



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL 20 2000

Rodney J. Bieker, Esq.  
General Counsel  
Kansas State Department of Education  
120 S. E. 10<sup>th</sup> Avenue  
Topeka, Kansas 66612-1182

Dear Mr. Bieker:

This is in response to your letter to the Office of Special Education Programs (OSEP) dated March 8, 2000, in which you seek assistance in clarifying the disclosure and IEP meeting attendance requirements applicable to 18 year-old students with disabilities and their parents. We are assuming that based on the information set out in your inquiry, under Kansas law, the rights accorded to parents transfer to the student when the student attains the age of majority under State law (age 18), unless the student has been determined to be incompetent.

Your inquiry seeks our views regarding the requirements of Part B of the Individuals with Disabilities Education Act (Part B), as well as applicable requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing regulations at 34 CFR Part 99. The Part B regulations at 34 CFR §§300.560.300.577 incorporate and cross-reference the regulations under FERPA. See 34 CFR §300.561(a)(3). FERPA is administered by the Department's Family Policy Compliance Office (FPCO). Therefore, members of my staff also have consulted with representatives of FPCO in developing some portions of the responses that follow.

Your letter presents two scenarios, each of which is described below and followed by OSEP's response.

- 1. In the first scenario, an 18 year-old student with a disability lives at home with his parents, and is claimed as a dependent by his parents for Federal income tax purposes. According to your letter, the student has indicated to the school district that he does not want his education records disclosed to his parents or to have his parents attend his individualized education program (IEP) meeting. You indicate that the school district is invoking the exception to the prior consent requirement in FERPA since the parent claims the student as a dependent for Federal income tax purposes.**

Under 34 CFR §300.571(a)(1) of the Part B regulations and 34 CFR §99.30 of the regulations implementing FERPA, an educational agency or institution must obtain the prior consent of the parent or eligible student before disclosing personally identifiable information in education records. Section 99.31 of the FERPA regulations contains

eleven exceptions to the prior consent requirement, which educational agencies or institutions are permitted to invoke. The Part B regulation at 34 CFR §300.571(b) crossreferences the exceptions to the prior consent requirement in the FERPA regulation. These exceptions can be invoked regardless of whether the prior consent of the parent or eligible student is required under FERPA, and regardless of whether rights accorded to parents under Part B transfer to students who reach the age of majority under State law that is applicable to all students. .

Under 34 CFR §99.31(a)(8), the prior consent of the parent or eligible student "is not required if [t]he disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954." Thus, since under FERPA, it is permissible for an educational agency or institution to invoke any of the exceptions set out at 34 CFR §99.31(a), the school district may, without the consent of the parent or eligible student (under FERPA, a student over 18 years of age, and under Part B, a student to whom parental rights accorded under Part B are transferred), disclose information from the student's education records to the parents pursuant to one of the specific exceptions to the prior consent requirement under §99.31.

Your letter also indicates that the public agency intends to invite the parents to the student's IEP meeting and to invoke the provision at 34 CFR §300.344(a)(6), which permits the parents or public agency, at their discretion, to invite "other individuals who have knowledge or special expertise regarding the child to their child's IEP meeting." It is OSEP's view that the presence of an individual who has been determined to have knowledge or special expertise regarding the child at an IEP meeting, which is specifically authorized by Part B at 20 U.S.C. § 1414(d)(1)(B)(vi), does not conflict with FERPA or the confidentiality of information requirements in Part B.

Under 34 CFR §300.344(c) of the Part B regulations, "[t]he determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP." Therefore, the transfer of rights accorded under Part B to a student who attains the age of majority under State law does not alter the discretionary authority of a school district under 34 CFR §300.344(a)(6) to invite the parent to the IEP meeting as an individual who has knowledge or special expertise regarding the child, provided that the public agency has determined that the parent possesses the requisite knowledge or special expertise regarding the child. 34 CFR §300.344(c).

Further, there is no provision in Part B that gives either the parent or the public agency the authority to veto the participation of an individual selected by the other party to attend an IEP meeting at the parent's or agency's discretion, so long as the party seeking to bring the individual to the meeting has appropriately determined that the individual possesses the requisite knowledge and special expertise regarding the child. It is difficult to imagine that a public agency could not reasonably make this determination in the case

of the student's parent, unless, for example, the parent and the student were estranged and the student had no recent contact with the parent.

2. In the second scenario, the facts are the same, except that the student does not live with the parent and is not claimed as a dependent for Federal income tax purposes. Therefore, you ask whether personally identifiable information from the student's records can be disclosed to the parent without the student's prior consent and whether the parents can attend the student's IEP meeting at the public agency's discretion, without violating FERPA.

Under Part B and FERPA, the student's consent would be required in order for personally identifiable information in the student's records to be disclosed to the parents, unless one of the exceptions to the prior written consent requirement were applicable. In the absence of the requisite consent, we find no basis for the school district to release personally identifiable information from the student's records to the parent. Although the student could properly bar the parent from inspecting and reviewing the student's records, we find nothing in Part B that would prohibit the school district from inviting the parent to the student's IEP meeting, so long as the school district has reasonably determined that the parent possessed the requisite knowledge and special expertise regarding the child. 34 CFR §300.344(c).

We hope that you find this explanation helpful. If you would like further assistance, please contact Dr. JoLeta Reynolds of OSEP at (202) 205-5507 or Ms. Delores Barber, the Kansas State contact for Part B in the Monitoring and State Improvement Planning Division at (202) 205-9033.

Sincerely,

Kenneth R. Warlick  
Director  
Office of Special Education Programs