

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>JOHN DOE, <i>et al.</i>,</b>	:	<b>CASE NO.: 2:91-cv-00464</b>
	:	
Plaintiffs,	:	<b>JUDGE: WATSON</b>
	:	
vs.,	:	<b>MAGISTRATE JUDGE: KEMP</b>
	:	
<b>STATE OF OHIO, <i>et al.</i></b>	:	
	:	
Defendants.	:	

**ENTRY REGARDING PUBLICATION OF FERPA NOTICE**

In their “Fifth Request for the Production of Documents – Data,” Plaintiffs have requested that Defendant Ohio Department of Education (“ODE”) provide extensive student information held on its Education Management Information System (“EMIS”). As discussed previously, EMIS is a statewide data collection system for Ohio’s primary and secondary education, collecting information on individual public school students in Ohio. Plaintiffs have requested “access to the database(s) containing data specific to” the following topics:

- Data on students identified as receiving or needing services/accommodations under the IDEA and the Rehabilitation Act;
- Data on students receiving special education services outside of regular classrooms for various percentages of the school day;
- Data on students’ participation in and performance on individual state tests and testing accommodations;
- Data on students’ attendance patterns;
- Data on students’ disciplinary records;
- Data on special services provided to students.

Plaintiffs have specified that their request is for a complete copy of all EMIS data for the 2013/2014 school year.

Under FERPA, persons whose EMIS data is disclosed must be given sufficient notice and opportunity to object to the disclosure before disclosure is made by ODE. Under R.C. § 3319.321 and R.C. § 3301.0714(O), ODE is prohibited from releasing personally identifiable information concerning students except in accordance with those statutes. ODE has objected to the disclosure of EMIS data, and has argued that a more limited disclosure should be sufficient. The Court has overruled that position, and made it clear that all EMIS data will be disclosed to the Plaintiffs under a protective order. Given that the pool of persons affected by the proposed release of EMIS data is very large and widely dispersed, the Court finds that the only feasible means of notifying affected students and/or their parents or guardians regarding the disclosure of the EMIS data is through publication of notice. Accordingly, the parties have proposed and the Court hereby approves a method of notice that will provide to all affected persons adequate notice of 1) the proposed disclosure of the EMIS data; 2) the fact that the disclosure could contain the person's education information subject to FERPA and R.C. § 3319.321 and R.C. § 3301.0714(O); and 3) the person's opportunity to object to the disclosure of the EMIS data. Accordingly, the Court orders as follows:

1. Class counsel is directed to provide consent under FERPA and R.C. § 3319.321 for members of the class.

2. The Notice attached hereto is approved for publication and is deemed adequate to provide all affected persons sufficient notice of the proposed disclosure of EMIS data and the opportunity of affected persons of their right to object to the disclosure of EMIS data. The Notice referenced in Subsection 2 and 3 below shall be the approved Notice that is attached.

3. A copy of the Notice will be made available to any affected student or that student's parent or guardian upon request. ODE shall post a copy of the Notice prominently on its website, [www.ode.state.oh.us](http://www.ode.state.oh.us). ODE shall also disseminate a copy of the Notice to all local educational agencies and ask that the Notice to be posted on the agency's website and in a central location accessible to the public in each building that is open to the public. ODE shall arrange for the Notice to be posted in the offices of each of Ohio's sixteen (16) State Support Teams ("SST") and sixty (60) Educational Service Centers ("ESC") and made available through their websites. The Notice shall be posted and promulgated no later than three business days from the date of this order and proof of compliance shall be filed with the Court.

ODE shall request that each member of Ohio's State Advisory Panel for the Exceptional Children and the Ohio Coalition for the Education of Children with Disabilities ("OCECD") distribute the Notice to their members and post the Notice on their websites.

4. Disabilities Rights Ohio ("DRO"), as Plaintiffs' counsel, will mail a copy of the Notice to the five (5) remaining named Plaintiffs in this case. A copy of the Notice will also be made available on the DRO website and upon request. DRO shall also disseminate electronic copies of the Notice to statewide disability advocacy organizations.

5. The Court shall maintain all objections under seal. This Order constitutes the order authorizing such filings for purpose of S.D. Ohio L. R. 79.3(c). The Court will provide the parties counsel with access to the objections.

6. Objections must be submitted by September 12, 2014. The parties must provide any information they wish for the Court to consider when reviewing the objections by September 19, 2014.

7. The parties' current case schedule requires Defendants to produce EMIS data to Plaintiffs no later than September 29, 2014; however, Defendants will provide the EMIS data to Plaintiffs' counsel and/or their experts within two weeks of the Court's ruling on any objections filed regarding the disclosure.

**IT IS SO ORDERED.**

/s/ Terence P. Kemp  
United States Magistrate Judge