



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

Honorable James W. Holsinger, Jr., M.D., Ph.D.  
Secretary  
Cabinet for Health Services  
275 East Main Street  
Frankfort, Kentucky 40621-0001

NOV 12 2004

Dear Secretary Holsinger:

The purpose of this letter is to respond to Kentucky's March 31, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part C funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP), within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and improvement planning functions of the CIFMS into one document. OSEP's Memorandum regarding the submission of Part C APRs directed States to address five cluster areas: General Supervision; Comprehensive Public Awareness and Child Find System; Family Centered Services; Early Intervention Services in Natural Environments; and Early Childhood Transition.

***Background***

Kentucky submitted a Self-Assessment to OSEP in December 2001 that identified the following sixteen areas for improvement that Kentucky addressed in an Improvement Plan (IP): (1) lack of a systemic method to identify State-wide issues; (2) continued occurrence of persistent deficiencies after enforcement actions (34 CFR §303.501(b)(4)); (3) under-utilization of local and private funding sources; (4) the absence of a structured process to convey personnel needs to Institutions of Higher Education (IHEs); (5) the need for consistency in data collection and the need to utilize data to improve the child find function in rural areas to ensure timely referrals (34 CFR §303.321(d)(2)(ii)); (6) lack of parental feedback and limited use of parent surveys; (7) limited understanding by parents of their parental rights and responsibilities (34 CFR §303.400); (8) lack of parental involvement in the development of Kentucky's performance goals and indicators; (9) concern regarding professional development and training of service

providers; (10) personnel shortages in certain professions or disciplines in some areas of the State; (11) issues regarding transitioning from First Steps; (12) Part C exit data not accurately reported or specified on exit forms; (13) lack of systemic data that confirmed all children eligible for Part B received services by their third birthday (34 CFR §303.344(h)); (14) inconsistency in transition training; (15) transition training not tracked; and (16) inconsistency in the State-wide use of parent surveys.

Kentucky submitted an IP to OSEP dated June 28, 2002 and OSEP approved the IP in a June 13, 2003 letter to Kentucky. In addition to approving the IP, the June 2003 letter requested that Kentucky address four areas of potential noncompliance: (1) the need to correct the recurrence of deficiencies identified in monitoring as required by 34 CFR §303.501(b)(4); (2) the need to identify, locate, and evaluate all eligible infants and toddlers in the State, and the need to develop an effective method to determine which children received needed early intervention services as required by 34 CFR §303.321(b)(1) and (b)(2); (3) the need for IFSPs to include transition plans as required by 34 CFR §303.344(h), and that monitoring of transition would result in compliance with the requirement by 34 CFR §303.148 regarding a smooth transition from Part C to Part B preschool or other appropriate services; and (4) the need to ensure that families were provided information regarding their procedural safeguards and were informed of, and understood, their parental rights and responsibilities as required by 34 CFR §§303.400 and 303.403.

In the June 2003 letter, Kentucky was asked to determine its compliance status in the above-mentioned four areas and provide to OSEP by August 29, 2003, documentation supporting its conclusions. If noncompliance or potential noncompliance was indicated, a revised IP was required with baseline data and strategies to resolve noncompliance by June 13, 2004. The June 2003 letter also required a Progress Report to OSEP by August 29, 2003 on the implementation of strategies in the current IP, and a subsequent Progress Report by December 31, 2003, to address all issues, including those in the revised IP, if a revised IP was warranted. OSEP received the August 2003 Progress Report in which the State indicated no areas of noncompliance but which did not include documentation to support its assertion. OSEP also received the December 2003 Progress Report. Kentucky submitted the FFY 2001 APR to OSEP on July 1, 2003 and OSEP responded to the FFY 2001 APR and the August 2003 Progress Report in a February 13, 2004 letter to Kentucky; the letter indicated that an analysis of the December 2003 Progress Report would be included in this APR letter.

