(b)(6)

FEB 8 2011

Dear (b)(6)

This is in response to your October 11, 2010, letter to this office in which you allege that the (b)(6) (District) violated your rights under the Family Educational Rights and Privacy Act (FERPA). Specifically, you allege that your daughter's education records were disclosed to an attorney representing the District "when no legal action had been initiated on our part." This office administers FERPA.

FERPA is a Federal law that affords 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. Education records are those records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for the agency or institution. Enclosed is a fact sheet for your review.

As noted above, FERPA generally prohibits the nonconsensual disclosure of information derived from education records. One of the exceptions to the prior written consent requirement in FERPA allows "school officials, including teachers, within the agency or institution" to obtain access to education records provided the educational agency or institution has determined that they have "legitimate educational interests" in the information. 34 CFR § 99.31(a)(1). Although "school official" is not defined in the statute or regulations, this office has interpreted the term broadly to include a teacher; school principal; president; chancellor; board member; trustee; registrar; counselor; admissions officer; attorney; accountant; human resources professional; information systems specialist; and support or clerical personnel. 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.

Section 99.7(a)(3)(iii) of the FERPA regulations requires an educational agency or institution to include in its annual notification of rights under FERPA a statement indicating whether it has a policy of disclosing personally identifiable information under § 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest.

It appears from the information you provided that the attorney is a school official whom the District determined had a legitimate educational interest in gaining access to your child's education records in compliance with FERPA. There is not a need for litigation or pending litigation to permit a disclosure of education records to a school official with legitimate educational interest under FERPA. Accordingly, there is no basis on which to pursue your allegation.

Sincerely,

Ingrid Brault
Management and Program Analyst
Family Policy Compliance Office

Enclosure