



**Key points:**

- FERPA does not prevent parents from observing, but IDEA provides no actual right
- Plans to ask OSEP to rethink issue prompted by recent reference
- Former OSEP chief, author of 2004 letter, says agency may be willing to revisit issue now

## Disability groups may ask OSEP to rethink letter on classroom observation

According to the IDEA, parents are full-fledged members of the IEP team.

Indeed, "the education of children with disabilities can be made more effective by ... strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children," Congress said in 2004.

Two parent rights are tenuous, however: the right to observe one's child in class and the right to observe a class into which one's child might be placed.

In 2003, the [Family Policy Compliance Office](#) said the former right was not barred by FERPA; it did not speak to the latter.

"FERPA does not protect the confidentiality of information in general," it said in *Letter to Mamas*, [106 LRP 15971](#) (FPCO 2003). "Rather, FERPA applies to the disclosure of tangible records and of information derived from tangible records."

Five months later, OSEP issued its own statement on the subject, but its response was not what parent attorneys were hoping for.

Parental participation is important, but "neither the [IDEA] statute nor the regulations implementing the IDEA provide a general entitlement for parents of children with disabilities, or their professional representatives, to observe their children in any current classroom or proposed educational placement," OSEP said in *Letter to Mamas*, [42 IDELR 10](#) (OSEP 2004).

For more than a decade, that is where the matter has stood. Now, however, two **≤ disability groups ≥** are preparing to ask OSEP to reconsider.

### Changing a culture

In general, letters from OSEP and other parts of the Education Department are written by the [Office of the General Counsel](#) for the department as a whole.

Thus, any change in position would have to be cleared by that office. However, it's not out of the question that OGC would be willing to revisit the issue, according to Stephanie Smith Lee, who signed *Letter to Mamas* as OSEP director in 2004.

"The legal interpretation of OGC in 2004 was that IDEA does not specifically state that parents have the right to observe their children's classroom," according to an email from Lee, now chair of the [Think College Accreditation Workgroup](#). "It may be that the OGC office may have a different interpretation at this point in time."

"My personal view is that it is critically important for schools and parents to work together collaboratively, [and] the opportunity for parents to observe their child's classroom and potential classroom placements is an important part of this collaborative process," she continued. "I am seeing more and more parents comment on social media that they are not allowed to do so, and this is truly unfortunate."

Barb Trader, executive director of [TASH](#), said she too has heard from parents who have been kept from observing their child. In fact, she said, that's why some parents want video cameras in classrooms, a proposal TASH doesn't support.

"The solution," she said, "is to change the culture, not to put in more infrastructure that continues to build an atmosphere of distrust."

### **Not seeking free run**

The plan to ask OSEP to reconsider is being developed by the [National Disability Rights Network](#) and the [Council of Parent Attorneys and Advocates](#).

The groups are collaborating, in part, because OSEP cited the 2004 letter in a more recent document, *Letter to Savit*, [64 IDELR 250](#) (OSEP 2014).

In that document, OSEP said independent and district evaluators have equal rights when it comes to observing children in the classroom; it referred to *Letter to Mamas* only in passing, saying "the determination of which individuals may have access to classrooms may be addressed by state and/or local policy."

Even a passing reference to a bad policy is disturbing, however, according to Ron Hager, senior staff attorney at NDRN.

"If a parent can't even go in and observe the classroom, how can they be equal members?" he said. "They're a member of the team."

On that point, Hager got support from Jose Martín, a school attorney at Richards, Lindsay, and Martín in Austin, Texas.

OSEP might not withdraw *Letter to Mamas*, but it could "issue a follow-up, [saying,] 'We think that as part of a parent's meaningful opportunity to participate, there has to be some opportunity to observe in the classroom environment' -- which I think, by the way, is a good point," Martín said. "I think there's some limited right that could be recognized under the IDEA under the meaningful participation standard."

By "limited," Martín said he means parents cannot be allowed to disrupt the classroom environment. But that's understood, according to Shari Mamas, a staff attorney at the [Disability Rights Network of Pennsylvania](#).

"The intent of the law is to give parents a meaningful opportunity to participate in the development of programming for their children," said Mamas, who was working in the Pittsburgh office of the [Education Law Center](#) when she wrote to the family compliance office and OSEP. "I'm not advocating for parents to have free run."

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