Mrs. June Doe
Superintendent
Dedham Public Schools
100 Whiting Avenue
Dedham, Massachusetts 02026

APR 8 2011

Dear Mrs. Doe:

This is in regard to allegations made to this Office by (b)(6) (Parents) regarding violation of the Family Educational Rights and Privacy Act (FERPA) by (b)(6) (District). Specifically, the Parents allege that the District violated their rights when it disclosed information from the education records of their son, (b)(6) (Student), to third parties without their prior written consent.

FERPA is a Federal law that gives parents the right to have access to their minor 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. Enclosed for your information is a copy of the FERPA regulations which appear at 34 CFR Part 99 and at our Website as follows: www.ed.gov/policy/gen/guid/fpco/index.html

Under FERPA, 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. 34 CFR 99.3 "Education records." 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. 34 CFR § 99.30.

"Personally identifiable information" includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. 34 CFR § 99.3 "Personally identifiable information."

There are several exceptions to FERPA's general prohibition against nonconsensual disclosure of education records. 34 CFR § 99.31. However, none of FERPA's exceptions appear to apply to the disclosures alleged by the Parents.

In addition to conducting investigations of alleged violations of FERPA, this Office also provides educational agencies and institutions with technical assistance to help ensure they comply with or come into compliance with FERPA. Due to the passage of time since we received the Parents' allegations, we are providing this letter of technical assistance on FERPA in lieu of investigating the parents' concerns.

Allegation A

The Parents allege that on February 9, 2009, a school official in the District improperly disclosed personally identifiable information from the Student's education records to (b)(6) .com," a blog run locally by (b)(6) . The individual who entered the information in the blog is known as (b)(6) ." In (b)(6) blog entry, he or she writes in relevant part:

> . . . Recently I've found that one of my nephew's teachers[s], a 6th grade special educator, has been reassigned to home tutor an elected official's child . . . during the time at which she was supposed to be in the middle school. This official's child certainly deserves any accommodations . . .

The Parents believe that (b)(6) is a school official because the information disclosed in the post is information from the Student's education records, including information from his Individualized Education Plan (IEP). The Parents state that (b)(6) disclosed the fact that the Student received special education services and that he was receiving such services from a middle school official in his home. The Parents allege that even though the Student's name is not disclosed in the blog entry, the information disclosed by (b)(6) is personally identifiable information from the Student's education records because it is linkable to the Student by members of the community. As evidence to support this assertion, the Parents provided this Office with February 10 and March 23, 2009, e-mails from (b)(6) to the Parents regarding the blog entry. Enclosed for your review is a copy of the February 9 blog entry and (b)(6) February 10 and March 23 e-mails.

Allegation B

The Parents allege that (b)(6) , a middle school teacher in the District and co-chairman of the Faculty Council, improperly disclosed personally identifiable information from the Student's education records to (b)(6) , a

correspondent for (b)(6) newspaper. In (b)(6) March 29, 2009, article, she writes:

> . . . And then "it came to the attention of the Faculty Council in late January that the special-ed teacher was directed to leave the building to provide in-home services to a student," (b)(6) said. "It was brought to my attention that the directive came directly from Superintendent June Doe."

The Parents state that (b)(6) disclosed the fact that the Student received special education services and that he received such services from a middle school official in his home. The Parents state that (b)(6) said she was told the Student's name but did not use it in the article. The Parents allege that even though the Student's name does not appear in the article, the information disclosed by (b)(6) Bolton is personally identifiable information from the Student's education records because it is information that is linkable to the Student by members of the community. As evidence to support their assertion, the Parents state that (b)(6) contacted them "at home for quotes and information" with regard to the article. Enclosed for your information is a copy of (b)(6) March 29 article.

Allegation C

The Parents allege that you improperly disclosed personally identifiable information from the Student's education records in a 40-minute public interview you gave on March 30, 2009. As evidence to support their allegation, they provided us with April 1 and 2, 2009, articles by (b)(6), a staff writer for the (b)(6), in which (b)(6) recounts information from your interview.

> . . . "All education services were in place for all students while the tutoring occurred," Doe said . . .
>
> Doe said she supported the decision by (b)(6), interim special education director, that home tutoring was appropriate for an unnamed student during the week before Christmas vacation, and in January until about January 22.
>
> Doe said one special education teacher tutored for about nine days, before a second teacher took over. The tutoring took place between 9 and 11 a.m. most days per week . . .
>
> Doe replied: "I would say that through the information that seems to be in the community, that the identity of the child and the family is pretty widely known, and that is really extremely saddening to me as a professional person because their confidentiality has been violated. . . ."

The Parents state that you disclosed the fact that the Student received special education services and that he received such services from a middle school official in his home, in addition to other details such as the dates and times of the tutoring. The Parents allege that even though you did not disclose the Student's name during your interview, you disclosed personally identifiable information from the Student's education records because it is information that is linkable to the Student by members of the community. As evidence to support their assertion, the Parents point to your comment at the March 30 interview (as recounted in the April 1 article) which is our fourth and last quote above.

If the information in these allegations is accurate, we suggest you take this opportunity to review the FERPA definition of "personally identifiable information" and the general FERPA requirement regarding written consent for disclosure of personally identifiable information from student education records as it relates to the matters in the Parent's allegations, and share this information with (b)(6) and other appropriate officials in the District. If you or your staff have any question regarding the information in this letter or wish to discuss this matter further, you may contact Mr. Ricky Norment of my staff at 202-260-3887.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosures

cc: Parents