OSEP staff conducted a verification visit to Kentucky in November 2003 to verify the effectiveness of the State's systems for general supervision and data collection under section 618 of IDEA. OSEP reported the results of the verification visit in an April 15, 2004 letter to Kentucky. OSEP indicated in its April 2004 letter that, without collecting data at the local level, OSEP could not determine the effectiveness of Kentucky's monitoring system in identifying and correcting

noncompliance; and reiterated OSEP's concern that data-based determinations were not included in Kentucky's FFY 2001 APR. In addition, the verification letter advised the State that its Family Rights Handbook did not include the prior written notice content required by 34 CFR §303.403(b) and required the State to develop and submit, by June 15, 2004, its prior written notice documents to ensure that the prior written notice provided to parents meets the requirement at 34 CFR §303.403(b). OSEP received the prior written notice documents from Kentucky and will provide its analysis of those documents in a separate letter to the State.

The State's APR should reflect the collection, analysis and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas (as well as any other areas identified by the State to ensure improvement). OSEP's comments regarding the December 2003 Progress Report and the FFY 2002 APR are listed by cluster area.

### ***General Supervision***

To address the areas for improvement from the State's Self-Assessment and the potential noncompliance identified by OSEP in this cluster, the State reported in the FFY 2002 APR that: it used data reports and quarterly monitoring reports to identify systemic issues (APR, page 3) (but the State did not identify for OSEP those systemic issues it identified; nor did the State indicate how it addresses the continued occurrence of persistent deficiencies after enforcement actions); it revised the individualized family service plan (IFSP) effective July 2004 to monitor the use of other payment sources (December 2003 Progress Report, page 5); and it developed a proposal to strengthen collaboration with the Institution of Higher Education (IHE) consortium (APR, page 8).

In the FFY 2002 APR, the State provided monitoring data that covered the period from the third quarter of 2003 through the first quarter of 2004. The data included information on monitoring visits completed and scheduled; the type of providers monitored; the top five areas cited; noncompliance findings; and the average number of contracts that were in full compliance (APR, page 4). The State analyzed its monitoring data and concluded that: compliance was increasing, demonstrating the effectiveness of general supervision; there continued to be an increase in the number of contracted entities and a full contingent of monitors; there was an increase in the number of contracts monitored per quarter; and State regulations were amended to address the problems found during monitoring (APR, page 5).

While the State reported such monitoring data as the type of providers monitored, areas cited, noncompliance findings, and contracts in full compliance, it did not link the providers monitored to the monitoring finding; therefore, OSEP could not determine whether the State's system of general supervision was effective in identifying and correcting deficiencies identified through monitoring, as required

by 34 CFR §303.501(b)(4), and whether monitoring findings identified systemic issues.

To assist OSEP in determining the effectiveness of the State's monitoring system in identifying and correcting noncompliance, in the next APR, the State must identify for each provider type it monitored (e.g. Point of Entry (POE)), evaluation, therapeutic, and primary service coordinator (PSC)): (1) the number of providers monitored; (2) the findings made, listed by provider; (3) indicate if corrective action plans were required, and if so, provide (a) examples of two corrective action plans approved by the State, (b) the time period given providers to correct all noncompliance, and (c) the data or information each provider must submit to the State in order for the State to determine whether the noncompliance has been corrected; (4) for those noncompliant providers, indicate if each met the timeline for correcting noncompliance, and the number of providers that corrected all noncompliance within established timelines; (5) for noncompliance not corrected within the required timeline, indicate if any enforcement actions were taken (including the type of sanctions); (6) if persistent noncompliance existed, identify the barriers in correcting persistent noncompliance and how the State has addressed, or will address, those barriers; and (7) issues the State identified as systemic during the FFY 2002 reporting period and an analysis of strategies implemented to resolve those systemic issues.

Kentucky reported that it utilized a Family Rights Handbook to inform families of their rights and procedural safeguards. Although the Family Rights Handbook was utilized by the State, the State was unable to determine whether families were aware of their complaint rights; however, the State reported that it could determine that procedural safeguards were provided to all families at the initial visit and each IFSP meeting (APR, page 6). In June 2004, Kentucky submitted the Family Rights Handbook to OSEP for review, and OSEP will provide its analysis of the Handbook in a separate letter. Kentucky reported that no formal complaints were filed during the reporting period, and any informal complaints were resolved locally by technical assistance teams with guidance from the administration, as needed (APR, page 2).

