

**Title:** *Letter to Opuda*  
**Issued by:** Office of Special Education Programs  
**Date:** November 2, 1994

#### **CASE SUMMARY**

Is a state educational agency (SEA) obligated to provide the public with copies of the complaint investigation reports issued pursuant to 34 CFR 300.660 et seq. after deleting personally identifiable information?

The determination as to whether a state educational agency (SEA) is obligated to provide the public with copies of complaint investigation reports issued pursuant to 34 CFR 300.660 et seq. is governed by state law, as they are state and/or local government documents. Although some states have disclosure laws similar to the Freedom of Information Act (FOIA), the federal law requiring public disclosure of federal documents, the applicable state law in question should be consulted.

#### **JUDGE/ADMINISTRATIVE OFFICER**

Thomas Hehir, Director

#### **FULL TEXT**

Mr. Michael J. Opuda  
Due Process Coordinator  
Maine Department of Education  
State House Station 23  
Augusta, Maine 04333

#### **TEXT OF INQUIRY**

I am in receipt of your recent OSEP Memorandum #94-19 in which the U.S. Department of Education has determined that the draft monitoring reports issued by the U.S. Department of Education will immediately become available to the public upon request at the time the draft monitoring reports are released to the states.

In line with this openness to provide information to the public, I note that the complaint investigation reports required under 34 CFR 300.660 et. seq. are not required to be made available to the public.

My question is: Does the U.S. Department of Education require SEA's to provide to the public upon request copies of complaint investigation reports issued under 34 CFR 300.660 et seq. after deleting personally identifiable information?

As a follow-up; If the U.S. Department of Education anticipates requiring SEAs to release complaint investigation reports, does the U.S. Department of Education anticipate that all such reports will have personally identifiable information deleted or only complaint investigation reports issued after a certain date?

Obviously, the requirement that all complaint investigation reports have personally identifiable information removed would pose a tremendous burden upon SEA staff. I would strongly urge your office to require that only reports issued after a date certain be available for public distribution.

Thank you for your consideration in these matters. If I can provide any additional information, please feel free to contact me at (207) 287-5974.

#### **TEXT OF RESPONSE**

This is in response to your letter to the U.S. Department of Education's Office of Special Education Programs (OSEP) requesting clarification with respect to a State educational agency's (SEAs) obligation to provide copies of complaint investigation reports to the public. Specifically, you asked if the SEA is obligated to provide upon request copies of the investigation reports issued under procedures required by 34 CFR § 300.660 et seq. after deleting personally identifiable information. Your question was prompted by your receipt of *OSEP MEMO 94-19*, which announced that OSEP will make available upon request copies of draft monitoring reports at the time the draft monitoring reports are released to the States. The Freedom of Information Act (FOIA), 5 U.S.C § 552, requires the public disclosure of records created by or otherwise in the possession of the Executive Branch of the Federal Government except where such records are exempt from mandatory disclosure under one or more of nine enumerated exemptions to FOIA.

FOIA also provides administrative and judicial remedies for those denied access to records. The complaint investigation reports, which are the subject of your inquiry, are State and/or local government documents rather than records of the Federal Government. Their disclosure is therefore not governed by FOIA. However, a number of States have enacted disclosure statutes similar to FOIA, generally referred to as "sunshine laws." If Maine has such legislation, you should consult with the appropriate State authorities to determine its applicability to the investigation reports issued by your agency.

I hope that this information is helpful to you. If I may be of further assistance, please let me know.

Thomas Hehir  
Director  
Office of Special Education Programs

#### **REGULATIONS CITED**

34 CFR 300.660

#### **CITATION**

22 IDELR 368

22 LRP 3082