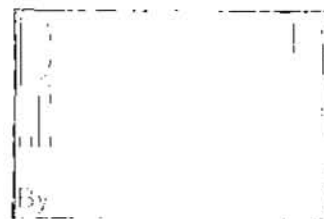


*From the desk of:*

(b)(6),(b)(7)(C)



October 24, 2009

Mr. Paul Gammill  
Director – Family Policy Compliance Office  
400 Maryland Avenue  
Washington, D.C. 20202

Dear Director Gammill,

Attached is copy of a request I made to you back on August 6, 2009 for a ruling on my proposed website information for “(b)(6),(b)(7)(C)” for youth attending (b)(6),(b)(7)(C) Community College.

I was told by a wonderful lady in your office, “Regina” I believe was her name, that this process would probably take about 2 to 3 weeks, and if I had not heard in that time period, to inquire again. Obviously, that time period has well expired, and I have yet to hear back from your office on my request. I am quite aware that you are probably swamped, and I am certainly not upset. I am simply respectfully asking that you would consider putting my request at the top of your list for review.

I do not believe I am in any violation of FERPA for what I want to do. Absolutely no names of any students or any identification of specific students would be involved in any way. It is merely a global form of assistance to parents, based on my 38 years of experience, if their kids attended (b)(6),(b)(7)(C) CC.

I would sincerely appreciate a ruling in writing from your office to be certain I was not in any violation, before I proceed. I am currently in a holding pattern until that happens.

Thank you very much for your efforts and all you do!

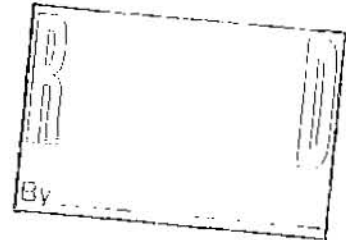
Sincerely,  
(b)(6),(b)(7)(C)  
(b)(6),(b)(7)(C) Community College

*From the desk of:*

(b)(6),(b)(7)(C)

8/6/2009

Mr. Paul Gammill  
Director Family Policy Compliance Office  
400 Maryland Avenue  
Washington, D.C. 20202



**Re: Request for ruling on my proposed website for “(b)(6),(b)(7)(C)” for youth attending (b)(6),(b)(7)(C) Community College.**

Dear Director Gammill,

I write to you to insure that what I propose to help our community college students succeed is not in violation of the Family Educational Rights And Privacy Act (FERPA). I would sincerely appreciate a written decision from your office back to me on this. Here are the particulars – in two brief pages.

As a 38-year veteran faculty member at (b)(6),(b)(7)(C) Community College, I teach (b)(6),(b)(7)(C) mainly to teenagers and youngsters in their early twenties. As I’m sure you can imagine, you name it, I’ve “seen it” in my time. Many of today’s students with poor study skills, lacking in math and English preparation and more, present the ultimate challenge. Here’s what I would like to do to help them even more.

I would like to develop my own simple website listing out a very brief series of “(b)(6),(b)(7)(C)” representing my best advice for parents for advising their son or daughter to succeed at (b)(6),(b)(7)(C) based on my decades of experience.

I have attached a “table” listing my “(b)(6),(b)(7)(C)” They would be augmented with a brief description, explanation, and rationale for each, and I will gladly supply that, too, if you request.

- I would pay for the website myself.
- It would NOT be directed at anyone by name, and would reveal no specific information about any specific student in any manner.
- I would state that the information in the website was strictly my opinion based on my experience and not formally endorsed by (b)(6),(b)(7)(C) CC.

I simply believe that my 38 years of seeing patterns of success and failure among thousands of students could benefit parents – many of whom have never even been to college

themselves -- as a way to help them work with their kids to have their college graduation dreams become reality.

In closing, our college administrators are very concerned about FERPA compliance and so am I. However, I also have a responsibility to do all I can to help our students within the confines of the law. Thank you so much for your time and consideration.

Sincerely,

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

Community College

## Helping Your Teenager Succeed

At (b)(6),(b)(7)(C) Community College:

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

October,31,2009

TO: FAMILY POLICY COMPLIANCE OFFICE  
US DEPARTMENT OF EDUCATION  
400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-5920

FROM: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

FORT MILL, SOUTH CAROLINA

(b)(6);  
(b)(7)(C)

I am requesting that an investigation be done for what I very much believe is a violation of FERPA.

The violation was done by the:  
Fort Mill South Carolina York 4 School District

(b)(6); (b)(7)(C) South Carolina (b)(6);  
(b)(7)(C)

Superintendent- Keith Callicut

(b)(6); (b)(7)(C)

On (b)(6); (b)(7)(C) I received from our attorney a copy of an Educational Records Review Report -Confidential- (see attached report) that was submitted as evidence by the (b)(6); (b)(7)(C) School District for a Due Process Hearing. This evidence was submitted to our attorney on (b)(6); (b)(7)(C) This was the first time I had been made aware that this records review was ever done.

I had absolutely no prior knowledge that this "confidential" Educational Records Review was done, and was absolutely never informed that this records review was to be done.

There is no date on the report, however it states that my son (b)(6) was (b)(6); (b)(7)(C) old at the time the report was done. Since my son's birth date is (b)(6); (b)(7)(C) that would mean that this report had to have been done sometime between (b)(6); (b)(7)(C)

(b)(6);  
(b)(7)(C)

According to the report, it states that it was done at the request of the (b)(6); (b)(7)(C) School District for a comprehensive review of (b)(6); (b)(7)(C) (my son) educational records. The report states "The purpose of this review was to provide an objective second professional regarding (b)(6); (b)(7)(C) level of functioning." This Records Review was done by (b)(6); (b)(7)(C) is staff member of (b)(6); (b)(7)(C) University. She is not a Fort Mill School District official and not employed by the school district. (b)(6); (b)(7)(C) is not a member of a participating agency. She is a (b)(6); (b)(7)(C) at a (b)(6); (b)(7)(C) University. She did not have a legitimate educational interest in my son, and by her own admission has never met my son or us. (b)(6); (b)(7)(C) is not a school official with a legitimate educational interest or a need to review my son's educational records in order to fulfill her professional responsibility. She is a (b)(6); (b)(7)(C) at an outside university that



was asked by the Fort Mill School District to review my son's educational records for their own purposes that had nothing to do with my son's education.

I believe that this review was done for the sole purpose of disputing a South Carolina Board of Education resolution to a complaint that I filed. The complaint dealt with the qualifications of the teacher to teach a student with my son's level of disability. The resolution (see attached) was issued on (b)(6),(b)(7)(C) (which was a Friday) in my favor. The report according to my son's exact age at the time had to be done between (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C). That period of time would put my son's age at (b)(6),(b)(7)(C) (the age stated at the time of record review). This would be the four week period immediately following the Board of Education resolution decision.

The Fort Mill School District may claim that this record review was done to respond to my Due Process complaint. However, my Due Process complaint was not filed until (b)(6),(b)(7)(C). This would be after the Records Review report was done. This leads me to believe again that this report was done solely to give ammunition for the (b)(6),(b)(7)(C) school district to appeal the Board of Ed decision with absolutely no educational benefit to or interest in my child.

My son's confidential education records which included confidential medical records was released without our consent or knowledge for the purpose of benefiting the Fort Mill school district. This was with absolutely no regard to my son's rights to confidentiality of his educational and medical records. In my opinion this is a serious violation of my son's rights under FERPA and IDEA and perhaps even HIPPA. I do not even know if copies of these records were destroyed or are still in the hands of complete strangers. I find this extremely unsettling and a complete violation of my son's rights to privacy.

According to the IDEA an evaluation of your child cannot take place without obtaining parental consent. According to the IDEA, an evaluation must have more than one measure in determining the appropriate placement of your child. All of these provisions were violated. I did not give my consent to an evaluation. I was not even ever informed it was being done. It also would not even fall under the IDEA guidelines as a legitimate evaluation since (b)(6),(b)(7)(C) never even met my son.

Although I do not know for a fact if (b)(6),(b)(7)(C) was provided copies of my son's records, or went to the school district to review them, I would have to assume based on the wording of the report that copies were sent to (b)(6),(b)(7)(C). (b)(6),(b)(7)(C) states "based on the documentation provided"

In (b)(6),(b)(7)(C) I requested through my attorney that copies of my son's educational records be provided since it was impossible for me to appropriately review the records at the school district due to the fact that my son was removed from school and I had no one to watch him. Although my son did attend a summer program for three hours a day for twenty days during the summer, it was the only time I was not with him since (b)(6),(b)(7)(C). During those few short hours I spent much time in meetings with school personnel

and time transporting my son to and from school. I also had personal business to take care of that I could not take care of while my son was with me. In order to appropriately review my son's complete educational files and all the data collected I would need many hours. This was something I did not have the luxury of. Although the school district was made aware of this through several letters from my attorney, they still refused to provide copies of my son's records to me. The school district even admitted that all the data I requested copies of was not even available for review in June at the date they had originally scheduled me to review the files and data.

