FEB 14 2011

(b)(6)

Dear (b)(6)

This is to respond to your January 19, 2011, letter to this office in which you allege that the (b)(6) (District) violated rights afforded you under the Family Educational Rights and Privacy Act (FERPA) when it did not respond to your questions with regard to a disciplinary event involving your son. 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. Enclosed is a copy of a FERPA fact sheet.

Under FERPA, a school must provide a parent or eligible student 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 or eligible student 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. Based on the information in your correspondence, it appears that you live within commuting distance to the District and it is required only to provide you with an opportunity to inspect and review the Student's education records, although it is permitted to provide you with copies.

In accordance with FERPA, a school generally is not required to maintain particular education records or education records that contain specific information. Rather, a school is required to provide certain privacy protections relative to those records it selects to maintain. Nor does FERPA require schools to create or to re-create lost or destroyed education records. It may destroy education records without notice to the parent, unless there is an outstanding request from the parent to inspect and review such records.

In this instance, you appear to allege that the District did not reply to certain of your questions involving your child's October 8, 2010, disciplinary event. As stated above, FERPA does not require a school to create records that it does not maintain in an education record. Although not required to do so under FERPA, (b)(6) of the District replied to your October emails in their responses of October 8 – 12, 2010. Accordingly, no basis exists for this office to investigate your allegation that the District violated FERPA when it did not respond to your requests for information that is not contained in an education record.

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

Sincerely,

Bernard Cieplak
Program Analyst
Family Policy Compliance Office

Enclosures