



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

September 23, 2016

Nisha Kashyap, Esq.
Alliance for Children's Rights
3333 Wilshire Boulevard, Suite 550
Los Angeles, California 90010

Dear Ms. Kashyap:

This letter responds to your May 3, 2016 correspondence to the Office of Special Education Programs (OSEP) requesting guidance on certain provisions of Part B of the Individuals with Disabilities Education Act (IDEA, or Part B) and its implementing regulations. Specifically, you asked whether the right to examine education records afforded by section 615(b)(1) of the IDEA is limited only to parents¹ of children who already have been deemed eligible for special education services, or if the right also extends to children with suspected disabilities.

You note that you raise this question in connection with a complaint filed under the IDEA's State complaint provisions (34 CFR §§300.151-300.153). Generally, it is not OSEP's practice to comment on the merits or factual accuracy of a State complaint filed with a State educational agency. However, we will respond to your general question about the IDEA's provision related to a parent's right to access his or her child's education record.

Under 34 CFR §300.501, the regulation that implements section 615(b)(1) of the IDEA, the parents of a child with a disability must be afforded, in accordance with the procedures in 34 CFR §§300.613-300.621, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child. The regulation in 34 CFR §300.613 requires each participating agency to permit parents to inspect and review any education records² relating to

¹ Under 34 CFR §300.30, a parent means: (1) A biological or adoptive parent of a child; (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) A surrogate parent who has been appointed in accordance with 34 CFR §300.519 or section 639(a)(5) of the IDEA.

² The IDEA Part B regulations in 34 CFR §300.611(b) define "education records" as the type of records covered under the definition of "education records" included in the regulations in 34 CFR Part 99 implementing the Family Educational Rights and Privacy Act (FERPA). Section 99.3 defines, with a few exceptions, "education records" as those records that (1) directly relate to a student in attendance; and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution. Under the Uninterrupted Scholars Act (USA), which amended FERPA, educational agencies and institutions are permitted, but not required, to disclose, without prior written consent, personally identifiable information from a child's education records to an agency caseworker or

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-2600

www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

their children that are collected, maintained, or used by the agency under Part B. The agency must comply with a request without unnecessary delay and before any meeting regarding an individualized education program, or any hearing pursuant to 34 CFR §300.507 or §§300.530-300.532, or resolution session pursuant to 34 CFR §300.510, and in no case more than 45 days after the request has been made.

Under 34 CFR §300.613(b), the right to inspect and review education records includes: (1) the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; (2) the 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; and (3) the right to have a representative of the parent inspect and review the records. An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

The regulation in 34 CFR §300.613 does not limit the right of a parent to access education records to only those parents whose children have been evaluated and found eligible for special education and related services under the IDEA. To restrict access in this manner denies an important right to other parents who may need access to education records related to identification and evaluation to fully participate in meetings held to discuss their child's potential eligibility for IDEA services or a public agency's determination that their child is ineligible for special education and related services under the IDEA. A parent may wish to review referral documents, assessment and evaluation reports, and required notices under the IDEA, etc., to gain a better understanding of the public agency's recommendations and decisions. The information in the child's education records could be needed to help the parent decide whether he or she wishes to pursue the IDEA's dispute resolution options to resolve any disagreement with the public agency's determination that the child is not suspected of having a disability under the IDEA or is ineligible to receive, or continue to receive, special education and related services.³ Therefore, in response to your question, we believe that a parent's right to inspect and review a child's education record also extends to parents who suspect their child may have a disability.

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 by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

other representative of a State or local child welfare agency or tribal organization when the agency or organization is legally responsible for the care and protection of the child and has the right to access the child's case plan under State or tribal law. 20 U.S.C. §1232g(b)(1)(L). Department guidance on the USA is available at: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf>.

³ Under IDEA section 615(d)(1)(A)(i) and 34 CFR §300.504(a)(1), a copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents upon initial referral or parental request for evaluation. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available, including those related to access to education records.

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

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs