



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN - 4 2003

[REDACTED]

This letter is in response to your telephone call requesting a copy of the April 15, 1988 Office of Special Education Programs (OSEP) Memorandum 88-17 regarding the use of tape recorders at IEP meetings. As a member of my staff, Mr. Dale King, explained in your telephone conversation of May 2, 2003, the position expressed in Memorandum 88-17 does not reflect OSEP's current position regarding the use of audio or video tape recorders at IEP team meetings. The Department issued OSEP Memorandum 91-24 on July 18, 1991 clarifying and amending OSEP's position as expressed in Memorandum 88-17. I am enclosing a copy of Memorandum 91-24.

Moreover, Appendix A to the final regulations (see 34 CFR Part 300) implementing the Individuals with Disabilities Education Act (IDEA) states the Department's current position regarding the audio or video tape recording of IEP meetings. OSEP, in its response to question 21 under "Other Questions Regarding Implementation of IDEA" states the following:

Part B does not address the use of audio or video recording devices at IEP meetings, and no other Federal statute either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official. Therefore, an SEA or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings.

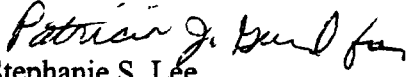
If a public agency has a policy that prohibits or limits the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under Part B. An SEA or school district that adopts a rule regulating the tape recording of IEP meetings also should ensure that it is uniformly applied.

Any recording of an IEP meeting that is maintained by the public agency is an "education record," within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR Part 99) and Part B (§§300.560-300.575).

Parents wishing to use audio or video recording devices at IEP meetings should consult State or local policies for further guidance.

Should you have further questions regarding this issue, please do not hesitate to contact Dale King at (202) 260-1156.

Sincerely,


Stephanie S. Lee
Director,
Office of Special Education Programs

Enclosure

cc: Dr. Jana L. Jones
State Director
Idaho State Department of Education



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

July 18, 1991

Contact Person

Name: Robert LaGarde
Telephone: (202) 732-1053

OSEP - 91- 24

OSEP MEMORANDUM

TO : State Directors of Special Education

FROM : Judy A. Schrag, Ed. *JAS*
Director
Office of Special Education Programs

SUBJECT: Amendment of "OSEP 88-17" Regarding the Use of Tape
Recorders at IEP Meetings

The purpose of this Memorandum is to clarify the position of the Office of Special Education Programs (OSEP), issued in OSEP Memorandum 88-17, dated April 15, 1988, on the tape recording of meetings conducted to develop, review, and revise individualized education programs (IEPs) for children with disabilities. Because OSEP has received a number of inquiries regarding our policy on the tape recording of IEP meetings, we would like to reiterate the position stated in the previous Memorandum, which reflects our current position. This Memorandum is not intended to alter our conclusion, as stated in the April 15, 1988 Memorandum, that a decision regarding whether parents may tape record IEP meetings should be left to the discretion of local school districts, based upon local considerations. Instead, the purpose of this Memorandum is merely to provide clarification of the statements made in OSEP Memorandum 88-17 regarding Federal privacy law.

Since Part B of the Individuals with Disabilities Education Act (Part B), formerly cited as the Education of the Handicapped Act, does not address the issue of tape recording IEP meetings, and because there are no Federal statutes that authorize or prohibit the tape recording of an IEP meeting by either a parent or a school official, a State educational agency (SEA) or school district has the option to require, prohibit, limit, or otherwise regulate the use of tape recorders at IEP meetings. This remains OSEP's position.

With regard to Federal privacy law, the April 15, 1988 Memorandum also stated that:

A review of case law under the subject of right to privacy indicated that the rights of a child with a handicap and the child's parents could be violated if school officials recorded an IEP meeting without their permission. However, the privacy rights of school officials would not be violated by tape recording an IEP meeting because they are public officials serving in an official capacity. As stated earlier, [Part B] does not address these issues, but this is the trend in court cases.

