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

February 27, 2017

Mr. Patrick J. Zacchini
Chief Compliance Officer
Sonoran Schools Inc.
2430 West Ray Road, Suite 3
Chandler, Arizona 85224

Dear Mr. Zacchini:

This letter responds to your June 27, 2016 correspondence to the U.S. Department of Education's (Department's) Family Policy Compliance Office. Your inquiry was forwarded to the Office of Special Education Programs for response. We apologize for the delay in responding.

In your correspondence, you requested clarification regarding when and how parents must be notified before records containing personally identifiable information are destroyed under Part B of the Individuals with Disabilities Education Act (IDEA). Specifically, you asked whether, under 34 CFR §300.624, the school district must specifically notify parents at the time the district intends to destroy the records or whether such notice must be provided at the time the records are no longer needed.

Under 34 CFR §300.624 of the IDEA Part B regulations, a public agency must inform parents when personally identifiable information collected, maintained, or used under Part B of the IDEA is no longer needed to provide educational services to the child. 34 CFR §300.624(a). Additionally, personally identifiable information must be destroyed at the request of the parents once it is no longer needed. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. 34 CFR §300.624(b).

As discussed in the Analysis and Comments accompanying the 1999 IDEA Part B regulations, the notice required in 34 CFR §300.624(a) would normally be provided to the parent and student when the student graduates (typically the earlier of when the student receives a regular high school diploma or at age 21) or otherwise leaves the public agency. See: Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities, Final Rule, 64 Fed. Reg. 12406, 12642 (March 12, 1999). Therefore, we do not believe it is necessary to also provide this notice at the point in time when the district meets its record retention requirement and intends to destroy the special education records.[1]

[1] IDEA records must be retained consistent with the record retention requirements in 2 CFR §200.333, and when actually applied, this record retention time period is at least five and a half years. The provision in 2 CFR §200.333 requires "Financial records, supporting documents, statistical records, and all other non-Federal entity records

We also note that in informing parents about their rights under this section, it would be helpful if the public agency reminds them that the education records (such as the individualized education program) may be needed by the student or parents for other purposes, such as accommodations for employment or higher education, public benefits and insurance, and private insurance. In instances in which an agency intends to destroy personally identifiable information that is no longer needed to provide services to the student (such as after the student has graduated from, or otherwise leaves the agency's program), and informs parents of that determination, the parents may want to exercise their right to access those records and request copies of the records that they will need to acquire post-school benefits in the future. 64 Fed. Reg. 12406, 12643.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation of the IDEA by the Department in the context of the specific facts presented.

If you have any further questions, please do not hesitate to contact Lisa Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs

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pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report." This three-year period runs from when the final expenditure report is submitted (and it is due generally 90 days from the end of the performance period, which is typically when Federal fiscal year (FFY) funds are no longer available for obligation). Under 34 CFR §76.709, if a State does not obligate all of its IDEA grant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate those funds during a carryover period of one additional year. For example, under an IDEA Part B grant for FFY 2014 awarded on July 1, 2014, a State could obligate such FFY 2014 funds during the period July 1, 2014 through September 30, 2016. The final expenditure report for that FFY 2014 award would then be due, and typically submitted, on December 30, 2016, and thus, all records created during that period pertinent to that FFY 2014 grant would need to be retained until December 30, 2019, regardless of whether the record pertained to an obligation entered into on the first or the last day those funds are available for obligation. Given that a State generally submits its final expenditure report two and a half years after it receives its IDEA grant, the record retention period can extend to five and a half years from the date an IDEA record was created and the minimal record retention period is thus five and a half years. A number of States have adopted a six-year record retention timeline for IDEA records given that State and Federal fiscal years do not always align and such a timeline is consistent with these requirements.