The State reported slippage in the area of sufficient personnel (APR, pages 7–8). A focused provider recruitment strategy resulted in limiting new provider contracts in under-served areas of the State and decreased provider availability. The State did not report on what impact, if any, this limitation of providers had on conducting evaluation and assessments and the provision of early intervention services. In the FFY 2003 APR, Kentucky must provide information that includes both implementation of strategies and the resulting data demonstrating improvement in the area of personnel development, sufficient personnel, and data indicating whether timely evaluations and assessments and provision of Part C services are negatively affected by any personnel unavailability.

The State identified flaws in two data reports: (1) the 45-day timeline report; and (2) the IFSP report that captured the percentage of services delivered (APR, page 9). The APR indicated the reason the reports were flawed but did not indicate how or when the reports would be corrected, and in the interim, how the State would determine compliance with the 45-day timeline requirements under 34 CFR §§303.321(e)(1), 303.322(e)(2), and 303.342(a) and ensure that children would receive all the services identified on the IFSP as required by 34 CFR §§303.340(c) and 303.342(e). In the next APR, the State must provide to OSEP strategies, evidence of change, targets, and timelines for correction of the flawed data reports within a reasonable period of time and, in the interim, how the State will determine compliance with the Part C 45-day timeline and EI service provision requirements.

### ***Comprehensive Child Find System***

To address the areas for improvement from the State's Self-Assessment and the potential noncompliance identified by OSEP in this cluster, the State reported that referral source data indicated good rural penetration similar to the population distribution of Kentucky; updated monthly report forms were implemented in January 2004; and POEs were required to report all referral sources on their monthly report (December 2003 Progress Report, page 10). The State reported that it contracted with neo-natal follow-up programs to ensure more timely and appropriate referrals; however, the FFY 2002 APR and December 2003 Progress Report did not include performance data on the results of implementation of the strategies. In the next APR, the State must provide to OSEP, data on the number and source of referrals received in rural areas, including the number of referrals from neo-natal follow-up programs.

Child count data reported by the State under Part C, Section 618 of IDEA, from [www.ideadata.org](http://www.ideadata.org) indicated that the State's December 1, 2002 child count was 2.67% for the birth to three population. The national average for children served under Part C was 2.24% for that same time period. Data for the birth to twelve-month category were not yet available.

### ***Family Centered Services***

To address the areas for improvement from the State's Self-Assessment, the State determined that it had no baseline data to determine whether family assessments met the Federal requirements at 34 CFR §303.322(d), but that it would continue to monitor for family assessments and analyze data to identify barriers to addressing family issues (APR, page 14). A committee was formed to address translation of forms into other languages and formats (December 2003 Progress Report, page 3). The State reported that the family survey had not been created, but the State reviewed existing family surveys and adapted them to its needs (APR, page 17). The State must continue to report on the implementation of its strategies to ensure compliance and performance in this cluster area.

### ***Early Intervention Services in Natural Environments***

To address the areas for improvement from the State's Self-Assessment and the potential noncompliance identified by OSEP in this cluster, the State reported using quarterly data reports to monitor district and discipline-specific provider/child ratios (December 2003 Progress Report, page 6). The Comprehensive System of Personnel Development (CSPD) committee reviewed various strategies for personnel training and development, and the removal of barriers to obtaining certification. To address personnel shortages, the State reported that it allowed special consideration to providers willing to provide services in under-served areas (December 2003 Progress Report, page 7). The State reported having no citations regarding family supports and services (APR, page 23), but did not provide data or information to indicate if IFSPs included all the services necessary to meet the identified needs of the child. In the area of services provided in the natural environment, the State reported its performance data indicated that over 90% of children received services in the home or community setting. In the next APR, the State must report compliance data demonstrating: (1) whether IFSPs for children who do not receive early intervention services in natural environments have appropriate child based justifications; and as stated in the General Supervision cluster; and (2) whether children received the services listed on their IFSP and the impact, if any, of personnel shortages on the provision of early intervention services.

