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This is in response to your February 22 and March 22, 2011, letters to this office, your May 18, 2011, letter to Congressman Miller, and your May 18, 2011, letter to Secretary Duncan regarding the Family Educational Rights and Privacy Act (FERPA). Specifically, in your February 22 letter, you allege that the (b)(6) (District) denied you access to your daughter's education records. In your March 22 letter, you allege that the District improperly discloses education records of all its students. As you know, this office administers FERPA, a Federal law that pertains to education records.

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. FERPA prohibits the improper disclosure of information derived from education records. Therefore, information that is based on opinion or hearsay and not specifically contained in education records would not be protected under FERPA.

With respect to your allegation that the District improperly discloses education records of all its students, you provided copies of newsletters that the District has released. However, any disclosures relative to students therein, all appear to fit FERPA's permissible disclosure as directory information. While FERPA generally prohibits the nonconsensual disclosure of information derived from education records, there are exceptions to the general prohibition, one of which permits the nonconsensual disclosure of "directory information" that has been appropriately designated as such by the educational agency or institution.

In this regard, FERPA defines directory information as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

A school may disclose directory information to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the parent's right to restrict the disclosure of such information, and the period of time within which a parent has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." The means of notification could include publication in various sources, including in a newsletter, in a local newspaper, or in the student handbook. A school is not required to individually notify parents regarding directory information.

With respect to your allegation of denial of access to your daughter's education records, when a student reaches the age of 18 or attends an institution of postsecondary education at any age, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the student. In this regard, the age of your daughter is not clear to us. Even if your daughter is 18 years of age and receiving services under Part B of the Individuals with Disabilites Education Act (Part B), depending on certain circumstances, you may have additional rights under Part B. Although Part B is a Federal law, it is administered by the States. Regarding your allegation against the District that it denied you access to her education records relative to her Individualized Education Program, you should contact your State department of education at the following:

Dr. Alice D. Parker
Assistant Superintendent of Public Instruction
State Director of Special Education
California Department of Education
1430 N. Street, Suite 2401
Sacramento, California 94244-2720
Telephone: (916) 445-4602

Please note, this office investigates specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred. Additionally, it is unclear whether or not you are taking legal action against the District or vice-versa. It is the policy of this office that if any of the issues in the litigation relate to FERPA, we need to know the decision of the court before we can further consider them. In this regard, if a party commences litigation in court involving the subject matter of an alleged FERPA violation, this office would not investigate that alleged violation prior to a decision by the court. Generally, once the allegation in question is no longer the subject of such litigation, this office will again consider the allegation upon request. The results of the litigation are considered in determining what action the Department will take. Thus, this office cannot fully consider your complaint until you have clarified whether any litigation is on-going between you and the District and whether such litigation involves your FERPA allegation. Therefore, please inform this office about the nature of any on-going litigation against the District. We will review the information you provide and take any necessary action.

This office's enforcement process is intended to work cooperatively with schools to achieve their voluntary compliance with FERPA's requirements. Following a review of the evidence and allegations submitted by a complainant, we may initiate an administrative investigation by sending the school and the complainant a notification letter about the allegation, and requesting a written response from the school concerning the allegation. If we then determine that a school is in violation of FERPA, the school and the complainant are so advised by a letter of finding which contains corrective actions to be taken by the school in order to come into compliance with FERPA. Such measures can include training of school officials or a memorandum advising school officials of the specific requirements at issue in the complaint. There is no basis under FERPA to require that a school take punitive or disciplinary action against an individual school official as the result of a FERPA violation. We close the investigation when the school has completed the required corrective actions.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office