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Bureau of Special Education FY'08 Memo #10

Date: September 6, 2007

To: Directors of Special Education

From: Lyonel B. Tracy  
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Santina Thibedeau  
State Director of Special Education  
Administrator, Bureau of Special Education

Re: Web-based New Hampshire Special Education Information System (NHSEIS)

The New Hampshire Department of Education is using the web-based New Hampshire Special Education Information System (NHSEIS) as the data management system for collecting information to monitor the education of, and progress made by, special education students in New Hampshire pursuant to the Individuals with Disabilities Education Act (IDEA). Some data is collected for NHSEIS through the student's Individual Education Program (IEP). This memo is to assist local education agencies (LEAs) in understanding the purpose and authority that the Department has to access personally identifiable student level information.

IDEA requires states to provide a free appropriate public education to all children, including special education children, residing in the state between the ages of 3 and 21. IDEA establishes requirements that State departments of education must follow for monitoring, confidentiality and reporting the implementation of the IDEA. The main goal of the Department's monitoring is to ensure improving educational results for children with disabilities and to ensure that public agencies meet the program requirements, especially in improving the educational results of children with disabilities. As part of IDEA, states are now required to report State level data in the State Performance Plan (SPP) and Annual Performance Report (APR) as well as district level data in the District Data Profiles.

When the Department is required to report data outlined in IDEA, steps are taken to protect the confidentiality of personally identifiable information collected. Therefore, under IDEA, the Department is permitted to access student information that is being collected through NHSEIS.

The Family Educational Rights and Privacy Act (FERPA) is to provide students access to their educational records, as well as to protect the privacy of education records by only permitting disclosure of the records with the written consent of the student's parent(s). However, the intent of FERPA is not to prohibit the Department from collecting student information pursuant to its obligations under IDEA. FERPA permits school districts to disclose educational records to the Department without a parent's consent if the

disclosure is to an authorized representative of the Department. This disclosure of educational records is for the purpose of an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs. The collection of student information through NHSEIS is being done in connection with the Department's requirement to enforce and ensure compliance with IDEA. Therefore, FERPA does not prohibit the Department's access to student information in this instance.

The purpose of the Health Insurance Portability and Accountability Act (HIPAA) is to protect individuals' health information. However, protected health information under HIPAA does not include identifiable health information in education records subject to FERPA. Records of a student that pertain to services provided to that student under IDEA are education records under FERPA and are subject to the confidentiality provisions under IDEA and FERPA. The term "education records" is defined as all records, files, documents, and other materials which contain information directly related to a student and are maintained by the educational agency or institution or by a person acting for such agency or institution. Therefore, the purpose of the Department's access to students' personally identifiable information through NHSEIS does not violate HIPAA.

For the above reasons, the Department is acting within its authority as the State Educational Agency (SEA) regarding the collecting of personally identifiable information through the NHSEIS.