The Part C FFY 2001 and FFY 2002 APR instructions requested data on the percentage of children participating in the Part C program that demonstrate improved and sustained functional abilities (in the developmental areas listed in 34 CFR §303.322(c)(3)(ii)). The State reported having no baseline data regarding the functional abilities of children eligible for the Part C program. In the FFY 2003 APR, due March 31, 2005, Kentucky must either submit data (whether collected through sampling, monitoring, IFSP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or its plan to collect and report to OSEP data by the FFY 2004 APR, (expected deadline March 2006), including a detailed timeline of the activities necessary to implement the plan.

### ***Early Childhood Transition***

To address the areas for improvement from the State's Self-Assessment and the potential noncompliance identified by OSEP in this cluster, the State reported that it continued to pursue funding sources to link the Part C and Part B data systems in order to assist in collecting systemic data (December 2003 Progress Report, page 28). OSEP assumes that any data tracking system that tracks children from Part C to Part B will be consistent with the IDEA and the Family Educational Rights and Privacy Act (FERPA). OSEP has enclosed, for your information, a copy of its February 11, 2004 Letter to Elder which describes the circumstances under which the limited disclosure of personally identifiable information from a

child's education records may be made in order to meet IDEA's child find mandate.

The State also reported improvement in identifying Part B eligible children (APR, page 29). Exit data reported by Kentucky's Part C program under IDEA Section 618 from [www.ideadata.org](http://www.ideadata.org) indicated an increase in the number of children identified as Part B eligible, from 209 on December 1, 2001 to 901 on December 1, 2002. The same exit data indicated that children who exited Part C with eligibility not determined decreased from 1,259 in 2001 to 1,053 in 2002. The State, however, did not provide an explanation or analysis of the large number of children exiting Part C with eligibility not determined. The State reported that citations from monitoring regarding transition plans decreased, including transition conferences for children potentially eligible under Part B conducted at least 90 days prior to the child turning age three (APR, page 28). Also, the State developed a transition needs survey (December 2003 Progress Report, page 29), although no surveys of parents or providers were conducted to determine the effectiveness of the transition process (APR, page 32). In the next APR, the State must include an analysis of monitoring or other data to explain why the majority of children exiting Part C do so with eligibility not determined, and strategies to resolve any identified discrepancies; and provide updated monitoring data on compliance with the Part C 90-day transition conference and LEA notification requirements at 34 CFR §303.148(b)(1) and (2).

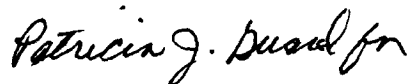
### ***Conclusion***

As mentioned above, in the next APR due March 31, 2005, the State must provide: (1) in the General Supervision cluster, disaggregated monitoring data by provider type; an analysis of systemic issues and barriers to resolving systemic issues; a description of how flawed data reports will be corrected and compliance maintained in the interim; and information that includes both implementation of new strategies in the area of sufficient personnel and the resulting data demonstrating improvement, and data indicating whether timely evaluations and assessments and provision of Part C services are negatively affected by any personnel unavailability; (2) in the Comprehensive Public Awareness and Child Find System cluster, referral source data from rural areas and neo-natal follow-up programs; (3) in the Early Intervention Services in Natural Environments cluster, compliance data demonstrating whether IFSPs for children who do not receive early intervention services in natural environments have appropriate child based justifications; whether children received the services listed on their IFSP and the impact, if any, of personnel shortages on the provision of early intervention services; and performance data demonstrating improved and sustained functional abilities of eligible infants and toddlers, or a plan to collect the data for the FFY 2004 APR, including detailed timeline of activities to implement the plan; and (5) in the Early Childhood Transition cluster, data to explain the reason the majority of children exiting Part C do so with eligibility not determined, and strategies to resolve any data discrepancies, and provide updated monitoring data on

compliance with the Part C 90-day transition conference and LEA notification requirements at 34 CFR §303.148(b)(1) and (2).

