



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAY -7 1998

Patricia A. Hertzler, Esq.
R. R. 1, Box 68
Port Royal, PA 17082

Dear Ms. Hertzler:

This letter is in response to your inquiry dated January 28, 1998 regarding the disclosure of a child's education records under the Individuals with Disabilities Education Act (IDEA). I hope the following information is helpful to you.

Parents (or their representatives) have the right to inspect and review education records, as well as the right to a response from the school to reasonable requests for explanations and interpretations of the records. See 34 CFR §300.562. Under the IDEA, education records are defined as those records that are directly related to the student and maintained by an educational agency or a party acting for the educational agency. 34 CFR §300.560; 34 CFR §99.3. Personal notes or papers of a teacher are not considered part of a child's education records. Parents also have "[t]he right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records" §300.562(b)(2).

The Education Department General Administrative Regulations (EDGAR), at 34 CFR §76.731, provide that records required to demonstrate compliance with program requirements must be maintained. In the case of Part B of the IDEA, this requirement would include records demonstrating that all eligible children with disabilities are provided a free appropriate public education, consistent with their individualized education programs (IEPs). EDGAR further states that these records must be retained for three years. See 34 CFR §80.42(b). If certain records are not required to demonstrate compliance with IDEA, there is no requirement to retain these records.

The U.S. Department of Education does not have jurisdiction to review the decision of due process hearing officers. In Pennsylvania, that decision must be appealed to the State educational agency since the hearing is conducted by a local education agency.

If you have further questions regarding these issues, please contact Deborah Morrow, the Pennsylvania State contact at (202) 260-2946 or e-mail at Deborah_Morrow @ed.gov.

Sincerely,

Thomas Hehir
Director
Office of Special Education Programs

cc: Dr. William Penn