



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

Ms. Shari A. Mamas  
Staff Attorney  
Education Law Center  
1901 Law & Finance Bldg.  
429 Fourth Avenue  
Pittsburgh, Pennsylvania 15219

DEC 8 2008

Dear Ms. Mamas:

This is in response to your letter to this Office and also to the Office of Special Education Programs (OSEP) regarding the Family Educational Rights and Privacy Act (FERPA). Specifically, you ask whether FERPA prohibits a parent of a child with disabilities, or a professional working with a parent of a child with disabilities, from observing the child in a special or regular education classroom. I apologize for the delay in responding to your inquiry.

FERPA is a Federal law that protects a parent's privacy interest in his or her child's "education records." In particular, FERPA provides that an educational agency or institution may not have a policy or practice of denying parents the right to: inspect and review their children's education records; seek to amend education records; or consent to the disclosure of information from education records, except as provided by law. The term "education records" is defined as:

[T]hose records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

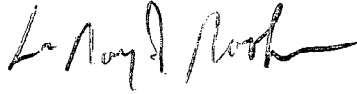
20 U.S.C. § 1232g(a)(4). See also 34 CFR § 99.3 "Education records." Moreover, the records of a student which pertain to services provided to that student under the Individuals with Disabilities Education Act (IDEA) are "education records" under FERPA and are subject to the confidentiality provisions under IDEA (see 34 CFR § 300.560-300.576) and to all of the provisions of FERPA. (Part B of IDEA incorporates and cross-references FERPA.)

With regard to your specific question, FERPA does not specifically prohibit a parent or professional working with the parent from observing the parent's child in the classroom. This is because FERPA would generally prohibit a teacher from disclosing information from a child's education records to other students in the classroom, as well as prohibit a teacher from disclosing information from a child's education records to the parents of another child who might be observing the classroom. Further, FERPA does not protect the confidentiality of information in general; rather, FERPA applies to the disclosure of tangible records and of information derived from tangible records.

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With regard to your request that OSEP provide you with an opinion on whether IDEA “guarantees parents and their representatives a reasonable opportunity to observe their children’s classrooms and proposed placement options,” OSEP will contact you directly. I trust this is responsive to your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "LeRoy S. Rooker". The signature is fluid and cursive, with a long horizontal stroke at the end.

LeRoy S. Rooker  
Director  
Family Policy Compliance Office

cc: Stephanie Lee  
Director, OSEP