

1975 WL 29671 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 7, 1975

*1 Hon. Cyril B. Busbee
State Superintendent of Education
Rutledge Building
Columbia, South Carolina

Dear Superintendent Busbee:

You have requested an opinion as to the legality of the State Department of Education's collection of enrollment data on students assigned to programs for the handicapped, which data requires the submission of the names of the students and the programs to which the students named have been assigned.

The collection of enrollment data, including personally identifiable data, appears, in our opinion, to be desirable from the standpoint of program planning and budgeting and necessary from the standpoint of the Department's financial responsibility for reimbursement to local school districts. See, Sections 21-295 et seq., Code of Laws of South Carolina, 1962, as amended (Cum. Supp.). More important than these bases, however, is the fact that federal law, specifically P.L. 93-380 Part B, 613(b)(1)(A), requires State educational agencies to develop a census of handicapped children, to wit: Any State which desires to receive a grant under this part for any fiscal year beginning after June 30, 1975, shall submit to the Commissioner for approval . . . , through its State educational agency an amendment to the State plan required under subsection (a), setting forth in detail the policies and procedures which the State will undertake in order to assure that (A) all children residing in the State who are handicapped regardless of the severity of their handicap and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services; . . .

See also, 'Suggested Procedures And Forms For Development Of The FY 1976 State Plan Amendment Under Part B. Education Of The Handicapped Act, As Amended By P.L. 93-380,' subsection (f) at 20, U.S. Dept. of Health, Education, and Welfare (March 18, 1975).

The law further requires that the confidentiality of such data and information be protected by the State educational agency. See, P.L. 93-380, Part B, 613(b)(1)(B). Moreover, in order to more fully establish that the Department has not violated either Title VI of the Civil Rights Act of 1964 or the regulations of the U.S. Department of Health, Education, and Welfare (see, 45 C.F.R. § 80), personally identifiable data, including racially identifiable data, should be maintained by the Department.

Our opinion is, therefore, that the State Department of Education may validly collect enrollment data, including the names of students assigned to programs for the handicapped, if the confidentiality of such data is protected by the Department.

With kind regards,

Karen LeCraft Henderson

Assistant Attorney General

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