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Bureau of Special Education Issues Guidance on a School District's Ability to Send Records to Out-of-District Placements

On December 24, 2014, the State Department of Education, Bureau of Special Education (the "Bureau"), issued guidance on a school district's ability to send student records to out-of-district placements proposed by a student's planning and placement team ("PPT"). Specifically, the guidance provides that a school district may disclose personally identifiable student information to an out-of-district placement proposed by a PPT without parental consent because, under the Family Educational Rights and Privacy Act ("FERPA"), such proposed placement constitutes a school where the student seeks or intends to enroll. Under FERPA, parental consent is not required under these circumstances because disclosure of records to a school where the student seeks or intends to enroll is an exception to the general consent requirement.

The Bureau's guidance comes more than one year after the Family Policy Compliance Office ("FPCO") interpreted FERPA to permit such disclosure. Letter to Anonymous, 113 LRP 35724 (June 19, 2013). In Letter to Anonymous, on which the Bureau relies, the FPCO opined that a school district "may disclose personally identifiable information from a student's education records to a third party (such as another school) in order to make an educational placement" under the Individuals with Disabilities Education Act. Such disclosure may only be made, however, if the school district includes in its annual FERPA notification a statement that it "discloses education records for this purpose" or if the school district "makes a reasonable attempt to notify the parent in advance of the disclosure."

School districts in Connecticut should find this guidance helpful in light of the July 2013 revisions to the Connecticut special education regulations regarding out-of-district placements. The new special education regulations remove the requirement for parental consent for out-of-district placements and the requirement that a school district request a due process hearing when a parent refuses or revokes consent for an out-of-district placement. The current regulations, read together with the Bureau's guidance, permit a school district to send student records to proposed out-of-district placements without parental consent.

While parents certainly retain the right to file for due process if they disagree with the program proposed by the school district, we are hopeful that this new guidance will



streamline the placement process for students who require an out-of-district placement. We encourage school districts to review the Department's guidance, which can be accessed at <https://bureaubulletin.files.wordpress.com/2014/12/sending-educational-records-to-proposed-out-of-district-placements-without-parent-consent.pdf>. We also encourage schools to review their annual notification of rights under FERPA to ensure inclusion of language permitting disclosure of educational records for purposes of enrollment.

Questions or Assistance:

If you have questions regarding the Bureau's guidance or policy language, please contact Gwen Zittoun at gzittoun@goodwin.com or 860-251-5523, or Julie Fay at jfay@goodwin.com or 860-251-5009.

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