Copies of the data was submitted as evidence on (b)(6); (b)(7)(C) This was the first time we received copies of the data first requested in (b)(6); (b)(7)(C) This was only because they were required by law to give us copies if they were to introduce it as evidence. We never received the other copies of my son's records that we requested. Although the school district was in severe violation of the access rights under IDEA, we lost that claim as well in the Due Process Hearing.

I have mentioned the violation of access rights because it shows that even though as a parent I was denied copies of my son's educational records, the school district managed to have no problem sending copies of my son's educational and medical records to (b)(6); (b)(7)(C) without my knowledge or consent. This at the same time period that I was requesting copies.

In conclusion, I strongly believe that the (b)(6); (b)(7)(C) School District was in complete violation of my son's rights to confidentiality of records under FERPA. His educational and medical records were disclosed to someone who is not a school official and did not have a legitimate educational interest in my child. The records review and evaluation was done without parental consent and knowledge.

If you have any questions, please feel free to call me at (b)(6); (b)(7)(C) or e-mail me at (b)(6); (b)(7)(C)

Thank you

Sincerely,

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

**EDUCATIONAL RECORDS REVIEW REPORT**  
**- CONFIDENTIAL -**

**STUDENT'S IDENTIFYING INFORMATION**

Name: (b)(6); (b)(7)(C)  
DOB: (b)(6); (b)(7)(C)  
Age: (b)(6); (b)(7)(C)

**REASON FOR REVIEW:**

At the request of (b)(6); (b)(7)(C) School District officials a comprehensive review of (b)(6); (b)(7)(C) educational records was conducted. The purpose of this review was to provide an objective second professional regarding (b)(6); (b)(7)(C) level of functioning. It must be noted clearly stated that I have not met, observed or formally evaluated (b)(6); (b)(7)(C) nor were (b)(6); (b)(7)(C) interviewed as part of my review process. This report is not intended to provide a comprehensive evaluation of (b)(6); (b)(7)(C) cognitive abilities, adaptive or functional skills mastery.

**SUMMATIVE FINDINGS:**

Records indicate that in (b)(6); (b)(7)(C) was evaluated by (b)(6); (b)(7)(C) Center, Long Branch, New Jersey (b)(6); (b)(7)(C) diagnosed (b)(6); (b)(7)(C) with (b)(6); (b)(7)(C) No Otherwise Specified (b)(6); (b)(7)(C) elting significant delays in speech and social/emotional development. (b)(6); (b)(7)(C) is the (b)(6); (b)(7)(C) category for a spectrum of five different disorders with similar characteristics. (b)(6); (b)(7)(C) is the diagnosis given when a child presents with significant developmental delays, but does not clearly meet the diagnostic criteria for any of the four other disorders under this broad category. In fall of (b)(6); (b)(7)(C) entered the (b)(6); (b)(7)(C) School District's preschool program for children with disabilities.

In (b)(6); (b)(7)(C) was evaluated by (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) reported that at the time of his evaluation (b)(6); (b)(7)(C) presented with "classic features of a Childhood Autistic Disorder." While he found no specific etiology for (b)(6); (b)(7)(C) Autism, he did report "moderate global developmental delay in personal-social, language, performance and practical reasoning."

In the spring of (b)(6); (b)(7)(C) school personnel reevaluated (b)(6); (b)(7)(C) to determine his educational service needs and classification as he transitioned from preschool to kindergarten. From the records provided it appears that (b)(6); (b)(7)(C) reevaluation was limited to a speech/language evaluation and the completion of the Vineland Adaptive Behavior Scales and The Childhood Autism Rating Scale (CARS) by his teacher. The speech pathologist and school psychologist for the school district concurred with (b)(6); (b)(7)(C) diagnosis. Their reports indicate that (b)(6); (b)(7)(C) demonstrated significant delays in "speech, language, cognitive, social/emotional and fine motor" functioning. At that time (b)(6); (b)(7)(C) was able to "generally follow

RE: (b)(6); (b)(7)(C)

Page 1

one-step directions," but needed consistent guidance and prompts to demonstrate his skills. The CARS results obtained from his teacher were reportedly "similar to those obtained by (b)(6); (b)(7)(C) which was within the *moderate autistic range*." It was recommended that he be placed in a self-contained kindergarten program with an individual aide and speech/language and occupational therapy as related services.

It appears that in (b)(6); (b)(7)(C) moved to (b)(6); (b)(7)(C) County Florida. (b)(6); (b)(7)(C) was enrolled in (b)(6); (b)(7)(C) Elementary School in (b)(6); (b)(7)(C). At this point educational records appear to be incomplete. It was not possible to determine (b)(6); (b)(7)(C) educational placement or service delivery model. But it would appear that at some point (b)(6); (b)(7)(C) was removed from (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) and placed at the (b)(6); (b)(7)(C) School. At the beginning of the (b)(6); (b)(7)(C) school year he was withdrawn from (b)(6); (b)(7)(C) School and reenrolled in (b)(6); (b)(7)(C). He remained in the program for students with autism until spring (b)(6); (b)(7)(C) after which time he was home schooled. Documentation and rationale for placement changes could not be gleaned from the records reviewed.

In (b)(6); (b)(7)(C) transferred to (b)(6); (b)(7)(C) School District in (b)(6); (b)(7)(C) NJ, he was in the (b)(6); (b)(7)(C) grade. The Child Study Team for the (b)(6); (b)(7)(C) District conducted a reevaluation to determine (b)(6); (b)(7)(C) continued eligibility, need for educational services and to bring his educational records into compliance with New Jersey state statutes. While no standardized assessment of intellectual functioning was conducted, the Child Study Team determined that (b)(6); (b)(7)(C) met criteria for special education and related services under the classification of "Autism with associated delays across developmental lines, most notably in communication and social/emotional domains." Strengths noted at that time included, but were not limited to rote auditory memory, tolerance of frustration with supportive adult intervention, pre-learning skills for group functions and interest in his environment. The Child Study Team recommended that (b)(6); (b)(7)(C) be placed in an "Autism Program at (b)(6); (b)(7)(C) Public School, with speech/language therapy, and an individual assistant." Records indicated that (b)(6); (b)(7)(C) began this program in (b)(6); (b)(7)(C).

Records indicate that (b)(6); (b)(7)(C) adjusted nicely to the program and class at (b)(6); (b)(7)(C) School, but that school personnel had difficulties "accommodating (b)(6); (b)(7)(C) needs." In (b)(6); (b)(7)(C) was moved to (b)(6); (b)(7)(C) School and placed in a Multiple Disabilities class for the remainder of the (b)(6); (b)(7)(C) school year. In the (b)(6); (b)(7)(C) grade (b)(6); (b)(7)(C) transferred to (b)(6); (b)(7)(C) School and was placed in the Learning and/or Language Disabilities Program.

Assessment reports and IEPs (b)(6); (b)(7)(C) from (b)(6); (b)(7)(C) School District all indicate that while modest growth was seen in adaptive functioning and expressive and receptive language skills, (b)(6); (b)(7)(C) required "continuous opportunities for repetition in order to learn new skills." He also required one-on-one instruction with visual, verbal and/or physical prompts for all subject areas. Behaviorally, (b)(6); (b)(7)(C) continued to display a number of stereotypic behavior associated with individuals with Autism, including hearing sensitivity as well as a tendency to spit, pant/hyperventilate, swallow and/or burp and bruxism. His high level of distractibility, low motivation and many behaviors reportedly interfered with his learning. He had been instructed using the Picture Exchange Communication System (PECS) but was inconsistent with this progress. Academically, (b)(6); (b)(7)(C) was using Language Stories and environmental pictures to increase his expressive and receptive language skills and the Edmark Reading Computer Program to teach sight word recognition skills.

At the end of the (b)(6); (b)(7)(C) school year (b)(6); (b)(7)(C) had aged out of the program at (b)(6); (b)(7)(C) School and the Child Study Team for (b)(6); (b)(7)(C) Schools recommended placement in a program that focused on "self-help, functional skill building and pre-vocational skill building." This program was in the (b)(6); (b)(7)(C) School District and was deemed to have the best resources for meeting (b)(6); (b)(7)(C) educational needs. Records indicate that this placement was rejected by (b)(6); (b)(7)(C).

R.F. (b)(6); (b)(7)(C)

Page 2

In (b)(6); (b)(7)(C) transferred from the (b)(6); (b)(7)(C) School District to the (b)(6); (b)(7)(C) School District in (b)(6); (b)(7)(C) SC. At the time of his enrollment, (b)(6); (b)(7)(C) had a vocabulary of over 100 words and was able to identify and label a number of familiar objects, pictures and symbols when prompted as reported by (b)(7)(C) mother in a document provided to school personnel.

