



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

DEC 23 1997

Dear

Thank you for your letter of May 5, 1997, regarding the New Hampshire Department of Education's (NHDOE) Special Education Information System (SPEDIS). Your letter of April 17, 1997, to Thomas Hibino, Director, Office for Civil Rights, Boston Office, U.S. Department of Education, was also referred to the Office of Special Education Programs (OSEP) for response.

We have been informed by LeRoy S. Rooker, Director, Family Policy Compliance Office, U.S. Department of Education, that he responded directly to Senator Robert C. Smith at his Manchester, New Hampshire Office, about the issues you raised regarding Family Educational Rights and Privacy Act (FERPA). The date of his response is May 9, 1997. The following information is in response your questions and to the issues you raised which apply to the Individuals with Disabilities Education Act (IDEA) and the IDEA Amendments of 1997.

1. Why does the N.H. Dept. of Education have SPEDIS numbers for identification of handicapped children?

NHDOE's system, SPEDIS, is defined on page 11 of New Hampshire Standards for the Education of Students with Disabilities, at ED1102.32, as "a computer-based special education data bank and retrieval system that confidentially maintains personally identifiable data used for program development, monitoring, compliance, and reporting to the State Hoard of Education, the New Hampshire legislative bodies, and the federal department of education." The purpose and use of SPEDIS is detailed in Chapter IX (RESPONSIBILITY OF STATE EDUCATIONAL AGENCY FOR ALL EDUCATIONAL PROGRAMS) of NHDOE's fiscal year (FY) 1996-98 State Plan for the Implementation of Part B of the IDEA, pages 72-80 (copy enclosed). We were informed by Robert Kennedy, Director, Division of Educational Improvement, New Hampshire Department of Education, that he wrote directly to Senator Smith in response to your inquiry regarding this issue. A copy of Dr. Kennedy's May 9, 1997 letter to Senator Smith is enclosed for your convenience. We were also informed that you were provided a copy of NHDOE's State Plan.

2. Is it according to (the State) plan required by the U.S. D.O.E. regulations as submitted by N.H. DOE?

Prior to the IDEA Amendments of 1997, OSEP required each State to establish and include in its State Plan policies and procedures to be used by local educational agencies (LEA) and other educational institutions in counting the number of children with disabilities receiving special education and related services (34 CFR §300.754, copy enclosed). The note to 34 CFR §300.754 provides that the data required in the annual report of children served not be transmitted to the Secretary in personally identifiable form, and that States are encouraged to collect data in non-personally identifiable form. NHDOE has elected to collect and maintain this data with the establishment of SPEDIS. NHDOE's FY 1996-98 State Plan was approved by OSEP on July 3, 1995, on the basis that the Plan met and was consistent with criteria established by IDEA, prior to the IDEA Amendments of 1997. Appendix A for Chapter I to NHDOE's FY 1996-98 State Plan, under Part B of IDEA, contains information regarding SPEDIS.

After enactment of the IDEA Amendments of 1997, OSEP required a signed written assurance stating that New Hampshire would implement the applicable new provisions of the Act.

3. Who has access to SPEDIS number?

Under 34 CFR §§300.560-300.576 of the regulations implementing Part B of IDEA, States must assure the confidentiality of personally identifiable information collected, maintained and used by public agencies. The regulations at 34 CFR §300.571 provide that parental consent must be obtained before personally identifiable information is: (1) disclosed to anyone other than officials of participating agencies collecting or using the information, or (2) used for any purpose other than meeting a requirement of IDEA. New Hampshire's policies and procedures regarding confidentiality of personally identifiable information are contained on pages 46-55 of the State Plan.

4. How did the Federal Dept. of Education [monitor the] issue [of] compliance for N.H.'s Dept. of Education for students['] personally Identifiable information.

OSEP conducted its most recent comprehensive compliance monitoring review of NHDOE's implementation of Part B during the week of April 11-15, 1994. A monitoring report, Office of Special Education Programs Monitoring Report: 1994 Review of the New Hampshire State Department of Education (Report) was issued to the State on December 21, 1994 (copy enclosed).

OSEP's monitoring process includes numerous avenues for parents and advocates to raise issues of concern. This process consists of a pre-visit document review, including a review of complaints, and outreach meetings with parents, professional educators, advocates, and the public. At the time of its visit, OSEP did not have a basis for investigating, nor did it investigate, NHDOE in the area of confidentiality of personally identifiable information. OSEP's Report did identify deficiencies in the areas of general supervision, state educational agency monitoring, state educational agency review and approval of local educational agency applications, due process procedures and procedural safeguards, individualized education programs, transition services, free appropriate public education, and complaint management. Based upon your letter, your concerns will be added to OSEP's list of issues for the next on-site monitoring of NHDOE.

5. How does a citizen access data in order to track the spending of tax dollars [on children who require special education]?

If the data to be accessed is or contains personally identifiable information, then private citizens, regardless of the purpose of their request, must obtain written consent from the parents of the child with a disability prior to gaining access to data related to that child. 34 CFR §300.571. NHDOE's policies and procedures in this regard are set out in its FY 1996-98 State Plan.

6. If the N.H. Dept. of Education allows access under S.P.E.D.I.S. to handicapped files how do they guarantee no one can get into their data files by having the SPEDIS numbers?

According to the policies and procedures established in the State Plan, NHDOE does not allow access to educational records except in those instances discussed in items 3 and 5 directly above. However, the Family Policy Compliance Office, U.S. Department of Education, will investigate complaints filed by parents and eligible students who believe that personally identifiable information has been improperly disclosed (see May 9, 1997 letter to Senator Smith enclosed).

7. If the N.H.D.O.E. allows access to the handicapped students files[, then] what is the penalty?

Each State educational agency (SEA) that applies for assistance under Part B is required to exercise general supervision over all education programs for children with disabilities within the State in order to ensure that each educational program meets the education standards of the SEA and Part B. Accordingly, as a condition of eligibility to receive Part B funds, NHDOE, must

ensure that education programs for students with disabilities in New Hampshire comply with the State agency's standards and Part B. As part of this responsibility, NHDOE is required to correct deficiencies in special education practices and procedures that are identified through monitoring or evaluation of New Hampshire school districts. In addition, states are monitored by OSEP for consistency with the requirements of Part B. If Part B violations are found as a result of monitoring, States are required to develop corrective action measures to correct the identified deficiencies. Generally, there is no penalty imposed by the U.S. Department of Education (the Department) as long as a State demonstrates to the Department that all identified deficiencies have been corrected, or that the State is working to correct all identified deficiencies in accordance with the requirements and timelines specified in the corrective action plan. Where a State fails to meet its responsibility to correct all deficiencies, the Department has a number of enforcement options available to ensure compliance with Part B, including withholding of Part B funds.

If an educational agency or institution does not comply with the requirements of FERPA, the Department may withhold further payments, pursue compliance through a cease and desist order, or terminate eligibility to receive funding under any applicable program. 34 CFR §99.67.

8. If a Superintendent claims [that] by giving the SPEDIS numbers to a citizen that that citizen then can access personally identifiable information [,] is he accurate in that statement?

This Office is not aware of any means of access to SPEDIS numbers except as stated in items 3 and 5 above. However, as stated in item 6 above, the Family Policy Compliance Office investigates complaints filed by parents and eligible students who believe that personally identifiable information has been disclosed improperly. In addition, a parent may file a State complaint alleging violation of the Part B regulations through the procedures established under 34 CFR §§300.660-300.662, and may notify this Office for purposes of future monitoring on this issue.

9. Please send me N.B.'s D.O.E. statement of assurance that N.H. D.O.E. has filed as to how they comply with civil rights, Family Rights and Privacy and other educational laws?

NHDOE's FY 1996-98 State Plan provides assurances that the State will comply with the Federal regulations that implement the Part B requirements. A copy of NHDOE's submission of a signed statement regarding implementation of the provisions of the Individuals with Disabilities Education Act Amendments of 1997,

P.L. 105-17, enacted June 4, 1997, that affect State implementation for the 1997-98 school year is enclosed.

10. **Please send a copy of the Federal handicap education laws and any pamphlets of how it works[,] what might be right[,] etc.**

Copies of the new IDEA Amendments of 1997 and of the existing Federal regulations governing the implementation of IDEA are enclosed as requested. The regulations are currently under revision as a result of the IDEA Amendments. Your name will be added to the mailing list to receive a copy of the revised regulations.

I hope this information is helpful. Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc: Honorable Robert C. Smith
Honorable Charles F. Bass
Dr. Robert Kennedy