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State, and we look forward to collaborating with you as you continue to improve results for infants and toddlers with disabilities and their families. If you have questions, please contact Mary A. Williams at 202-245-7586.

Sincerely,

A handwritten signature in black ink that reads "Stephanie J. Lee" with a stylized flourish at the end.

Stephanie Smith Lee  
Director  
Office of Special Education Programs

Enclosure

cc: Germaine O'Connell,  
Part C Coordinator





UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES  
FEB 11 2004

Mary Elder  
Executive Director  
Texas Interagency Council on  
Early Childhood Intervention  
4900 N. Lamar Boulevard  
Austin, Texas 78751-2399

Dear Ms. Elder:

This is in response to your letter to the Office of Special Education Programs (OSEP) and the Family Policy Compliance Office (FPCO) requesting guidance concerning the disclosure of referral information from a lead agency under Part C of the Individuals with Disabilities Education Act (IDEA) to the State education agency (SEA) or the local education agency (LEA) under Part B. The information being disclosed is about children who will shortly turn three and transition from receiving early intervention services under Part C to potentially receiving special education and related services under Part B. You specifically requested on behalf of Texas Interagency Council on Early Childhood Intervention (TXECI), the lead agency in Texas under Part C, clarification regarding the circumstances in which parental consent is required for disclosure of this information by the lead agency. OSEP has consulted with the FPCO in responding to your letter.

The IDEA requires each State to have policies and procedures to ensure a smooth transition for toddlers receiving early intervention services under Part C to preschool or other appropriate services, including a description of how the lead agency will notify the LEA for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under Part B. 20 U.S.C. §1437(a)(8)(A); 34 CFR §303.148. Section 637(a)(8)(A)(ii)(II) of the IDEA also requires the lead agency to convene a conference, with the approval of the parents of the child, among the lead agency, the family, and the LEA at least 90 days (and at the discretion of all such parties, up to 6 months) before the child is eligible for preschool services under Part B, to discuss any such services that the child may be eligible to receive.

To help ensure a smooth transition, Congress also included specific requirements under Part B of the IDEA for LEAs regarding transition of children from Part C to Part B. Section 612(a)(9) of the IDEA and 34 CFR §300.132 require the SEA to ensure: that children served under Part C who will participate in Part B preschool programs experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8) of the IDEA; that by the third birthday of a child eligible under Part B, an individualized education program (IEP) or an individualized family service plan (IFSP) with appropriate content has been developed and is being implemented for the child; and that each LEA will participate in transition planning conferences arranged by the Part C lead agency.

Additionally, the SEA is responsible for ensuring that the child find responsibilities under its program are met, even if the SEA, through an interagency agreement or other mechanism, delegates to the lead agency or another agency the primary role in child find for the birth through two population. 34 C.F.R. §300.125. Since the eligibility criteria under Parts B and C are different, the child find and evaluation procedures under Part C must be followed when the purpose is to locate, identify and evaluate infants and toddlers with disabilities who may be eligible for early intervention services under Part C; and the child find and evaluation procedures under Part B must be followed when the purpose is to locate, identify and evaluate children with disabilities who are in need of special education and related services under Part B. See 20 U.S.C. §§1412(a)(3)(A) and 1435(a)(5); 34 CFR §§ 300.125 and 303.321.

If an infant or toddler is determined eligible under Part C, that infant and toddler with a disability and the family receive the early intervention services identified in the child's IFSP under Part C. At least 90 days (or up to six months depending on the State) prior to a toddler reaching the age of three (the age of initial eligibility for services under Part B), the Part C lead agency must notify the LEA for the area where the child resides that the child will shortly reach the age of eligibility for preschool services under Part B. 20 U.S.C. §1437(a)(8)(A)(ii)(I). Both the SEA under Part B and the lead agency under Part C are subject to their respective child find statutory obligations under the IDEA. See 34 CFR §§300.125 (Part B) and 34 CFR §303.148(b)(1) (Part C).