Since attending school in (b)(6); (b)(7)(C) IEP goals have continued to focus on functional communication, self-help and adaptive skills, behavioral management of the more distracting stereotypic behaviors that interfered with learning and pre-vocational skill building. His skill mastery has continued to show scatter with modest growth demonstrated in most areas.

**RELEVANT EDUCATIONAL IMPRESSIONS:**

Based on all the written documentation provided in (b)(6); (b)(7)(C) educational files, he has made substantial educational progress since his initial identification of Autism. His expressive and receptive language skills, while still significantly delayed, have improved greatly. His receptive language skills are a strength and allow him to follow simple one-step directions with verbal prompts. With minimal assistance and verbal cuing, he is developing self-care skills and daily living skills that are vital to a young man his age. While (b)(6); (b)(7)(C) skills mastery and daily skill performance is inconsistent, this appears due to his high level of distractibility and stereotypic behaviors that interfere with his attention to tasks and instruction rather than cognitive deficits typically associated with individuals within severe or profound range of Autism. Based on available records reviewed, no standardized assessment of (b)(6); (b)(7)(C) abilities has ever been conducted, but based on the documentation provided and professional judgment, I would concur with previous and current school personnel that (b)(6); (b)(7)(C) displays characteristics and behaviors consistent with a diagnosis of Autism Spectrum Disorder, and functions within the moderate range.

(b)(6); (b)(7)(C)

RE: (b)(6); (b)(7)(C)

Page 3



South Carolina  
Department of Education

Jim Rex  
Superintendent of Education

Together, we can.

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

York School District Four  
120 E. Elliott Street  
Fort Mill, South Carolina 29715

Dear Ms. (b)(6);  
(b)(7)(C)

I am enclosing the letter of resolution issued by the South Carolina Department of Education (SCDE) regarding the complaint filed against York School District Four (District) by (b)(6); (b)(7)(C) (Complainant) on behalf of her son, (b)(6); (b)(7)(C) (Student).

Thank you for your continued cooperation during the investigation and resolution of this complaint. If you have any questions, please do not hesitate to call me at 803-734-8783.

Sincerely,

(b)(6); (b)(7)(C)

Lana T. Ott, Complaint Investigator  
Office of General Counsel

Enclosure

c: V. Keith Callicutt PhD, District Superintendent  
(b)(6); (b)(7)(C) Complainant



## LETTER OF RESOLUTION PROCEDURAL HISTORY

On April 20, 2009, the South Carolina Department of Education (SCDE) received a special education complaint from (b)(6); (b)(7)(C) (Complainant) on behalf of her son, (b)(6); (b)(7)(C) Student), a student with a disability who attends (b)(6); (b)(7)(C) High School (b)(6) S). The Complainant asserts that the District violated the Individuals with Disabilities Education Act (IDEA), the applicable federal and State Board of Education (SBE) regulations, and South Carolina Department of Education (SCDE) policies and procedures, by violating the Student's individualized education program (IEP) and failing to provide instruction by a teacher who is appropriately certified and highly qualified to instruct students with severe disabilities. More specifically, the Complainant alleges that in violation of the Student's IEP, which requires the District to provide the Student with one-on-one supervision, the District allowed the assignment of one staff member to five students during a class trip in (b)(6); (b)(7)(C). Additionally, the Complainant alleges the Student's teacher, (b)(6); (b)(7)(C) is only certified to instruct students with mild and moderate disabilities, but her son functions within the severe range.

On April 20, 2009, the SCDE verified receipt of this complaint by the District and forwarded a letter to the district superintendent and director of special services requesting a response to the complaint. The District was asked to respond to the allegations made in the complaint by April 30, 2009. The District's request for an extension of the due date for its response was granted until Tuesday, May 5, 2009.

On May 6, 2009, the SCDE forwarded a copy of the District's response to the Complainant. The Complainant was invited to submit written comments in reply to the District's response. The Complainant provided written comments to the District's response on May 14, 2009.

On May 27, 2009, the District submitted supplemental information to the SCDE in reply to the complaint.

On May 27, 2009, the SCDE forwarded a copy of the supplemental information provided by the District to the Complainant.

On June 1, 2009, the Complainant provided written comments to the supplemental information provided by the District.

In accordance with the IDEA regulation 34 C.F.R. § 300.504, the District provided the Complainant with a copy of the full procedural safeguards on April 28, 2009.

After a careful review of the information submitted by each party and applying the IDEA, the applicable federal and SBE regulations, and SCDE policies and procedures, a decision is rendered in the following manner.

## OVERVIEW

The Student is in the (b)(6); (b)(7)(C) at (b)(6)S. The Student is eligible for special education and related services under the category of autism as his primary disability and speech and language (SL) impairment as his secondary disability. In addition to specialized instruction, the Student receives daily specialized transportation to and from school and monthly consultative indirect occupational therapy (OT) as related services.

## ISSUES

Did the District violate the Student's IEP by failing to ensure that specialized instruction was provided by a teacher who is appropriately certified and highly qualified to teach students with severe disabilities?

Did the District fail to provide one-on-one supervision during a class trip in December 2008?

## LEGAL STANDARDS

Under the IDEA regulation 34 C.F.R. § 300.17(d) a free appropriate public education (FAPE) means special education and related services that are provided in conformity with an IEP that meets the requirements of §§ 300.320 through 300.324.

Under the IDEA regulation 34 C.F.R. § 300.18, a teacher of children with disabilities must obtain full state certification as a special education teacher, hold a license to teach in the state as a special education teacher, and meet the requirements set by the Elementary and Secondary Education Act (ESEA) and the state for highly qualified teachers.

Under the IDEA regulation 34 C.F.R. § 300.156, the state educational agency (SEA) must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of the IDEA are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

Under the IDEA regulation 34 C.F.R. § 300.320, the term IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324.

Under the IDEA regulation 34 C.F.R. § 300.320, for students in public schools and agencies, the members of an IEP team including the parents of the child, must at least on an annual basis develop, review, and revise each student's IEP in a meeting. Among other requirements, each IEP must include the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to enable the student to advance appropriately



toward attaining the annual goals identified in the student's IEP. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and SBE regulation 43-243.

Under SBE regulation 43-62(III)(E), a teacher who meets the state requirements for certification in the area of multi-categorical special education allows a teacher to serve learners with mild to moderate disabilities, which include autism, emotional disabilities, learning disabilities, mental disabilities, and traumatic brain injury.

Under SBE regulation 43-62(III)(F), a teacher who meets the state requirements for certification in the area of severe disabilities allows a teacher to serve learners with moderate to severe cognitive disabilities, which include mental disabilities, multiple disabilities, orthopedic impairment, autism, traumatic brain injury, and other health impairments.

### FINDINGS OF FACT

- The Student is (b)(6); (b)(7)(C) and in the (b)(6); (b)(7)(C) HS. The Student is eligible for special education and related services as a student with autism and a SL impairment. The Student spends 0-39% of his time in the regular education environment.
- The (b)(6); (b)(7)(C) child student team report from the (b)(6); (b)(7)(C) Public Schools in New Jersey, stated the Student received special education and related services in a self-contained program for students with learning disabilities. The team report stated the Student was diagnosed with autism and was initially classified on (b)(6); (b)(7)(C) as a preschool child with a disability in the (b)(6); (b)(7)(C) Schools, New Jersey. In (b)(6); (b)(7)(C) the Student attended (b)(6); (b)(7)(C) Schools, Florida, and received special education services as a student with autism.
- The child student team report stated the Student exited the preschool program at the end of the (b)(6); (b)(7)(C) school year; a reevaluation review was conducted on (b)(6); (b)(7)(C) and the Student remained eligible for special education as a student with autism.
- The Student transferred into the District in (b)(6); (b)(7)(C). The Student's IEP team met and accepted the (b)(6); (b)(7)(C) psychological evaluation report from (b)(6); (b)(7)(C) Public Schools, the Student's former school district.
- Based upon the results of the (b)(6); (b)(7)(C) psychological, the Student's IEP team determined the Student continued to meet the eligibility criteria for a student with autism.
- On (b)(6); (b)(7)(C) the Student's IEP team, including the Complainant, conducted a reevaluation review planning meeting; determined that no additional

information was needed; determined the Student continued to be a student with autism; and developed the Student's IEP for the (b)(6), (b)(7)(C) school year.

- The Student's IEP stated the Student required constant 1:1 adult supervision and redirection for inappropriate behavior. The Student's IEP team added 1:1 adult supervision as a modification in the general curriculum.
- The Student's IEP stated the Student is a multi-sensory learner who requires a structured and routine educational environment. The Student's inattentive behavior and sensory sensitivity require prompting to complete most work tasks.
- The Student's IEP stated the Student improved in his ability to work for longer periods without a break, but the Student was unable to consistently work for thirty minute periods of time. The Student works best when given simple one step commands and consistent reinforcement (edibles and sensory stimulation).
- The Student's IEP stated the Student can use eating utensils and, with the use of a simple eating schedule, can feed himself with minimal assistance. The Student's IEP stated the Student can use the restroom with minimal assistance.
- The Student's IEP stated the Student demonstrated academic skills below the kindergarten level and displayed inconsistencies in many skill areas.
- The Student's IEP stated the Student demonstrated functional academic deficits in the areas of categorizing; opposite concepts; 1:1 correspondence with numbers; sequencing items; and writing.
- The Student's IEP stated the Student was unable to identify his name and had difficulty matching numbers and letters.
- The Student's IEP stated the Student displayed the ability to rote count to 20, but displayed deficits in the area of categorizing, opposite concepts, and 1:1 correspondence.
- The Student's IEP stated through classroom observation and observing the Student's work, it was evident the Student had difficulty with 1:1 correspondence with numbers, sequencing items, and writing.
- The Student's IEP stated the Student scored well in the area of causality and made improvements in matching pictures, puzzle completion, and sorting objects.
- The Student's IEP stated the Student demonstrated strengths in receptive language, but was unable to effectively communicate across the curriculum due to poor pragmatic skills and expressive language deficits. Responding spontaneously, making requests, and socially interacting in the classroom

setting are affected by the Student's communication abilities, secondary to his diagnosis of autism. The Student's communication needs continued to adversely affect his involvement and progress in speaking and listening in the general and special education curriculum.

- The Student's IEP stated the Student demonstrated difficulty in peer interactions; required verbal and physical prompts when interacting with his classmates; sometimes asked for help; and communicated his wants and needs through gestures and one word phrases. The Student was unable to appropriately participate in leisure activities without prompting and redirection. The Student very rarely participated in socialization.
- The Student was unable to effectively make choices through the use of PIC symbols and use a PIC visual schedule without physical prompting.
- The Assessment of Basis Language and Learning Skills (ABLLS), the Assessment, Evaluating, and Programming System for Infants and Children (AEPS), and teacher observation (b)(6); (b)(7)(C) were the methods of evaluation used to develop the Student's present levels of functional performance for the (b)(6); (b)(7)(C) school year IEP.
- The Student's IEP team determined the Student needed 620 minutes per week of direct instruction in functional academics; 650 minutes per week of direct instruction in daily living and vocational skills; 620 minutes per week of direct instruction in social skills development; 30 minutes per week of direct and 30 minutes per week of indirect instruction in communication/language/pragmatics.

### Teacher Certification

- The District stated in its response that (b)(6); (b)(7)(C) the Student's special education teacher at (b)(6) HS, is certified in the area of multi-categorical.
- The Complainant stated (b)(6); (b)(7) is not certified to teach students with severe disabilities.
- The Complainant stated that the Student has a severe disability due to his levels of academic functioning falling below the kindergarten level.
- The District did not address in its response on May 4, 2009, whether (b)(6); (b)(7)(C) was appropriately certified and highly qualified to teach students with severe disabilities, merely that (b)(6); (b)(7) was appropriately certified in the area of multi-categorical.
- The District stated that although this is (b)(6); (b)(7)(C) first year teaching in the District, she has taught since 1996 and has many experiences supporting students with autism.

- The District stated that (b)(6); (b)(7)(C) and one of the Student's former (b)(6); (b)(7)(C) is directly involved in facilitating, reviewing, and supporting both academic and behavioral strategies for the Student's program.
- (b)(6); (b)(7)(C) is highly qualified in the areas of severe disabilities and orthopedic impairments.
- (b)(6); (b)(7)(C) is not the special education teacher of the Student.
- Under SBE regulation 43-62(III)(E), a teacher who meets the state requirements for certification in the area of multi-categorical special education allows a teacher to serve learners with mild to moderate disabilities, which include autism, emotional disabilities, learning disabilities, mental disabilities, and traumatic brain injury.
- On May 14, 2009, the SCDE requested that the District provide a copy of the Student's most recent psychological evaluation. The District provided a copy of the psychological evaluation conducted by (b)(6); (b)(7)(C) Public Schools in (b)(6); (b)(7)(C).
- On May 27, 2009, the District provided the SCDE with supplemental information, including the Student's past evaluation reports and a description of the Student's previous and current academic and functional levels of performance.
- The documentation submitted by the District included a psychological memorandum (b)(6); (b)(7)(C) from (b)(6); (b)(7)(C) County, Florida; a SL evaluation and psychological report (b)(6); (b)(7)(C) from (b)(6); (b)(7)(C) Schools, (b)(6); (b)(7)(C) New Jersey; a pediatric evaluation (b)(6); (b)(7)(C) from (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) a pediatric audiological evaluation report (b)(6); (b)(7)(C) from (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) New Jersey; a learning evaluation report (b)(6); (b)(7)(C) from (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) School District, (b)(6); (b)(7)(C) New Jersey; and a child study team report and psychological evaluation report (b)(6); (b)(7)(C) from (b)(6); (b)(7)(C) Public Schools.
- The District stated that the Student's pediatric evaluation conducted in (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) reported the Student made considerable gains after his enrollment in the preschool program. Therefore, the District asserted that a student truly functioning within the severe range would be likely to have a flat profile without scatter skills and the indication of considerable gains during one school year would be unlikely for a student with skills in the severe or profound range.
- The District stated that the (b)(6); (b)(7)(C) pediatric report supported the Student's performance within the moderate range with some scatter. The District also stated that based on evaluative and functional data from the Student's previous and current educational records, the District believes the Student's degree of

disability falls primarily within the moderate range and not within the severe to profound range.

- Although the District provided evaluative reports from (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) the only indication that the Student's functioning fell within the moderate range were documented in the (b)(7)(C) evaluative reports. The District provided no subsequent evaluative reports or current substantive evidence to suggest the Student does not fall within the severe range.
- The District provided evidence of the IEP present levels of performance developed during the Student's IEP meetings held in (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C).
- Based on the Student's (b)(6); (b)(7)(C) IEP, the District stated that the Student can correctly identify and verbally label 20 familiar photographs, pictures, and symbols when given a choice of 6 items with the prompt, "What is this?"
- Based on the Student's (b)(6); (b)(7)(C) IEP, the District stated that the Student is able to use eating utensils; follow a simple eating schedule; eat appropriately and use the restroom with minimal assistance. The Student follows simple directions with prompting.
- The District stated the Student's observed skills are more typical of a student functioning within the moderate range of disabilities with some scatter skills.
- In (b)(6); (b)(7)(C) reported the Student sang the words to the song (b)(6); (b)(7)(C) from the musical "Rent" and the words from the rap song, (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) reported the Student successfully answered 5 out of 6 questions of the (b)(6); (b)(7)(C) program, a weekly on-line newspaper for beginning readers and individuals with special needs.
- On (b)(6); (b)(7)(C) the Complainant provided written comments to the District's supplemental information.
- The Complainant stated that in (b)(6); (b)(7)(C) the Student was diagnosed with autism at the (b)(6); (b)(7)(C) and was at that time found to be in the moderate range based on evaluations for his age. The Student was (b)(6); (b)(7)(C) old at that time.
- The Complainant stated that in (b)(6); (b)(7)(C) based on evaluative data by the (b)(6); (b)(7)(C) School, the Student functioned at the 24 month level with minimal scatter to the 36 month range in the areas of receptive/expressive language and cognitive development.
- The Student's IEP developed on (b)(6); (b)(7)(C) stated the Student demonstrated academic functioning below the kindergarten level.



- The Student's IEP developed in (b)(6); (b)(7)(C) stated the Student demonstrated academic skills below the kindergarten level.
- The Complainant stated that during the Student's IEP meeting held on (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) stated that the Student's academic functioning is at the pre-school level. The Student's SL receptive skills placed him at a four-year old level and his expressive language placed him at a two-year old level.
- The Complainant stated that the Student's present levels of functional academics; functional performance; and SL are based on the District's evaluative data.
- The Complainant stated that little to no gain was made in SL and academics during the past twelve years. The Complainant stated the Student has remained at the pre-school level since his diagnosis of autism at (b)(6); (b)(7)(C) of age.
- The Student is (b)(6); (b)(7)(C) years old.

#### **1:1 adult supervision**

- The District acknowledged that the Student's IEP developed on (b)(6); (b)(7)(C) required 1:1 adult supervision.
- The District stated that two special education classes with five assistants and twelve students participated in a field trip to (b)(6); (b)(7)(C) in (b)(6); (b)(7)(C).
- The District stated that due to an incident involving another student (b)(6); (b)(7)(C) and two assistants left (b)(6); (b)(7)(C) to return to school twenty minutes prior to the scheduled bus pick-up.
- The District stated that one teacher and three assistants were left with eleven students.
- The District stated that the Complainant remained with the Student at all times.
- The District stated that in addition to the Complainant, an assistant was assigned to the Student as well as to another student.
- The Complainant expressed concern about the field trip and questioned what would have happened had she not accompanied the class on the field trip.
- The District stated that (b)(6); (b)(7)(C) would have handled things differently had the Complainant not accompanied the class on the field trip.
- The District stated that for future field trips an additional adult will accompany the class even if the Complainant accompanies the class.

- The Complainant is not required to provide the Student's 1:1 adult supervision.

### CONCLUSIONS

Issue #1: Did the District violate the Student's IEP by failing to ensure that specialized instruction was provided by a teacher who is appropriately certified and highly qualified to teach students with severe disabilities?

Autism, which affects thought, perception and attention, is not just one disorder with a well defined set of symptoms; autism is a broad spectrum of disorders that ranges from mild to severe. The Student was diagnosed with autism at (b)(6); (b)(7)(C) of age. Since transferring into the District in (b)(6); (b)(7)(C) the Student's IEP team through the reevaluation review process determined that no additional information was needed and the Student continued to be a student with autism. Evaluations conducted by other sources and used by the District as the basis of its assertion that the Student falls within the moderate range, consistently shows the Student's level of functioning falls below the kindergarten level. Although in (b)(6); (b)(7)(C) at the age of (b)(6); (b)(7)(C) the (b)(6); (b)(7)(C) Schools stated the Student fell within the moderately autistic range, the Student is now (b)(6); (b)(7)(C) of age and continues to fall below the kindergarten level. Although Ms. (b)(6); (b)(7)(C) is appropriately certified in the area of multi-categorical, she is not appropriately certified and highly qualified to teach students with severe disabilities. Although (b)(6); (b)(7)(C) is highly qualified and the District uses her skills to provide support to (b)(6); (b)(7)(C) she is not the special education teacher of the Student. The District failed to provide substantive current evaluative data to support its assertion that the Student does not fall within the severe range. The District failed to ensure that specialized instruction was provided by appropriately certified and highly qualified personnel for students with severe disabilities and is found to be in violation of the IDEA 34 C.F.R. § 300.18.

Issue #2: Did the District fail to provide one-on-one supervision during a class trip in (b)(6); (b)(7)(C)?

The Student's IEP developed in (b)(6); (b)(7)(C) stated the Student continued to require constant 1:1 supervision and redirection for inappropriate behavior. As a result, the Student's IEP team determined it was necessary for the Student to receive 1:1 adult supervision. In (b)(6); (b)(7)(C) during a field trip to Walmart, the District failed to provide 1:1 adult supervision for the Student and is found to be in violation of the IDEA regulation 34 C.F.R. § 300.320.

Although the Complainant expressed concerns over the amounts of SL and OT services received by the Student, the Complainant agreed on May 12, 2009, to allow the District to reevaluate the Student in these areas. After the administration of the necessary assessments the Student's IEP team will reconvene to review the results, obtain additional input from the Complainant, and review the amounts and types of SL and OT therapies currently provided to the Student and determine if any changes are necessary.

### **CORRECTIVE ACTIONS**

When issues of noncompliance are identified corrective actions must be taken. The Student's IEP team must reconvene no later than within the **first twenty days** of the (b)(6); (b)(7)(C) school year and determine whether a negative impact exists as a result of the District's failure to provide instruction by a teacher who is appropriately certified and highly qualified to instruct students with severe disabilities during the 2008-09 school year. If the Student's IEP team determines a negative impact exists, the Student's IEP team must determine a schedule of compensatory services and provide documentation of a) the amount of compensatory services due to the Student; b) how the determination was made concerning the amount of services the Student needs; c) who will provide the compensatory services; d) how the District will measure the effectiveness of the compensatory services; e) the proposed timeline for the delivery of the compensatory services; and f) how the District will document the delivery of the services. The District must complete all autism compensatory services no later than **April 1, 2010**, and submit documentation to the SCDE no later than April 15, 2010, that verifies the completion of all owed compensatory services.

The District must review its records no later than within the **first twenty days** of the (b)(6); (b)(7)(C) school year concerning the provision of special education services for other similarly-situated students in (b)(6); (b)(7)(C) class who fall within the severe range of functioning and did not receive special education services by appropriately certified and highly qualified personnel. The IEP teams for each student must determine if the students are entitled to the provision of compensatory services. The District must submit each student's name and documentation of a) the amount and type of compensatory services due to each student; b) how the determinations were made concerning the amount and type of services each student needs; c) who will provide the compensatory services; d) how the District will measure the effectiveness of the compensatory services and each student's progress; e) the proposed timeline for the delivery of each student's compensatory services; and f) how the District will document the delivery of the services and provide the results of the reviews to my office no later than September 11, 2009.

The Office of Exceptional Children (OEC), general supervision unit, will notify the District whether or not there is a cause to further investigate the findings and work with the District to develop any additional corrective action plans for those students who fall within the severe range of functioning and did not receive special education services by appropriately certified and highly qualified personnel. All identified systemic issues must be corrected as soon as possible, but in no case later than one year from the **June 19, 2009**, letter of resolution. Should you have any questions, please contact Beckie Davis, coordinator, at 803-734-8342.

The District shall submit monthly reports beginning **September 25, 2009**, and submit additional reports no later than the twenty-fifth of each month thereafter, through the remainder of the (b)(6); (b)(7)(C) school year until the report indicates the completion of the delivery of appropriate compensatory services to the Student.



The District shall submit documentation of the completion of the provision of all compensatory services no later than **May 25, 2010**.

The District must provide a written assurance signed and dated by the district superintendent and the director of special services that the District will ensure that all special education services outlined in the Student's IEP will be provided, including 1:1 adult supervision no later than **June 29, 2009**.

Dated this 19<sup>th</sup> day of June 2009,

(b)(6); (b)(7)(C)

Lana T. Ott  
Complaint Investigator  
Office of General Counsel  
South Carolina Department of Education  
1429 Senate Street-Room 1015  
Columbia, South Carolina 29201

**THIS WRITTEN DECISION CONCLUDES THE SCDE'S INVESTIGATION  
OF THIS COMPLAINT**

The IDEA provides mechanisms for resolution of disputes affecting the rights of students with disabilities. This decision may not be reconsidered or appealed. This complaint is in the process of being resolved. It cannot be closed; however, until the District submits verification that it completed the required corrective action activities. Both parties retain any and all rights provided under federal and state law, including the right to mediation and/or a due process hearing, to further pursue this matter.

RE

(b)(6); (b)(7)(C)

From: (b)(6); (b)(7)(C)

To:

Cc:

Subject:

Date: Fri, Aug 28, 2009 3:54 pm

Ms. (b)(6); (b)(7)(C)

On June 2, 2009, (b)(6); (b)(7)(C) requested a copy of all the data collected on (b)(6); (b)(7)(C) or the (b)(6); (b)(7)(C) school year. Mrs. (b)(6); (b)(7)(C) responded with a letter dated June 4, 2009 and stated that (b)(6); (b)(7)(C) was "not necessarily entitled to receive copies of records" but she or her representative could review (b)(6); (b)(7)(C) records on Wednesday, June 10<sup>th</sup>.

You and I spoke on June 9, 2009 and I stated that (b)(6); (b)(7)(C) could not come down to the school district office to review (b)(6); (b)(7)(C) records due to (b)(6); (b)(7)(C) disability. On June 19, 2009 you emailed me for clarification of the records request. I responded on June 26, 2009 with "they would like copies of (b)(6); (b)(7)(C) IEPs and progress reports since he enrolled in the (b)(6); (b)(7)(C) School District in (b)(6); (b)(7)(C). For the (b)(6); (b)(7)(C) school year, they would like a complete copy of (b)(6); (b)(7)(C) records including, but not limited to, data collected and communication sheets."

(b)(6); (b)(7)(C) request for records has not changed since I clarified what she needed on June 26, 2009. It is now August 28, 2009 and she has not received the requested records, data, or communication sheets. Pursuant to 34 CFR § 300.613(b)(2), the (b)(6); (b)(7)(C) DO have the right to request copies of the records because failure to provide copies would effectively prevent them from exercising the right to inspect and review the records due to the extent of (b)(6); (b)(7)(C) disabilities.

(b)(6); (b)(7)(C) is unwilling to withdraw her due process allegation that she was not provided educational records in violation of the IDEA under any circumstances.

Thank you,

(b)(6); (b)(7)(C)

From: (b)(6); (b)(7)(C)

Sent: Saturday, August 22, 2009 12:22 AM

To: (b)(6); (b)(7)(C)

Cc:

Subject: RE: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) is in the process of compiling copies of various records. Could you please provide some clarification on which records (b)(6); (b)(7)(C) wants personal copies of? I know that she has a large amount of the information so I wanted to confirm whether (b)(6); (b)(7)(C) would like additional copies of all records directly from the District or simply documents to fill in what she already has.

