(b)(6)

APR 21 2011

Dear (b)(6)

This is in response to your March 3, 2011, complaint form to this Office in which it appears you are alleging that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it did not provide you access to information in the education records of your children, (b)(6) Students), in response to your request. This Office administers FERPA which addresses issues that pertain to education records.

As you know, FERPA is a Federal law that gives parents the right to have access to their children's education records unless there is a court order or State law that specifically provides to the contrary. Also, when a student turns 18 years of age or attends a postsecondary institution, the student becomes an "eligible student," and all rights under FERPA transfer from the parent to the student. 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. As a matter of note, if an elementary or secondary school maintains records that contain information regarding a minor student's mental health, such records are education records subject to the privacy protections of FERPA. Enclosed for your information is a FERPA guidance document.

Under FERPA, a school is required to provide a parent with an opportunity to inspect and review his or her minor child's education records within 45 days of the receipt of a request. A school is not required to provide a parent with copies of education records unless a failure to do so would effectively prevent the parent form obtaining access to the records. A case in point would be a situation in which the parent does not live within commuting distance of the student's school. Based on the information in your letter, it appears that you live within commuting distance of the District. Therefore, the District is not required to provide you with copies of the Students' education records. Rather, it is required to provide you with an opportunity to inspect and review the records. Although, this does not seem to currently be at issue between you and the District, it is important to be aware of this distinction.

Under FERPA, a school is not required to comply with a standing request from a parent for access to education records. In other words, FERPA would not generally require a school to automatically provide a parent with access to education records as they become available. Rather, FERPA requires a school to comply with each individual request by

a parent for access to education records. Also, a school is not required by FERPA to provide a parent with information that is not maintained or to create education records in response to a parent's request. Accordingly, a school is not required to provide a parent with information on his or she child's progress in a subject unless such information already exists in the form of an education record.

This Office investigates those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. If you wish this Office to further consider your allegation, we need to receive additional information from you. For example, based on the information in your complaint form, it appears that the Students are under 18 years of age, and you state that there is no court order or State law specifically restricting your rights under FERPA. However, enclosed with your complaint form to this Office are documents (copies enclosed) in which the Students have provided the District with written consent for disclosure of information from their education records to you? Under FERPA, the District would generally be required to comply with your request for access to the Student's education records. Thus, under normal circumstances, there would be no need for the Students to provide the District with written consent for disclosures of education records to you. **Therefore, to the best of your knowledge, please explain to us why the Students provided the District with written consent for disclosure of their education records to you. For example, did the District require that the Students provide their written consent?**

Along with your complaint form, you also enclosed the following:

--A November 4, 2010, letter from (b)(6) assistant superintendent for student services in the District, to you (copy enclosed) in which she states she has enclosed education records requested by you.

--A January 25, 2011, letter from you to (b)(6) (copy enclosed) requesting access to the Students' education records.

--A February 15, 2011, letter from (b)(6) to you (copy enclosed) stating that you have already been provided access to all of the Students' education records, except the education records that include information regarding the Students' mental health. She states that the Students have revoked their consent for the District to provide you access to these education records.

Thus, it appears you are alleging that the District violated FERPA when it failed to provide you access to your children's education records requested in your January 25, 2011, letter to the District. **Please verify that we have accurately stated your allegation?**

In (b)(6) February 15 letter, she states that she has not provided you with access to education records that include information regarding the Students' mental health. In addition to these mental health-related education records, are there other education records of the Students which you believe were encompassed in your January 25 request to which the District has not provided you access? **If so, please provide us with a list of some of these education records.** For example:

> --Disciplinary Records. My child received three days of detention for an altercation with another student. I am seeking a copy of my child's notice of detention and any other education records associated with the school's decision to give my child detention.

Please provide us with the requested information within two weeks of your receipt of this letter. We will review the information you submit and take any appropriate action.

Sincerely,

Ricky C. Norment
Program Analyst
Family Policy Compliance Office

Enclosures