The IDEA specifically provides that the protections of the Family Educational Rights and Privacy Act (FERPA) at 20 U.S.C. §1232g (FERPA) apply to both Part B and Part C. 20 U.S.C. §§1417(c) and 1442. Specifically, IDEA sections 617 and 642 define "a State's lead agency" as a "state educational agency," and an "early intervention service provider" as an "LEA" for purposes of FERPA. In addition, FERPA defines "educational agency or institution" to include "any public or private agency or institution which is the recipient of funds under any applicable program." 20 U.S.C. §1232g(a)(3); 34 CFR §99.1. "Applicable programs" means any program for which the U.S. Department of Education has administrative responsibility, including Parts B and C of the IDEA. 20 U.S.C. §1221(c)(1). Thus records maintained for purposes of Parts B and/or C by the lead agency, the SEA or the LEA on those children referred for, or receiving, services under the IDEA are covered as "education records" under FERPA, and must be disclosed only in accordance with FERPA's requirements.

Under the IDEA, in States where the SEA, through an interagency agreement or other mechanism, has included the lead agency's participation in the SEA's child find activities, the SEA, with the lead agency, can establish procedures that allow the lead agency to refer a child to the SEA without prior parent consent in order to meet the SEA's child find responsibilities under 34 CFR §300.125. The specific information that can be included in the referral without prior parental consent by the lead agency for these limited child find purposes are the child's name, date of birth, and sufficient parent contact information (as determined by the SEA) to the SEA and/or LEA so that the SEA and LEA can meet their respective child find responsibilities.

However, the SEA may meet its child find obligations in other ways. The SEA may require instead that the lead agency or any other agency that makes referrals under the State's child find system notify the parent that the child is being referred to the SEA for child find purposes and

allow the parent an opportunity to object; if 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, parental consent is required before the referral can be made. In a State that allows parents an opportunity to object to the child find referral, the lead agency may meet its child find referral obligations in other ways. For example, the lead agency may elect, but is not required, to convene an IFSP meeting to explain to the parent the child find purposes of the referral. If the parent continues to object to the referral, the lead agency may also require the parent to confirm in writing at the IFSP meeting that the parent objects to the referral. If the parent objects to the referral, the SEA and LEA may meet their respective child find obligations through other procedures, such as general public awareness campaigns and, under these circumstances, the IDEA does not require the referral to be made and the lead agency is no longer obligated to refer the child to Part B.

In general under FERPA, personally identifiable information about a child cannot be disclosed by a public agency without first obtaining parental consent unless there is a specific exception. Specifically, you ask whether the “directory information” exception, under FERPA at 20 U.S.C. §§1232g(a)(5) and (b)(1) might permit TXECI to disclose, without parental consent, certain personally identifiable information to the SEA or LEA to meet the statutory child find duties. While the directory information exception does not apply to this situation, we have concluded that another FERPA exception does apply.

The “directory information” exception under FERPA at 20 U.S.C. §§1232g(a)(5) and (b)(1) allows a public agency to disclose information designated as “directory information” to the public without first obtaining parental consent. FERPA does not allow “directory information” to be used to link to other categories of personally identifiable information, such as disability. The disclosure of the child find referral information under the IDEA by the Part C lead agency to the LEA or SEA is not disclosure of directory information because disclosing this information on only Part C children would identify these children as infants and toddlers with disabilities, which information is personally identifiable information not permitted to be released under FERPA. Thus, the child find referral information under the IDEA by the lead agency to the Part B agency does not fall under FERPA’s directory information exception.

