(b)(6)

APR 26 2011

Dear (b)(6)

This is in response to your November 1, 2010, letter to this office in which you request information relating to the Family Educational Rights and Privacy Act (FERPA). Specifically, you ask whether a student's test booklet, which includes the student's answers and name, is an education record protected under FERPA. This office administers FERPA, which addresses issues pertaining to education records.

FERPA is a Federal law that gives parents the right to have access to their 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. When a student reaches the age of 18 or attends an institution of postsecondary education, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the student. 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. Accordingly, a test booklet which includes a student's name and answers is an education record subject to FERPA's protections. Enclosed is a copy of a FERPA guidance document for parents. Additionally, information regarding FERPA is available on this office's website at: http://www2.ed.gov/policy/gen/guid/fpco/index.html.

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 the parent with copies of education records or make other arrangements when a failure to do so would effectively prevent the parent or the student from obtaining access to the education records. A case in point would be a situation in which the parent does not live within commuting distance of the school. In circumstances when a parent lives within commuting distance to the school or school district, the school is required only to provide the parent with an opportunity to inspect and review their child's education records, although it is permitted to provide them with copies. If a parent does not live within commuting distance, the school may comply with FERPA by providing the parent with copies or make other arrangements for the parent to inspect and review their child's education records. For example, the school could make arrangements to allow the parent to inspect and review their child's education records at a locale that is within commuting distance to the parent.

Also, it appears that some of the issues you raise may be addressed under the Individuals With Disabilities Education Act (IDEA), Part B, which, although a Federal law, is administered by the States. The contact information for your State is as follows:

Ms. Mary Watson
Director
Exceptional Children Division
North Carolina Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-6356
Telephone: (919) 807-3969

I trust this information is helpful to address the scope and limitations of FERPA as it relates to your inquiry.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure