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

(b)(6)

NOV 22 2010

Dear (b)(6)

This is to respond to your September 12, 2010, letter and your November 2, 2010, e-mail to this Office in which you allege that (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232; 34 CFR § 99. You allege that the above school, school district, or institution did not comply with one of the following provisions of FERPA:

____ FERPA's access provision.

_X_ FERPA's disclosure provision.

____ FERPA's amendment provision.

FERPA provides that an educational agency or institution that receives U.S. Department of Education funds may not have a policy or practice of denying parents or eligible students the right to:

- Inspect and review education records (34 CFR § 99.10).
- Seek to amend education records (34 CFR §§ 99.20, 99.21, and 99.22).
- Consent to the disclosure of personally identifiable information from education records except as specified by law (34 CFR §§ 99.30 and 99.31).

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 for your information are a FERPA Guidance Document and the FERPA regulations.

Based on the information you provided this Office, we are unable to investigate your allegation(s) for the following reason(s):

__X_ Your complaint is untimely. A complaint must be received by this Office within 180 days of the date of the alleged violation or of the date which the complainant knew or reasonably should have known of the alleged violation. (See highlighted portion of the enclosed guidance.)

____ While FERPA requires that a parent or eligible student be provided an opportunity to inspect and review education records, the law would only require that a school provide a copy of the records or make other arrangements for inspection of the records if certain circumstances exist. (See highlighted portion of the enclosed guidance.)

____ FERPA permits educational agencies and institutions to disclose education records to school officials with legitimate educational interest and other specified parties without consent. (See highlighted portion of the enclosed guidance.)

____ You have not provided sufficient information for this Office to determine that a violation of FERPA may have occurred. (See enclosed guidance.)

____ Requests to modify a grade, opinions included in education records, and other substantive decisions are not subject to FERPA's amendment provision. (See highlight portion of the enclosed guidance.)

In your letter, you indicate that your son (Student) attends (b)(6) (School) in the District where he was involved in an altercation with another student (Other Student). (b)(6) principal of the School, asked both students involved in the altercation to "write a statement which explains what happened and to sign it." Subsequently, the resource officer (for the School or District) informed each student that "what they have just signed is a police report and that they are to be criminally charged with disorderly conduct," and the resource officer collected the statements. Specifically, you allege that the District violated your rights under FERPA when the resource officer disclosed the statement written and signed by the Student to the "police department, the juvenile prosecutor, and the juvenile probation department."

As indicated above, your complaint does not meet FERPA's threshold requirement for timeliness. As such, there is no basis for this Office to further consider it. Notwithstanding the fact that your complaint is not timely, it also does not appear that the District violated FERPA as you allege. It is not clear from the information you have provided to us whether the "resource officer" was also designated as a school official and/or as a law enforcement unit official. See the bottom of page two and top of page three of the guidance document for a discussion of the school official exception and § 99.8 (the clipped and highlighted portion) of the FERPA regulations for a discussion about law enforcement units and officials.

Let's say the resource officer was a school official and a law enforcement unit official. Once he collected the Student's statement, the statement became an education record subject to FERPA. However, the statement would also qualify as a law enforcement unit record which the resource

officer would be permitted by FERPA to nonconsensually disclose to third parties, including officials in the local police department. If the resource officer was not a school official, the Student's statement was never maintained by the District, and therefore, it never became an education record protected by FERPA.

It does not appear that the District's procedure for obtaining statements from students involved in altercations and subsequently having the student statements provided to the police department, as set forth in your allegation, is a violation of FERPA. However, if you and other parents in the District are unhappy with this District procedure, you may want to discuss your concerns with your local board of education.

I trust this information adequately explains the scope and limitations of FERPA as it pertains to your concerns.

Sincerely,

(b)(6)

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures