

November 23, 2015

Julie J. Weatherly  
6420 Tokeneak Trail  
Mobile, Alabama 36695

Dear Ms. Weatherly:

This is in response to your June 16, 2015 letter to me requesting guidance from the Office of Special Education Programs (OSEP) regarding destruction of information under 34 CFR §300.624 of the Federal regulations implementing the Individuals with Disabilities Education Act (IDEA). Specifically, you ask whether 34 CFR §300.624 applies only to the destruction of personally identifiable information (PII) contained in education records maintained by a school district, or to every piece of PII collected, maintained, or used by any school person during the tenure of a student with a disability with the district.

Under 34 CFR §300.624(a), the public agency must inform parents when PII collected, maintained, or used under Part B of the IDEA is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. 34 CFR §300.624(b). The definition of "personally identifiable" under 34 CFR §300.32 is information that contains: (a) the name of the child, the child's parent, or other family member; (b) the address of the child; (c) a personal identifier, such as the child's social security number or student number; or (d) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. The purpose of the destruction option is to allow parents to decide that records about a child's performance, abilities, and behavior, which may possibly be stigmatizing and are highly personal, are not maintained after they are no longer needed for educational purposes. 64 Fed. Reg. 12406, 12643 (Mar. 12, 1999); *see also* Letter from OSEP to Terry Thomas (Mar. 1, 1982).

The IDEA Part B regulations governing confidentiality of information, at 34 CFR §§300.610–300.627, contain requirements on inspection and review, amendment, and consent for education records and PII collected, maintained, or used by participating agencies under Part B. The IDEA Part B Confidentiality of Information regulations do not simply incorporate or restate the requirements in the Family Educational Rights and Privacy Act (FERPA); they contain several provisions that are tailored specifically to the special education environment and that are not addressed adequately under the more general FERPA requirements.

The provision governing destruction of information, at 34 CFR §300.624, is one of the provisions in the IDEA Part B Confidentiality of Information regulations that has no counterpart in FERPA and provides protections beyond those provided by FERPA. See Letter from OSEP to David Anderson (Mar. 7, 2008). Under 34 CFR §300.624, Part B of the IDEA requires a public agency both to inform parents of their right to request the school destroy their child's PII when it

is no longer needed to provide educational services to the child, and to actually destroy the PII at the request of the parents (but permits the maintenance of certain specific information). FERPA, in contrast, does not require a school to destroy a child’s PII at the request of the parents.<sup>1</sup> In addition, 34 CFR §300.624 refers to “personally identifiable information” with no limitation that the PII be contained in education records. Therefore, 34 CFR §300.624 applies to the destruction of any PII – whether in education records or elsewhere – collected, maintained, or used under Part B that is no longer needed to provide educational services to the child with 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.

If you have any further questions, please do not hesitate to contact Jennifer Wolfsheimer, of my staff, at 202-245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,

/s/

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs

---

<sup>1</sup> FERPA, however, contains very specific conditions in which the destruction of PII contained in education records is required (*i.e.*, 34 CFR §§99.31(a)(6)(ii)(B) and 99.35(a)(2)(iii) and (b)(2)), as well as very specific conditions in which the destruction of education records is prohibited (*i.e.*, 34 CFR §99.10(e)).