



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

FEB 12 2004

I write to respond to your initial inquiry about the alleged disclosure of child find referral information about _____ by the _____ County Hospital to _____ County Child Development Services (CDS) which is part of the Maine Department of Education's child find system under Part C of the Individuals with Disabilities Education Act (Part C of IDEA). The information allegedly disclosed is information to enable the Part C agency to determine whether a child aged birth to three is eligible for early intervention services under Part C. You asked, and expressed concern, about the circumstances under which such information about _____ could be disclosed by the hospital to the child find entity under Part C without prior parental consent under the IDEA.

Under Part C of the IDEA, the State lead agency must make available to eligible infants and toddlers with disabilities and their families early intervention services to address their developmental needs. 20 U.S.C. §§1432(4), 1434(1), and 1435(a)(2). As part of the mandate to make early intervention services available to eligible infants and toddlers and their families, Part C of the IDEA requires the lead agency in each State to find such children and have in place child-find policies and procedures to ensure that primary referral sources (including hospitals) refer potentially eligible children to the Part C child find program within two business days of identification. 20 U.S.C. §§1435(a)(5); 34 CFR §303.321. The specific information that can be included in the referral without prior parental consent by the primary referral source for these limited child find purposes are the child's name, date of birth, and sufficient parent contact information (as determined by the lead agency) to the lead agency so that the lead agency can meet its child find responsibilities. The purpose of child find is to ensure that potentially eligible children with disabilities and their families are informed of the availability of services under the IDEA by the agency or agencies responsible for administering the IDEA in the State.

In addition, under Part B of the IDEA, the State educational agency (SEA) is required to have child find policies and procedures in place to identify children with disabilities from birth through 21. 20 U.S.C. §1412(a)(3); 34 CFR §300.125. In many States where the SEA and lead agency are different agencies, the SEA, through an interagency agreement or other mechanism, may include the lead agency's participation in the SEA's child find activities for birth to three children with disabilities. However, the lead agency has an independent child find obligation for children with disabilities aged birth to three years under Part C of the IDEA. 20 U.S.C. §1435(a)(5); 34 CFR §§303.320 and 303.321. In Maine, the Maine Department of Education serves as both the State educational agency

under Part B and the lead agency under Part C. Thus, the Maine Department of Education is responsible for child find under both Parts B and C of the IDEA.

In lieu of the required disclosure under 34 CFR §303.321(d)(2), the lead agency under Part C may, but is not required to, meet its child find obligations for children birth to three in other ways. The lead agency may require instead that the primary referral source or any agency that makes referrals under the State's child find system notify the parent that the child is being referred to the lead agency for child find purposes and allow the parent an opportunity to object. If, under these circumstances, the parent objects during the period provided for objection, then the IDEA does not require that the referral be made (and, consequently in this situation, prior parental consent may be required under other privacy laws before the referral can be made). If, under these circumstances, the parent objects to the referral, the lead agency may meet its child find obligations through other procedures, such as general public awareness campaigns. In a State that has adopted these notification procedures, if the parent objects to the referral, the IDEA does not require the referral to be made to the lead agency. See, 20 U.S.C. §1435(a)(6) and 34 CFR §§303.320 and 303.321. It is our understanding that Maine does not have such notification procedures.

Your initial inquiry was directed to the Family Policy Compliance Office (FPCO), the Office that administers the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g. The FPCO initially responded to your inquiry separately in a letter dated [redacted] and informed you that FERPA does not apply because, based on the information the Department had at that time, the [redacted] County Hospital was not an "educational agency or institution" to which funds had been made available under a program administered by the Secretary of Education. Your response letter dated [redacted] indicated that the [redacted] County Hospital has a financial relationship with the [redacted] County CDS (the Part C provider in [redacted] County). This letter also responds to your [redacted] letter to the FPCO. Since your [redacted] letter, the Department has learned that the [redacted] County Hospital serves as a contractor to the [redacted] County CDS for some early intervention services. Although the [redacted] County Hospital is an "educational agency or institution" under FERPA to the extent that it provides Part C services under the IDEA, FERPA only applies to "education records" of "students." 20 U.S.C. §§1232g(a)(4)(A) and (a)(6). The term "student" is defined to include "any person with respect to whom an educational agency or institution maintains education records, but does not include a person who has not been in attendance at such agency or institution." 20 U.S.C. §1232g(a)(6). In this case, [redacted] at the time of the alleged disclosure, was not a "student" under Part C of the IDEA because your prior correspondence specifically indicated that [redacted] had not received Part C services and that you did not seek such services on [redacted] behalf. Thus, FERPA does not apply to the disclosure by the hospital as a primary referral source to [redacted] County CDS, which implements the lead agency's child find responsibilities in [redacted] County.

You expressed two other concerns about Part C in your inquiry, namely that: (1) you neither needed nor desired to seek early intervention services for [redacted] and (2) the referral was being made to allegedly increase the amount of funds that the lead

agency would receive from the Federal Part C program. As to your first concern, while the lead agency under Part C has an obligation to find infants and toddlers with disabilities, parents have an unequivocal right under Part C of the IDEA to decline to participate in the Part C early intervention program. Part C requires prior written parental consent be obtained before an evaluation and assessment can be conducted or before the provision of early intervention services. 20 U.S.C. §1436(e); 34 CFR §§303.322(d)(2), 303.401(a)(1), and 303.404. Second, while lead agencies under Part C receive Part C funds based in part on the State's Part C "child count", the only children the State and lead agency are required to report on under 20 U.S.C. §1418(a)(1) are those infants and toddlers with disabilities who are receiving early intervention services. This includes a count of those infants and toddlers with disabilities whose parents have consented to their child being evaluated for early intervention services and who are determined eligible and have individualized family service plans (IFSPs) in place as of the December 1st child count deadline. Thus, if [redacted] was referred to Part C but is not receiving services under Part C, is not eligible to be included in the State's child count data for Federal funding purposes.

Finally, IDEA's procedural protections for parents include the right to file a State complaint if there is an alleged violation of Part C. If, after reviewing the above information, you believe that there is a violation of Part C of the IDEA, you may file a State complaint with the lead agency in accordance with the Part C regulations at 34 CFR §§303.510 through 303.512 and the lead agency is required to resolve the complaint and issue its final decision within 60 calendar days of the complaint being filed. In Maine, the contact for the lead agency is:

Laurie Bertulli, Part C & Section 619 Coordinator
Child Development Services
Department of Education
State House Station #146
Augusta, ME 04333

We trust this information is responsive to your inquiries. If you have further questions, please contact Dr. JoLeta Reynolds of my office at (202) 205-5507 (press 3).

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: LeRoy Rooker
Family Policy Compliance Office
David Stockford
Maine Department of Education