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# EdLawAlert

By the EdLaw Group at Lindabury

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**TWO ALERTS**

## Complying with FERPA and IDEA; Alicia's Law and Graduation

### Special Ed Evaluation Procedures Must Comply with FERPA and IDEA

The EDUCATION LAW GROUP at Lindabury has extensive experience in the area of school law. We serve as general counsel, special education counsel, and labor counsel for boards of education throughout the State.

ANTHONY P. SCIARRILLO  
ATHINA LEKAS CORNELL  
JEFFREY R. MERLINO  
DENNIS MCKEEVER  
LISA M. GINGELESKIE  
JENNIFER A. OSBORNE

[edlawgroup@lindabury.com](mailto:edlawgroup@lindabury.com)

#### Westfield Office

P. O. Box 2369  
53 Cardinal Drive  
Westfield, NJ 07091  
(TEL) 908-233-6800  
(FAX) 908-518-2967

#### Summit Office

480 Morris Avenue  
Summit, NJ 07901  
(TEL) 908-273-1212  
(FAX) 908-273-8922

#### Rumson Office

20 Bingham Avenue  
Rumson, NJ 07760  
(TEL) 732-741-7777  
(FAX) 732-758-1879

[www.lindabury.com](http://www.lindabury.com)

School districts must review their policies to ensure that special education evaluation procedures comply with Family Educational Rights and Privacy Act ("FERPA") and the Individuals with Disabilities Act ("IDEA"). In a case involving the Minnesota Department of Education, *Caledonia Independent School District #299*, the department determined that the school district violated the IDEA by providing a student's educational records to a private behavioral consultant in the course of the student's reevaluation.

Under 34 CFR 99.31(a)(1), an educational agency may disclose personally identifiable information from a student's educational records without parental consent, if the disclosure is to other school officials within the agency who are determined to have legitimate educational interests. The mandated content of FERPA notification includes the criteria used for determining who qualifies as a school official and what constitutes a legitimate educational interest. A school official, for example, may be an employee or contractor.

Elsewhere, however, parental consent is generally required for the disclosure of a student's personally identifiable information (see 34 CFR 300.622). Federal regulations also require that each school district provide parents with annual notification of their rights under FERPA.

In *Caledonia*, the student's parents signed a consent form that granted permission to the school district to reevaluate their son's social, emotional, and behavioral conditions. The notice stated that a "Behavioral Consultant" would be present for the reevaluation. When an IEP team meeting was held, the student, his parents, their attorney, two representatives from a private behavioral consulting firm hired by the district, and other school district staff and service providers attended the meeting.

But the Minnesota Department of Education ruled that the school district violated the IDEA by sharing the student's personally identifiable information with the behavioral consultants. (*cont'd* ➔)

According to the Department, the school district failed to receive parental consent for disclosing the student's personally identifiable information. The Department also held that the district failed to disclose to the parents the criteria it uses in determining who is a school official and what qualifies as a legitimate educational interest. The Department directed the school district to review and revise its policies to ensure their compliance with FERPA.

School districts that send students to private evaluators for evaluation should be sure that disclosures of personally identifiable information are compliant with FERPA. District policies must specify the criteria used for identifying who is a school official and what is a legitimate educational interest. Furthermore, districts must confirm that the receiving parties qualify under the district's criteria. Without this compliance, districts that do not have parental consent for disclosure should refrain from disclosing the personally identifiable information of their students.

### ***Alicia's Law Permits Graduation for Students with IEP's***

Following the direction of a new law, an Administrative Law Judge (ALJ) required that a school district permit a special education student, with insufficient credits to graduate, to participate in graduation.

Under Alicia's Law, a student whose high school special education program requires instruction beyond four years must be allowed to participate with her class in its graduation ceremony and to receive a certificate of attendance. Upon completion of required studies and individualized education program (IEP), the student may then receive a diploma. The law became effective immediately upon its enactment on June 13, 2008.

Only five days after its enactment, Alicia's Law was applied in *B.M., on behalf of*

*A.M., v. Jackson Township Board of Education*. In that case, A.M., a high school senior at Jackson Memorial High School, who suffered from irritable bowel syndrome, missed more than 50 days of school. The parent requested that her son be permitted to participate in the school's graduation and receive a diploma even though he had completed only 110 of the 130 credits required for graduation. The school district denied the request because A.M. had not completed 130 credits and he had excessive, unexcused absences.

A.M. was exempted from the district's maximum unexcused absence policy for his first three years in high school. The school declined to exempt him from the policy for his senior year because it rejected a generic, unsigned note from A.M.'s physician.

The ALJ explained that state regulations require boards to develop a program for the issuance of a diploma consisting of at least 110 credits. This regulation also requires that an IEP must address any alternate graduation requirements. The ALJ found that the school district complied with the regulation by requiring its students to complete 130 credits in order to receive a diploma. A.M.'s IEP incorporated this minimum.

Although the Court determined that A.M. did not satisfy the criteria for emergent relief, in part, because participation in a graduation ceremony is a privilege and not a right, the Court ultimately decided that A.M. must be permitted to participate in the graduation ceremony under Alicia's Law.



*The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at [edlawgroup@lindabury.com](mailto:edlawgroup@lindabury.com).*

*Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision.*

*You may, if this letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, P.O. Box 037, Trenton, NJ 08625.*