However, we have concluded that FERPA and its implementing regulations do not require the lead agency to obtain parental consent when the IDEA requires the lead agency to make the disclosure. As more fully explained above, the IDEA requires the lead agency to disclose some limited personally identifiable information to the LEA and/or the SEA when the SEA, through an interagency agreement or other mechanism, has included the lead agency’s participation in the SEA’s child find activities under 34 CFR §300.125. The specific FERPA exception that allows referral for child find purposes without prior parent consent is the exception to disclosure of personally identifiable information to authorized representatives of state and local educational authorities in connection with the enforcement of Federal legal requirements which relate to any Federally-supported education programs. 20 U.S.C. §§1232g(b)(3) and (b)(5); 34 CFR §99.31(a)(3)(iv) and 34 CFR §99.35(a). In this case, the disclosure of child find referral information by the lead agency to the SEA and/or LEA is required to meet the statutory child find duties under Parts B and C of the IDEA. See 20 U.S.C. §§1232g(b)(3) and (b)(5); 34 CFR §§99.31(a)(3)(iv) and 99.35(a); 20 U.S.C §§1412(a)(3) and 1437(a)(8); 34 CFR §300.125 and

303.148(b)(1). Under this FERPA exception, the education records disclosed by the lead agency to the SEA or LEA must be protected in a manner which will not permit the personal identification of Part C children and their parents to anyone other than the SEA or LEA and must be destroyed when no longer needed to enforce or to comply with the Federal legal requirements. Further, the lead agency must maintain, with the child's Part C records, a record that there has been a disclosure of personally identifiable information to the SEA and/or LEA from the child's education records. *See*, 34 CFR §99.32.

As noted earlier, under the IDEA, a State may adopt a policy of allowing parents an opportunity to object to the referral for child find purposes. Under such a policy, a parent may object during the period provided for objection. If the parent objects under this circumstance, the IDEA does not require referral of the child and, consequently in this situation, FERPA would require prior written parental consent before the referral can be made for child find purposes.

Disclosure of the same information by TXECI to the SEA or LEA, without consent, for a different purpose, however, is not permissible under either FERPA or Part C. Separate parental consent is required prior to each of the following stages under the IDEA for the: (1) transmission of other information about the child from the lead agency to the LEA; (2) evaluation of the child to determine eligibility under Part B; and (3) if the child is determined eligible under Part B, for the initial provision of special education and related services under Part B. 20 U.S.C. §§ 1414(a)(1)(C)(i) and 1436(e); 34 CFR §§ 303.342(e), 303.344(h)(2)(iii) and 300.505.

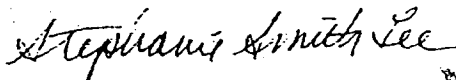
You also ask if a State may allow parents to refuse the transmission of information by the Part C agency if the parents do not want the SEA or LEA to contact them regarding a referral. The lead agency under Part C and the SEA and LEA under Part B have a statutory responsibility under the IDEA to ensure a smooth transition for each child and family and, under the IDEA's child find provisions, to ensure the identification, location and evaluation of each child eligible for services under Parts B and C of the IDEA. As discussed above, unless the SEA has adopted a procedure allowing parents an opportunity to object, the Part C lead agency must provide the name of the child, date of birth, and sufficient contact information, as determined by the SEA, to allow the SEA and LEA to fulfill their child find responsibilities; parental consent is not required for this disclosure. However, as noted above, the parent has the right under the IDEA to refuse to consent: (1) to having the child evaluated under Part B and (2) to the transfer of additional information from the child's Part C records.

Finally, you ask whether notice must be provided to a Part C family that identifying information will be sent to the LEA for child find purposes; while there is no such specific notice requirement under the IDEA or FERPA that applies to that situation, States may choose to do so. Under Part C, parents are notified of the transition conference by the lead agency at least 90 days prior to their child turning three and should be made aware of the referral by the lead agency to the LEA at that conference (or earlier if the State chooses to do so). Even if parents do not attend the transition conference, they have the right to inspect and review under the IDEA and FERPA their child's education records, which, as discussed above, contain a record that the SEA and/or LEA received personally identifiable information from their child's education records without parental consent.

Mary Elder – Page 5

I hope this information provides the clarification needed. If you need further assistance, please contact Terese Lilly, the OSEP Part C contact for Texas, at (202) 205-0151.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Gene Lenz  
Division of Special Education, TEA

LeRoy Rooker  
Director, Family Policy Compliance Office