As you know, the District has no obligation to provide copies of records to (b)(6); (b)(7)(C). Therefore, please advise me if (b)(6); (b)(7)(C) is also willing to withdraw her due process allegation that she was not provided educational records in violation of the IDEA when the District provides copies of the requested records at no cost.

Thanks so much and have a wonderful weekend. By the way, I hope the move went smoothly!

(b)(6); (b)(7)(C)

**From:** (b)(6); (b)(7)(C)  
**Sent:** Tuesday, August 18, 2009 11:02 AM  
**To:** (b)(6); (b)(7)(C)  
**Subject:** (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

Could you please tell me when we could expect (b)(6); (b)(7)(C) data and records?

Also, could you please provide contact information for (b)(6); (b)(7)(C) who used to be an assistant in (b)(6); (b)(7)(C) classroom last year? I understand she has been reassigned. She may be a potential witness for our due process hearing and we need to contact her as soon as possible.

Thank you,

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

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(b)(6); (b)(7)(C)

November 7, 2007

**VIA OVERNIGHT MAIL**

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-4605



RE: School in Violation of FERPA

Dear Sir/Madam:

I hereby lodge an official complaint against (b)(6); (b)(7)(C) of St. Petersburg, Florida on behalf of (b)(6); (b)(7)(C) who attends (b)(6); (b)(7)(C) for what I believe are violations of FERPA in that (b)(6); (b)(7)(C) (1) refused to provide me with a complete copy of my child's school records within 45 days of me asking for same (on two separate occasions) and (2) generally refused to recognize my rights as a non-custodial parent. (b)(6); (b)(7)(C) is located at 501 Park Street North, St. Petersburg, Florida 33710.

I sent a letter dated (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) at (b)(6); (b)(7)(C) requesting my son's school records which at that time would have only included registration papers as (b)(6); (b)(7)(C) did not begin school there until (b)(6); (b)(7)(C). (See enclosed my (b)(6); (b)(7)(C) letter to (b)(6); (b)(7)(C)). The date the letter was actually sent out was (b)(6); (b)(7)(C), and it was sent via certified mail. (See enclosed (b)(6); (b)(7)(C) certified mail receipt.) This letter was received by (b)(6); (b)(7)(C) on or about (b)(6); (b)(7)(C) as (b)(6); (b)(7)(C) a representative of (b)(6); (b)(7)(C) signed the certified mail return green card and the green card is postmarked (b)(6); (b)(7)(C). (See enclosed back of green card postmarked (b)(6); (b)(7)(C)). This means that (b)(6); (b)(7)(C) had 45 days from (b)(6); (b)(7)(C) to produce my son's school records to me, but it failed to do so.

In both of my letters to (b)(6); (b)(7)(C), I had specifically requested copies of my son's entire school records (including but not limited to registration papers) which I am allowed to do under FERPA. In addition, Illinois state law (Illinois being where the proceedings are pending) allows me access to these school records. Specifically, 750 ILCS 5/602.1 provides as follows:

- (a) Notwithstanding any other provision of law, **access to records and information pertaining to a child**, including but not limited to **medical, dental, child care and school records**, shall not be denied to a parent for the reason that such parent is not the child's custodial parent; however, no parent shall have access to the school records of a child if the parent is prohibited by an order of protection

from inspecting or obtaining such records pursuant to the Illinois Domestic Violence Act of 1986, as now or hereafter amended.

Despite me pointing out the state law and federal law regarding my parental right to access my son's school records, regardless of my status as a non-custodial parent, (b)(6); (b)(7)(C) has denied me access to my child's records. To date, (b)(6); (b)(7)(C) has failed to provide a complete set of (b)(6); (b)(7)(C) school records to me.

In addition, around June 7, 2007, I spoke to (b)(6); (b)(7)(C) via telephone regarding my son's school records which at that point would have included his registration papers as my son technically began school in (b)(7)(C). (b)(6); (b)(7)(C) confirmed for me on or about June 7, 2007 that he had paperwork regarding my son. (b)(6); (b)(7)(C) then claimed that he had "lost" my request for records and could I please send another letter regarding same. As a result, I sent an additional letter dated (b)(6); (b)(7)(C) indicating specifically what I wanted (see enclosed (b)(6); (b)(7)(C) letter to (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) FedEx receipt reflecting overnight mail delivery), but (b)(6); (b)(7)(C) failed to contact me again and/or failed to send me copies of my son's complete records.

Please note that (b)(6); (b)(7)(C) with my ability to obtain these records and other school records by calling the schools and wrongfully instructing school officials not to send records which she also did in this case. (b)(6); (b)(7)(C) never lost my initial letter. He was simply stalling because he had spoken to (b)(6); (b)(7)(C). There is no court order that terminates my FERPA rights (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) If you were to view the court file there, you will see that there is no order that even makes reference to "FERPA." Further, there is no Illinois statute that eliminates my ability to obtain my son's records under FERPA.

(b)(6); (b)(7)(C) falsely claimed to school officials that HIPAA bars me from obtaining these school records, but HIPAA does not apply to me or the schools as neither I nor the schools are considered to be "covered entities" under that Act. More importantly, **there is no provision under HIPAA that bars my access to these records.** In fact, there is a provision under HIPAA that allows for a non-custodial parent to obtain copies of records.

Further, (b)(6); (b)(7)(C) falsely reported to school officials that the Illinois Mental Health and Developmental Disabilities Act bars me from obtaining these school records. However, the Illinois Mental Health Act does not trump FERPA. As you know, if there are mental health records contained in school records, then those mental health records are considered to be part of the student's school records and are obtainable by me. **More importantly, the Illinois Mental Health Act makes no reference to FERPA whatsoever.** And as you know, only a statute that specifically eliminates my ability to obtain those records can terminate my FERPA rights. This letter is being sent within the 180-day time frame for reporting such violations since the first FERPA request was received by (b)(6); (b)(7)(C) on May 14, 2007 per the enclosed postmarked green card and the second FERPA request was received by (b)(6); (b)(7)(C) on June 10, 2007 as per the FedEx overnight receipts.

I have written to you about other schools that have violated FERPA in my pursuit of my children's school records. (b)(6); (b)(7)(C)  
various school officials have blatantly failed to recognize my rights under FERPA. But I know I have them because I have done the research. I know that a custodial parent cannot interfere with a non-custodial parent's access to school records. No one wants to get involved in a (b)(6); (b)(7)(C) but this is not a (b)(6); (b)(7)(C) This is a continued violation of my FERPA rights. These schools that accept federal funding are not allowed to deny me my FERPA rights, and if they are out-of-state schools, they are required to send me copies of the school records within 45 days. If a school is in state, it is required to allow be to view my child's school records within 45 days.

Please investigate this matter as I believe that (b)(6); (b)(7)(C) has not only violated FERPA, but that it has violated state law pursuant to 750 ILCS 5/602.1. If you have any questions, I can be reached at (b)(6); (b)(7)(C) Thank again you for your attention to this matter.

Sincerely,

(b)(6); (b)(7)(C)

Enclosures

(b)(6); (b)(7)(C)

**VIA CERTIFIED MAIL**

(b)(6); (b)(7)(C)

501 Park Street North  
St. Petersburg, Florida 33710

RE: (b)(6); (b)(7)(C)

Dear Sir:

I am the biological father of (b)(6); (b)(7)(C). It is my understanding from (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) applied to your school in (b)(6); (b)(7)(C) and/or (b)(6); (b)(7)(C). This representation was made to me in February of 2007. I have reason to believe that (b)(6); (b)(7)(C) in fact, did not apply to your school. However, if he did, I would like copies of any school records you have for him as I am entitled to under Illinois state law (Illinois is where the divorce was and other states like yours are to give full faith and credit to Illinois law in that case) and federal law.

If you are in possession of (b)(6); (b)(7)(C) school records, please forward them to me at your earliest convenience. I have enclosed copies of a November 9, 2006 letter my attorney sent out last Fall which was addressed to the medical providers and school officials for my children. The letter needed to be sent out because medical providers and/or school officials had been mistakenly told that records regarding my children could not be released to me. As you can see from my attorney's November 9, 2006 letter, Paragraphs 1 and 2 of the July 18, 2006 order and Paragraph C of the Parenting Agreement, I am allowed access to my children's educational and medical records. Naturally, I will reimburse your facility for the cost of copying said records.

