Mrs. Carol S. Hay
Superintendent
Panama Central School District
41 North Street
Panama, New York 14767

JAN 27 2010

Complaint No. (b)(6)
Family Educational Rights
and Privacy Act

Dear Mrs. Hay:

This is to inform you of the finding in the complaint filed by (b)(6) (Parent) against the (b)(6) (District) under the Family Educational Rights and Privacy Act (FERPA). By letter dated September 16, 2009, we informed you of the Parent's allegation that the District violated § 99.30 of the FERPA regulations when it improperly disclosed information from her daughter, (b)(6) (Student) education records. Specifically, the Parent alleged that on February 2, 2009, you disclosed information regarding the Student's diabetes and 504 plan in an email to (b)(6) grandfather of the Student.

By letter dated October 6, 2009, you responded indicating that you did email (b)(6) regarding the student's diabetes and 504 plan. You provided a copy of the Student's Diabetes Medical Plan for the current school year and you stated that the Parent signed a release in the diabetes medical plan that authorized the disclosure. That consent reads, in part, as follows:

> I also consent to the release of the information contained in this Diabetes Medical Management Plan to all staff members and other adults who have custodial care of my child and who may need to know this information to maintain my child's health and safety.

In your letter to this Office you state that you are aware that (b)(6) has been actively involved in the education of his granddaughter including the management of her diabetes. You state that he has attended her 504 meetings, is permitted to attend fieldtrips with his granddaughter, and is the emergency contact for her. In this regard you state:

> Given the fact that (b)(6) has been involved in his granddaughter's health care management and 504 Plan, I did not believe the information I provided to him would be deemed a violation under the FERPA regulations. The alleged disclosure was not to an agency or other entity or even an unrelated third party, but was instead provided to the child's grandparent who was previously involved with matters related to her diabetes

management. At no time was this disclosure with any intent other than to assist with the management of the child's medical condition and health plan. The alleged disclosure was made solely in the best interests of the child and consistent with prior involvement by the grandfather.

As you are aware, FERPA provides that educational agencies or institutions may disclose a student's education records, or personally identifiable information from such records, to third parties only after obtaining the written consent of a minor student's parent, or of a student who has reached the age of 18 or is attending an institution of postsecondary education. ("Eligible student.") 20 U.S.C. § 1232g(b)(1) and (d). 34 CFR § 99.30.

"Education records" means those records that are:

(a) Directly related to a student; and

(b) Maintained by an educational agency or institution or by a party acting for the agency or institution.

34 CFR § 99.3 "Education records."

FERPA requires that a consent for disclosure of education records must be signed and dated and must specify the records that may be disclosed; state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made. 20 U.S.C. § 1232g(b); 34 CFR § 99.30. The signed consent provided that the Parent signed contains the above required elements.

Your response indicates that you interpreted the consent that the Parent signed broadly to include (b)(6) You explain that you took into consideration the fact that his granddaughter is sometimes under his care, that he may need to know information from her 504 plan to ensure her health and safety, and that he has been involved in her education. The consent form that the Parent signed is very broad and can be read to include an individual such as (b)(6) Based on this fact and your response to the allegation, we find that no violation of FERPA occurred in this instance and as such no further action is required by the District. We will inform the Parent of our finding by copy of this letter.

However, it remains unclear to what extent (b)(6) is currently involved with the Student because in your response you mention his "previous" or "prior" involvement with the child. Moreover, the fact that the Parent filed a FERPA complaint with this Office indicates that she did not intend for the consent to be read to include (b)(6) and, in fact, may have wished that the consent specifically excluded him. Therefore, we are suggesting to you that, in the future, the consent be clarified as appropriate to avoid any future misunderstandings.

We also acknowledge the statement that you made in your letter that in light of this complaint, the District will make every attempt to adhere to the requirements under FERPA regarding the disclosure of education records. Accordingly, we are closing this complaint.

Thank you for your cooperation with regard to this matter.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

cc: Parent