Based on subsequent advice from the Department's Office of the General Counsel, the following clarification is needed to reflect current Federal privacy law. First, Federal privacy law does not directly address the issue of whether a parent or school official may tape record IEP meetings. Second, Federal privacy law does not suggest that the rights of children with disabilities or their parents would be violated by an uncontested tape recording of an IEP meeting by a school official, or that the school officials' status as public officials would permit tape recording by others. Instead, Federal privacy law does not make it unlawful for any participant to a communication (or meeting) to tape record the proceedings without the consent of the other parties. See Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §2520 et. seq., as amended. The fact that it is not unlawful under Federal law for a participant or party to tape record a conversation, however, does not give that party the absolute right to do so. It merely means that the non-consenting parties to the conversation would not be entitled to sue the tape recording party under Federal statutory law.

It would not be inconsistent with Federal privacy law for a school district to have a rule prohibiting the tape recording of IEP meetings if the policy provided for exceptions when they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under Part B. However, a school district that is considering the adoption of such a rule should be aware of the following: First, our discussion of privacy law only addresses the absence of governing Federal law. An individual State may have its own statutory or constitutional provisions that will govern this issue. Second, this action may involve complex issues of Federal constitutional law. We cannot assure that a rule regulating the taping of IEP meetings would not be subject to challenge under the U.S. Constitution. Third, an SEA or school district that adopts a rule regulating the tape recording of IEP meetings may wish to ensure that it is uniformly applied.

Interested SEAs or school districts should consult their own attorneys on these questions. Further, SEAs or school districts which permit tape recording of IEP meetings should be aware that those tape recordings would be subject to the Federal Educational Rights and Privacy Act (FERPA). Thus, with respect to such taped records, parents would have the right to: (1) inspect and review the tape recordings; (2) request that the tape recordings be amended if the parent believes that they contain information that is inaccurate, misleading, or in violation of that student's rights of privacy or other rights; and (3) challenge, in a hearing, information that the parent believes is inaccurate, misleading, or in violation of the student's rights of privacy or other rights. See 34 CFR §§99.10-99.22.

We emphasize that each school district has a responsibility to take the steps necessary to ensure parent participation at IEP meetings, including taking steps to ensure that the parent understands the proceedings at the IEP meeting. Under 34 CFR §300.345(e), the [school district] must take whatever action is necessary to ensure that the parent understands the proceedings at an IEP meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English. A district court has held that a parent, whose native language was Danish, and had difficulty understanding the English language, and thus, difficulty understanding her child's IEP meeting, has a right to tape record her child's IEP meeting. 735 F. Supp. 53 (D.Conn. 1990). The same district court also held that a parent with a disabling injury to her hand, making notetaking at her child's IEP meeting, and thus, her ability to understand the IEP meeting, difficult, has a right to tape record her child's IEP meeting. 131 F.R.D. 654 (D.Conn. 1990). Thus, any policy limiting or prohibiting a parent's right to tape record the proceedings at an IEP meeting must provide for exceptions if they are necessary to ensure that the parent is able to understand the proceedings at the IEP meeting or to implement other parental rights under Part B.

It also should be noted that under certain circumstances, an SEA or local district policy limiting a parent's right to tape record an IEP meeting could also constitute a violation of Section 504 of the Rehabilitation Act of 1973, the Federal law that prohibits discrimination, in Federally-assisted programs, on the basis of disability. A potential violation of Section 504 could arise where the parent involved is a person who is a deaf or hearing impaired, and thus, is unable to understand the proceedings at the IEP meeting without a tape recorder or an interpreter. Further, if the parent involved has a native language other than English, the SEA or school district policy could constitute a violation of Title VI of the Civil Rights Act of 1964, the Federal law that prohibits discrimination on the basis of race and national origin in Federally-assisted programs. The

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Department's Office for Civil Rights (OCR) is the branch that is responsible for enforcing these statutes. For further clarification of OCR's interpretation of these statutory requirements, you may wish to contact:

Ms. Jean J. Peelen
Acting Director
Policy and Enforcement Service
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Switzer Building, Room 5036
Washington, DC 20202-1174

We regret any confusion that may have resulted from the April 1988 Memorandum. If you have any questions regarding OSEP's position on this issue, please write or telephone the contact person whose name appears at the top of this Memorandum.

cc: Part B Coordinators