Mr. John P. Sheahan
Attorney
Law Offices of Guercio & Guercio, LLP
77 Conklin Street
Farmingdale, New York 11735

MAR 15 2011

Dear Mr. Sheahan:

This is in response to your July 22, 2010, letter to this Office in which you request guidance on the Family Educational Rights and Privacy Act (FERPA). Specifically you ask whether a public school district in New York may non-consensually disclose information from student education records to the New York State Education Department's (NYSED) Office of Vocational and Educational Services for Individuals with Disabilities (VESID).

Specifically, you state:

> One of our clients, a public school district on Long Island, has decided to discontinue its pre-school program for three-year old students. Although no complaint has been filed by any of the parents of the aforementioned three-year old students, a Regional Associate from [VESID] of [NYSED] has requested the names, services provided and school district of residence for certain pre-school special education students in relation to the district's decision. . . .

You further explain that VESID believes that they may receive this information "under the exception for disclosure to a 'law enforcement agency.'"

FERPA is a Federal law that gives parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. 20 U.S.C. 1232g; 34 CFR § 99. The term "education records" is defined as those records that are directly related to a student and that are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." Records on students receiving services under Part B of the Individuals with Disability Education Act (IDEA) are also protected under FERPA as "education records." Accordingly, the information requested by VESID would be information from the students' education records.

Under FERPA, a school may not generally disclose personally identifiable information from a student's education records to a third party unless the parent or eligible student has provided written consent. 34 CFR § 99.30. However, there are several exceptions to FERPA's general prohibition against non-consensual disclosure of education records.

School districts and their constituent schools most often disclose education records to State educational authorities, such as a State department of education, under §§ 99.31(a)(3) and 99.35 of the FERPA regulations, which permit disclosures without written consent to "authorized representatives of ...State and local educational authorities," provided the disclosure is in connection with:

- An audit or evaluation of Federal or State supported education programs; or
- Enforcement of, or compliance with, Federal legal requirements that relate to such programs.

While there is no specific exception in FERPA for a "law enforcement agency," the VESID is the office in the NYSED that administers the provisions of IDEA. While IDEA is a Federal law, it is administered by the States.

Based on the limited information provided in your letter, it appears that the disclosure to VESID of the requested information would fall under the exception to consent described above.

I trust that the above information is responsive to your inquiry.

Sincerely,

Ellen Campbell
Acting Director
Family Policy Compliance Office