



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

JUL 30 2002

Mr. John J. Tommasini
Assistant Director
Bureau of Special Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, Pennsylvania 17126-0333

Dear Mr. Tommasini:

This is in response to your April 25, 2002, letter to this Office in which you request guidance under the Family Educational Rights and Privacy Act (FERPA). Specifically you ask whether FERPA allows the Pennsylvania Department of Education (PDE) to share findings in complaints filed under Part B of the Individuals with Disabilities Education Act (IDEA) with complainants who are not the parent or guardian of the student to whom the complaint relates. This Office administers FERPA and is responsible for providing technical assistance under that statute.

You explain in your letter that as the cognizant State education agency (SEA) under the IDEA State complaint procedure, PDE is required to have procedures for "an organization or individual" to file a signed written complaint that must include the facts upon which the allegation is raised. 34 CFR §§ 300.660-662. IDEA regulations provide that within 60 days of receipt of a complaint the SEA must issue a written decision addressing each allegation and containing findings of fact, conclusions, and reasons for the SEA's decision. PDE's practice has been to issue a written complaint report to both the local education agency (LEA) and the complainant. Your letter notes that PDE's complaint findings contain personally identifiable information about a student subject to the confidentiality and privacy protections of IDEA and FERPA.

Based on guidance regarding IDEA State complaint procedures issued by the Department's Office of Special Education Programs (OSEP) on July 17, 2000, PDE wishes to establish new procedures for complaints from non-parents under Part B. You expressed doubt whether redacting information about a student's identity would satisfy FERPA requirements and ask whether this Office agrees with your conclusion that in order to comply with both IDEA and FERPA, PDE must require any non-parent individual or organization to include parental consent for the disclosure of student information before initiating an investigation under PDE's complaint procedures.

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OSEP's response to Question 2 in the July 2002 guidance provided with your inquiry states:

An SEA is required to resolve any complaint that meets the requirements of § 300.662, including a complaint alleging that a public agency has failed to provide FAPE to a child with a disability....

If a complaint is filed by someone other than a parent, the SEA may not provide personally identifiable information to the non-parent complainant as part of the decision without parent consent. Under § 300.571(a)(1), parental consent generally must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information under Part B.

We understand this guidance to mean that PDE may not refuse to resolve a complaint by a non-parent individual or organization if the parent refuses to consent to the disclosure of personally identifiable information about the student. However, the SEA may not provide the personally identifiable information from the complaint decision without the parent's consent. See § 300.571. Accordingly, if the PDE discloses a complaint decision that contains personally identifiable information, the PDE must obtain the consent of the parent. See § 99.3 "Personally identifiable information" and § 99.30 of the FERPA regulations. We have consulted with OSEP in responding to your inquiry. If you have any further questions about IDEA in this regard, you may call Mrs. JoLeta Reynolds in OSEP at (202) 205-5507.

I trust that the above information is responsive to your concerns. Should you have additional questions about FERPA, please do not hesitate to contact this Office again.

Sincerely,



LeRoy S. Rooker
Director
Family Policy Compliance Office

cc: Stephanie Lee
Director, OSEP