Please note that I am interested in a complete copy of (b)(6); (b)(7)(C) school records and particularly any documents that reflect the date that (b)(6); (b)(7)(C) applied to your school, the date he was accepted to or rejected by your school and any applications for financial aid that were provided to your school. In addition, I am interested in school records that include, but are not limited to, the following:

All books, records, documents, memoranda, attendance records, report cards, grade sheets, school progress notes, records of conferences, records of activities, emergency contact information, aptitude or intelligence test results, standardized test results, disciplinary records, documents reflecting the name (b)(6); (b)(7)(C) field trip records, teacher reports, counselor records, correspondence (handwritten



notes, typed letters, e-mail, etc.) to or from any third person (not a biological parent of (b)(6); (b)(7)(C)), insurance records, records of bills for anything at your educational facility (tuition, room & board, activities, etc.), records of payments for anything at your educational facility (tuition, room & board, activities, etc.), incident reports, officially generated reports, medical records, psychological records, psychiatric records, documents reflecting (b)(6); (b)(7)(C) physical and mental condition, registration/enrollment documents, acceptance documents, correspondence (handwritten notes, typed letters, e-mail, etc.) from your educational facility to (b)(6); (b)(7)(C) correspondence (handwritten notes, typed letters, e-mail, etc.) from (b)(6); (b)(7)(C) to your educational facility, any temporary restraining orders involving (b)(6); (b)(7)(C) any orders of protection involving (b)(6); (b)(7)(C) any legal documentation regarding (b)(6); (b)(7)(C) from whatever source, any police department records regarding (b)(6); (b)(7)(C) any notations by any school official, any photographs of (b)(6); (b)(7)(C) documents reflecting the names of (b)(6); (b)(7)(C) teachers, supervisors or advisors/counselors, documents reflecting the names of any health care providers who examined (b)(6); (b)(7)(C) physically or mentally, and the corresponding reports of any such examinations.

If you should withhold any documents for which a privilege is asserted, please identify the existence of the document(s), preferably with a Privilege Log which identifies the date of the document, the name or title of the document, the author(s) of the document and the intended recipient(s) of the document.

#### **ILLINOIS STATE LAW REGARDING NON-CUSTODIAL PARENTS ACCESS TO CHILD'S EDUCATIONAL RECORDS**

The applicable law in this case is Illinois law since the Petition for Dissolution, as well as the Judgment for Dissolution, were filed in the Circuit Court of Lake County, Illinois under Case No. 03 D 2157. All of the orders from my divorce came from that Illinois case. As such, other states, such as yours, are to give full faith and credit to the judgment in my case. Please also note that Illinois law is what governed, and continues to govern, my case.

In Illinois, 750 ILCS 5/602.1 provides as follows:

- (a) Notwithstanding any other provision of law, **access to records and information pertaining to a child**, including but not limited to **medical, dental, child care and school records**, shall not be denied to a parent for the reason that such parent is not the child's custodial parent; however, no parent shall have access to the school records of a child if the parent is prohibited by an order of protection from inspecting or obtaining such records pursuant to the Illinois Domestic Violence Act of 1986, as now or hereafter amended.

In my case, there is no order of protection or temporary restraining order against me. If you have been told different, then you have been misled. Please feel free to call the Lake



County Circuit Clerk at 847/377-2000 to confirm that there is no order of protection or temporary restraining order against me.

(b)(6); (b)(7)(C)

Please further note that any claim that I cannot have access to these records due to the Health Information Portability and Accountability Act ("HIPAA") or the Illinois Mental Health Act is a red herring and is contrary to state and federal law. Neither HIPAA nor the Illinois Mental Health Act prevents me from accessing these records or trumps the Illinois Statute, 750 ILCS 5/602.1. In fact, the federal statutes (such as HIPAA) defer to state statutes on this issue. For example, if **explicit state law** (including case law) **permits** or precludes disclosure of Protected Health Information ("PHI") about a minor to a parent, guardian or other person acting in loco parentis, then **HIPAA defers to the state law**. (Emphasis added.) 45 C.F.R.(g)(3)(ii)(A) and (B). Since 750 ILCS 5/602.1 allows both parents access to school and medical records, regardless of who has custody, then HIPAA does not apply.

My son, (b)(6); (b)(7)(C) (because he is under eighteen-years-old), cannot block my access to his medical records, either. Any authorizations signed by (b)(6); (b)(7)(C) attempting to do so are invalid and (b)(6); (b)(7)(C) contrary to 750 ILCS 5/602.1. And while under the Illinois Mental Health Act, a minor 12 years or older can prevent a parent from seeing psychological or psychiatric records, **when it comes to school records, if medical, psychological and psychiatric records are contained as part of the school record, they are also to be produced.** Again, any assertions by anyone that HIPAA prevents me from accessing (b)(6); (b)(7)(C) school records or that the Illinois Mental Health Act prevents me from accessing school records is absolutely wrong. Such assertions, if there have been any, have been made in a wrongful attempt to block my access to (b)(6); (b)(7)(C) school records and to interfere with my parental rights.

#### **FEDERAL LAW REGARDING NON-CUSTODIAL PARENT'S ACCESS TO CHILD'S EDUCATION RECORDS**

If a school refuses to allow a non-custodial parent to inspect his/her child's school records, the school will be violating the Family Educational Rights and Privacy Act of

1974 ("FERPA"). 20 U.S.C 1232g. Section 99.4 of that Act provides, "An educational agency or institution shall give full rights under the Act to **either** parent unless the agency or institution has been provided with evidence that there is a court order, state Statute, or legally binding document relating to such matters as divorce, separation, or custody, that **specifically** revokes these rights." (Emphasis added.) 20 U.S.C. 1232g. The meaning and intent of this Statute is pretty clear. Note the words "either" and "specifically." Unless a divorce decree specifically excludes a person from access to his/her child's school records, that person has the right to access them. Again, in my case, both the July 22, 2005 Parenting Agreement and the July 18, 2006 order both explicitly provide that I am allowed access to all of my children's school and medical records and that I am allowed to contact school officials regarding my children.

To ensure that a school does not deny the rights of non-custodial parents, school personnel should presume that the non-custodial parent has the right to access records unless they see evidence (as specified in FERPA) to the contrary. Please note that any such evidence must be unaltered evidence, not hypothetically where the date on an Order of Protection (granted because of false allegations and then dismissed within 9 days due to lack of evidence) from 2003 is whited out, changed to a more recent date and then presented to a school in an attempt to block the non-custodial parent's access to the school records.

The provisions in FERPA apply to all schools that receive federal funding of any kind. Under FERPA, school records include report cards, enrollment forms, achievement tests, progress reports, field trip forms, incident reports, disciplinary reports, **medical records**, emergency notification cards and any other officially generated reports, **including e-mail**. It also includes records of teacher conferences if such records are maintained.

It is important to note that **counselor and psychologist records are considered part of an education record under FERPA**. This means that HIPAA and the Mental Health Act do not apply to these records as indicated above where such medical, psychological or psychiatric records have been made a part of the school records. In those cases, any claims of privilege under HIPAA and/or the Mental Health Act are invalid. Thus, these records (if they are contained in the educational record of the child) are not exempt from FERPA's requirement for the school to allow the non-custodial parent access to the school records. Please further note that in order for the "teacher's notes" exception to apply (what school officials sometimes claim in order to withhold documents in the school record) to a counselor's records, the notes taken by the **counselor must be kept apart from all other student records and the information may not be shared with other persons**.

I should also be able to obtain all correspondence from my ex-wife to your educational facility, regardless of whether the correspondence was in written, typed or e-mail form, because those documents are presumably contained in the school records. In addition, school districts and even private schools usually have guidelines and rules that allow the non-custodial parent access to any such e-mails. Again, teachers sometimes attempt to assert that such correspondence does not need to be produced by claiming the following

exception: **"(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the records, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record."** (Emphasis added.) **Thus, the only thing that can be excluded from the records is personal notes used by the teacher and never intended for viewing by any other person. Two party communications (such as e-mails, written correspondence or typed correspondence between a parent and a school official) do not fall under that definition, since they are, by their very nature, meant to be viewed by others.** The majority of the private schools and school districts usually have an e-mail policy that almost always states specifically that e-mail received through the school or through the school district is the property of the school or the school district and reserves the right of the school or the school district to monitor employee e-mails, thus eliminating the "not accessible to any other person" requirement. This is in addition to the fact that there is a two party communication as outlined above.

It also is important to know that one of qualifications for schools receiving federal funds is dependent upon compliance with 20 U.S.C 1232g (FERPA) to receive federal funds. The key part of FERPA states, **"(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children."** In short, FERPA applies to educational agencies, institutions, and schools that receive funds from the U.S. Department of Education, no matter how small the amount of those funds is.

Again, HIPAA does not trump FERPA, nor does the Illinois Mental Health Act trump FERPA if medical, psychological and psychiatric records are maintained in the child's school records.. **"While mental health files also are now subject to the Health Information Portability and Accountability Act ("HIPAA"), any mental health records related to students which are maintained in the student's permanent or temporary school records fall under the Family Educational Rights and Privacy Act ("FERPA") regulations, and are generally exempted from HIPAA regulations."** (Emphasis added.) See Footnote 14 of article entitled, "Non-Custodial Parents: Legal Issues," by Brook R. Whitted of Whitted, Cleary & Takiff, L.L.C., 3000 West Dundee Road, Suite 303, Northbrook, Illinois 60062 which can be found at [www.whittedclearlylaw.com/CM/Publications/Publications159.asp](http://www.whittedclearlylaw.com/CM/Publications/Publications159.asp).

