



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

OCT 13 2006

Mr. David A. Anderson
General Counsel
Texas Education Agency 1701
North Congress Avenue
Austin, Texas 78701-1494

Dear Mr. Anderson:

I am writing in response to your April 25, 2006 letter to the Office of Special Education Programs (OSEP) and the Family Policy Compliance Office, regarding your request for guidance concerning confidentiality issues raised by the Individuals with Disabilities Education Act (IDEA) and the Family Educational Rights and Privacy Act (FERPA) related to the public dissemination of special education due process hearing decisions. Please excuse the delay in our response. You request specific guidance related to the requirement to make a hearing decision publicly available after removing personally identifiable information under sections 615(h)(4) and 617(c) of the IDEA as amended in 2004. You indicate that the Texas Education Agency (TEA) currently posts due process hearing decisions on its website and generally includes the following information: 1) first and last initials of the parent and the student; 2) the name of the school district; 3) the name of the campus; 4) the grade to which the student is assigned; 5) the disability designation of the student; and, 6) related student educational information. You state that TEA received a parental request to remove from the website, the due process hearing decision concerning her son and requesting that no information about the hearing decision be made available to the public because it would identify her and her son as she is well known in her community for advocacy work on behalf of children with disabilities. Pending receipt of guidance, you indicate that TEA has removed the hearing decision from its website.

Although your inquiry is specific to the IDEA requirements, this response is based upon the relevant confidentiality provisions of both the IDEA and FERPA and their respective implementing regulations. The Department's Family Policy Compliance Office has reviewed this response. Under the IDEA regulations, at 34 CFR §300.622 (effective Oct. 13, 2006) (see also, §300.571 (1999)), and the FERPA regulations, at 34 CFR §99.30 (2005), with certain exceptions, prior written consent is required before an agency discloses personally identifiable information from the student's educational records. Under section 615(h)(4) and 34 CFR §300.513(d) (effective Oct. 13, 2006) (see also §300.510(c) (1999)), the public agency must remove personally identifiable information before making due process hearing findings and decisions available to the public. The IDEA regulations, at 34 CFR §300.32 (2006) (see also §§300.21 and 300.500(b)(3) (1999)), define personally identifiable information as information containing: 1) the name of the child, the child's parent, or other family member; 2) the address of the child; 3) a personal identifier, such as the child's social security number or student number; or 4) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. The FERPA definition, at 34 CFR §99.3 (2005) ("definition of personally identifiable information"), includes the following: 1) the student's name; 2) the name of the student's parent or other family member; 3) the address of the student or student's family; 4) a personal identifier, such as the student's social security number or student number; 5) a list of

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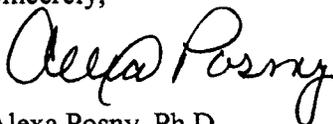
personal characteristics that would make the student's identity easily traceable; and 6) other information that would make the student's identity easily traceable. In general, these definitions are to be read congruously.

The determination regarding those personal characteristics or other information that would make it possible to identify the child with reasonable certainty or make the student's identity easily traceable, must be made on an individualized basis and not based on a general policy of disclosure, as TEA has set out in its letter. The public agency must consider the contents of each due process hearing findings and decision to determine which personal characteristics or other information contained therein would make it possible to identify the child with reasonable certainty or make the student's identity easily traceable if disclosed to the school's community or the community at large. For example, TEA's current policy of disclosing hearing findings and decisions that include student and parent initials, school district, the student's disability, grade, campus and other educational information, in a small school district, school or grade or for a child who has a low-incidence disability, could result in the identification of the child with reasonable certainty or make the student's identity easily traceable by members of the school's community. In general, factors to consider include, but are not limited to, the size of the district, school and grade and the prevalence and knowledge of the child's personal characteristics and other information (e.g., disability, initials, parent's advocacy work) within the school community and the community at large. In individually weighing these factors, the agency should determine the information or combination of information that would constitute personally identifiable information and remove it from the due process hearing findings and decision prior to its public dissemination.

This response regarding a policy, question, or interpretation under Part B of IDEA is provided as informal guidance, is not legally binding, is issued in compliance with the requirements of 5 U.S.C. 553, and represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

We look forward to our continued collaboration with TEA to support your work to improve results for children with disabilities and their families. If you have any questions, please contact Hugh Reid at (202) 245-7491.

Sincerely,



Alexa Posny, Ph.D.
Director
Office of Special Education Programs

cc: Kathy Clayton, Director, Division of IDEA Coordination