(b)(6)

JAN 1 2 2009

Dear (b)(6)

This is in response to your September 28, 2008, complaint form 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 disclosed personally identifiable information from the education records of your (b)(6) (Student), to a third party without your prior written consent. This Office administers FERPA which addresses issues that pertain to education records.

Specifically, you state:

> My (b)(6 [the Student], told a "story" to the librarian assistant around April 21, 2008. Without our knowledge, or consent, the elementary principal called a personal friend of hers, revealed the nature of the story to get advice as to whether [Child Protective Services] should be notified. The person she called was (b)(6) with the (b)(6) Highway Patrol. He (b)(6) is also (b (b)(6) . . . This conversation with (b)(6) obligated him to report the incident to (b)(6) supervisor.

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.

Under FERPA, a school may not generally disclose personally identifiable information from a minor student's education records to a third party unless the student's parent has provided written consent. However, please note that FERPA does not protect the confidentiality of information in general and, therefore, does not apply to disclosure of information derived from a source other than education records, even if education records exist which contain that information. Rather, FERPA protects information derived from education records from improper disclosure. As a general rule, information obtained through personal knowledge or observation, and not from an education record, is not protected from disclosure under FERPA.

Also, there are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records. One such exception permits the nonconsensual disclosure of education records in connection with a health or safety emergency. More specifically, a school may disclose personally identifiable information from a student's education record, without written parental or eligible student consent, to appropriate parties in connection with a an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

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

As stated above, FERPA applies to information contained in tangible education records. If the story told by the Student was recorded by the "librarian assistant," and the Student's story was disclosed to the "elementary principal" from the librarian assistant's written record, the story would generally be protected by FERPA. However, if the story was not recorded, the information would not be protected from disclosure by FERPA. Therefore, please inform this Office whether the Student's story was recorded by the librarian assistant or other school official and such written record was disclosed to the elementary principal before he contacted [redacted] Also please inform us of the specific nature of the Student's story. 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 concern.

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office