Even private schools usually get some type of federal funding and thus are also subject to FERPA. For instance, the Elementary and Secondary Education Act (ESEA), authorized by the No Child Left Behind Act of 2001, provided for service benefits to students and teachers of private schools, including Christian schools. The allocated federal funding for the participating private school is coordinated by the local education agencies (LEAs). Examples of LEAs include the local school district and the County Intermediate Unit. I presume that your educational facility receives some sort of federal funding. However, even if your educational facility does not receive any federal funds, 750 ILCS 5/602.1 still applies, and the records should be produced.

## **HIPAA AS IT APPLIES TO COURT ORDERS EXPLICITLY ALLOWING A PARENT TO ACCESS MEDICAL RECORDS**

The Health Information Portability and Accountability Act is not understood by many people. However, as indicated previously, HIPAA defers to state law regarding a non-custodial parent's access to his/her child's medical records, and thus HIPAA is trumped by Illinois state law, 750 ILCS 5/602.1. 45 C.F.R.(g)(3)(ii)(A) and (B). The HIPAA Privacy Rule permits a minor's parents access to the minor's Protected Health Information ("PHI") and, absent a court order (which there is none in my case), other judicial finding (which there is none in my case), or state law to the contrary (which there is none in my case as 750 ILCS 5/602.1 gives the right to both parents equally regardless of who has custody), **both parents are given this right equally.**

I apologize for the length of my letter, but I have been forced to go this route. Again, I am not prohibited by an order of protection under the Illinois Domestic Violence Act of 1986 as amended. If you have any questions, feel free to call me on my cellular telephone at (b)(6); (b)(7)(C) or to call either of my attorneys, (b)(6); (b)(7)(C).  
(b)(6); (b)(7)(C) Thank you again for your assistance in this matter.

Sincerely,

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Attorneys at Law

November 9, 2006

Medical Providers/

School Officials

For:

(b)(6); (b)(7)(C)

In re: Former Marriage of (b)(6); (b)(7)(C)  
Our File No. (b)(6); (b)(7)(C)

Dear Sir or Madam:

Attached is a copy of an order entered on July 18, 2006, in the matter of In re: the Marriage of (b)(6); (b)(7)(C) case no. (b)(6); (b)(7)(C). Pursuant to the enclosed order, (b)(6); (b)(7)(C) is legally entitled to access to information regarding the medical care and education of the minor children referenced above. He is also entitled to have contact with any and all medical providers providing such care, and any and all school officials providing such education.

Should you have any questions regarding the attached order, please feel free to contact (b)(6); (b)(7)(C) or myself.

Very truly yours,

(b)(6); (b)(7)(C)

Encl.

cc:

(b)(6); (b)(7)(C)

(b)(7)(C)

**VIA CERTIFIED MAIL**

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-4605

RE: School in Violation of FERPA

Dear Sir/Madam:

I hereby lodge an official complaint against the School District of 96 on behalf of (b)(6); (b)(7)(C) who attends (b)(6); (b)(7)(C) School for what I believe violations of FERPA in that (b)(6); (b)(7)(C) School (1) refused to provide me access to my child's complete school records, (2) provided me incomplete school records (only a recent report card and recent newsletter), (3) generally refused to recognize my rights as a non-custodial parent and (4) refused to allow me to physically view the records after being requested to do so. (b)(6); (b)(7)(C) School is located at (b)(6); (b)(7)(C), Illinois (b)(6); (b)(7)(C)

I also have reason to believe that (b)(6); (b)(7)(C) School allowed by (b)(6); (b)(7)(C) the custodial parent of (b)(6); (b)(7)(C) to register my daughter under the incorrect last name of (b)(6); (b)(7)(C) when her legal last name is (b)(6); (b)(7)(C). I spoke with Mr. (b)(6); (b)(7)(C) during the week of April 16, 2007 who confirmed this for me. However, once I asked for copies of my daughter's records from Mr. (b)(6); (b)(7)(C) he sent me a letter indicating he had "misspoken." He also refused to produce a complete set of the school records to me except for (1) a recent report card and (2) a recent newsletter. Notably, the registration papers were not included in what Mr. (b)(6); (b)(7)(C) sent me. This is after I had specifically requested copies of my daughter's entire school records (including but not limited to registration papers) which I am allowed to do under FERPA (which allows access to more than just report cards and newsletters, including but not limited to enrollment forms, achievement tests, progress reports, field trip forms, incident reports, disciplinary reports, medical records, emergency notification cards and correspondence from my ex-wife and others).

In addition, under 750 ILCS 5/602.1 provides as follows:

- (a) Notwithstanding any other provision of law, access to records and information pertaining to a child, including but not limited to medical, dental, child care and school records, shall not be denied to a parent for the reason that such parent is not the child's custodial parent; however, no parent shall have access



to the school records of a child if the parent is prohibited by an order of protection from inspecting or obtaining such records pursuant to the Illinois Domestic Violence Act of 1986, as now or hereafter amended.

Despite me pointing out the state law and federal law regarding my parental right to access my daughter's school records, regardless of my status as a non-custodial parent, (b)(6); (b)(7)(C) School has denied me access to my child's records.

I would also point out that (b)(6); (b)(7)(C) School had plenty of notice that my daughter's name has always been (b)(6); (b)(7)(C) since her older brother, (b)(6); (b)(7)(C) also attended (b)(6); (b)(7)(C) School. This makes me wonder why (b)(6); (b)(7)(C) School, knowing full well that (b)(6); (b)(7)(C) last name was (b)(6); (b)(7)(C) may have allowed my daughter to register under the wrong last name of (b)(6); (b)(7)(C). Obviously, I am seeking those registration papers to see exactly how (b)(6); (b)(7)(C) was registered.

In addition, I have not only asked (b)(6); (b)(7)(C) School to provide me with a complete set of my daughter's school records and to correct any incorrect registration of (b)(6); (b)(7)(C) last name as (b)(6); (b)(7)(C). I have also requested the opportunity to physically go to (b)(6); (b)(7)(C) School to view my daughter's entire school records. However, (b)(6); (b)(7)(C) School has denied me access to the school records this way also. At the very least, I should have been allowed to view her records under FERPA.

I have attached the following: (1) my initial April 26, 2007 letter to Mr. (b)(6); (b)(7)(C) requesting copies of (b)(6); (b)(7)(C) school records pursuant to the orders (b)(6); (b)(7)(C) case allowing me access to same and the corresponding enclosures, (2) my May 3, 2003 letter to Mr. (b)(6); (b)(7)(C) citing the state and federal law that allows me to access my daughter's records, (3) my May 3, 2003 e-mail to Mr. (b)(6); (b)(7)(C) regarding the specific records I was seeking, (4) my May 5, 2007 e-mail to Mr. (b)(6); (b)(7)(C) (and others as (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

one of my children's schools and/or medical centers) giving Mr. (b)(6); (b)(7)(C) the opportunity to check with Lake County Circuit Clerk to be sure that I do not have an order of protection or temporary restraining order against me, (5) Mr. (b)(6); (b)(7)(C) May 7, 2007 correspondence to me; and (6) my May 7, 2007 correspondence back to him. To date, (b)(6); (b)(7)(C) School has failed to provide a complete set of (b)(6); (b)(7)(C) school records to me, has failed to schedule an appointment with me to allow me to review (b)(6); (b)(7)(C) complete school records; and may have allowed (b)(6); (b)(7)(C) to continue to be registered under the wrong last name of (b)(6); (b)(7)(C)

Please investigate this matter as I believe that (b)(6); (b)(7)(C) School has not only violated FERPA, but that it has violated state law pursuant to 750 ILCS 5/602.1. If you have any questions, I can be reached at (b)(6); (b)(7)(C). Thank again you for your attention to this matter.

Sincerely,

Enclosures

(b)(7)(C) (b)(7)(C)

AT&T Yahoo! Mail

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Web Search



Welcome, (b)(6); (b)(7)(C)  
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Date: Mon, 7 May 2007 19:21:25 -0700 (PDT)

From: (b)(6); (b)(7)(C)

Add to Address Book Add Mobile Alert

Subject: (b)(6); (b)(7)(C)

To: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Please see attached.

(b)(6); (b)(7)(C)

### Attachments

Files:

(b)(6); (b)(7)(C)\_1\_.doc (27k) [[Preview](#)]

[Scan and Save to Computer](#) - [Save to Yahoo! Briefcase](#)

FERPA1tr1\_1\_.doc (34k) [[Preview](#)]

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