(b)(6)

FEB 8 2011

Dear (b)(6)

This is in response to your June 28, 2010, letter in which you allege that (b)(6) (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) when it improperly disclosed information from your children's education records. Below is a discussion of FERPA as it relates to your concerns.

FERPA is a Federal law that gives parents the right to have access to their 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. Once a student turns 18 years of age or attends a postsecondary institution, he or she becomes an eligible student and all rights under FERPA transfer from the parent to the student. The term "education records" is defined as those records that contain information 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.

Specifically, you allege that the District has refused to conduct a FERPA hearing to seek to amend your daughter's education records; that the inaccurate information in your daughter's record forced a delay in her college applications; that there is information in your daughter's record that should be removed, in particular information relative to another student; and you believe there is information from your daughter's record that is missing.

FERPA does not require schools to create or to re-create education records. Also, FERPA does not require a school to keep any particular file or record. Regarding your amendment concerns, FERPA affords parents the opportunity to seek amendment of their children's education records which they believe contain information that is inaccurate or misleading. While a school is not required to amend a record in accordance with a parent's request, it is required to consider the request for amendment of an education record, to inform the parent of its decision, and if the request is denied, to advise the parent of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the parent has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

This right is not unlimited, however, and a school is not required by FERPA to afford a parent the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student. This fact is indicated in the legislative history of FERPA. The primary source of legislative history regarding FERPA is contained in the "Joint Statement in Explanation of Buckley/Pell Amendment," Volume 120 of the Congressional Record, pages 39862-39866. The Joint Statement states that FERPA was "not intended to overturn established standards and procedures for the challenge of substantive decisions made by an educational institution." (Emphasis added.) FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. Thus, while FERPA affords parents the right to seek to amend education records which contain inaccurate information, this right cannot be used to challenge a grade or an individual's opinion, unless the grade or the opinion has been inaccurately recorded.

You allege that school officials gained unauthorized access to your daughter's education records and improperly informed you that your daughter's education records would not be disclosed to colleges where she was seeking or intending to enroll. FERPA specifically exempts from the prior written consent requirement those disclosures of education records that are made to other school officials, such as teachers, within the educational agency or institution whom the agency or institution has determined to have a legitimate educational interest. A school official is a person employed by the school such as an administrator, supervisor, instructor, or support staff member. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. Additionally, FERPA permits a school to disclose education records to officials of another school where the student seeks or intends to enroll. In this regard, a school district may release a portion or all of a student's education records, under the "seeks or intends" to enroll exception in FERPA, at its discretion. Moreover, the parent or eligible student does not, under FERPA, have the right to prevent a school which a student previously attended from transferring the student's education records or from communicating information about a student to the student's new school.

You also allege that school officials used your daughter's education records in a court of law and that school administrators and their legal counsel improperly disclosed your daughter's education records and other student's education records to the public via the court system. Another exception in FERPA that permits a school district to disclose education records absent consent is when the disclosure is to comply with a judicial order or lawfully issued subpoena. Furthermore, FERPA provides that if a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the

student's education records that are relevant for the educational agency or institution to defend itself. Or, if an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

You also allege that the District violated FERPA when it improperly disclosed to you the records of another student. As for this allegation, FERPA vests the rights it affords with the parent or eligible student whose rights were violated. Thus, the parent or eligible student whose records were disclosed to you would have to file a complaint in order for us to contact the school about this matter.

Finally, you allege that a school official discussed your son's AP exam with third party parents and discussed general progress with students in the hallway. With respect to this allegation, FERPA prohibits the improper disclosure of information derived from education records. Therefore, information that is based on opinion, observation, or hearsay and not specifically contained in education records would not be protected under FERPA.

The other issues you raise in your letter that are addressed at the local school level, not by FERPA. I trust that the above information adequately explains the scope and limitations of FERPA as it relates to your concerns.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office