



Early Childhood
Technical Assistance Center

Navigating IDEA and FERPA To Protect Privacy in Today's Early Childhood World

Speakers

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Moderators

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**Improving Data, Improving Outcomes #IDIO2022:
Leadership, Equity, Impact**

August 24, 2022

Navigating IDEA and FERPA – Presenters

- Speakers – U.S. Department of Education
- Kala Surprenant, Senior Counsel, Office of the General Counsel
- Frank Miller, Deputy Director, Student Privacy Policy Office

- Moderators & TA Providers
- Ross Lemke, Director, Privacy Technical Assistance Center
- Sharon Walsh, Policy Consultant, ECTA and DaSy



Navigating IDEA and FERPA – Intended Outcomes

Participants will:

- Have an increased understanding of IDEA and FERPA as related to data privacy in early childhood program.
- Have an opportunity to discuss issues related to COVID-19 impact on service provision and increased use of technology and data sharing across programs.
- Identify and obtain resources related to privacy and data sharing.



Navigating IDEA and FERPA – Agenda

- Introductions & Agenda
- Overview of IDEA Privacy
- Overview of FERPA Privacy
- IDEA and FERPA Cross-Walk – Updated 8/24/22
- Common themes in IDEA and FERPA
- Scenarios highlighting differences
 - Overview of IDEA Part C, IDEA Part B & FERPA Provisions
 - Discussion
 - Q & A
- Resources – U.S. Department of Education, PTAC, DaSy, and ECTA



Individuals with Disabilities Education Act (IDEA)

- IDEA provides parents of children referred to IDEA the right to:
 - access their children's records,
 - seek to have the records amended, and
 - consent to the disclosure of PII or personally identifiable information from records, except as provided by law.
- IDEA includes key protections under Parts B and C of the IDEA beyond FERPA.
- When reading IDEA and FERPA together, always **start with IDEA first.**
- IDEA Part B Privacy Provisions - 34 CFR 300.611 through 300.627 (last amended 2006).
- IDEA Part C Privacy Provisions - 34 CFR 303.401 through 303.417 (last amended 2011).



Family Educational Rights and Privacy Act (FERPA)

- FERPA provides parents and eligible students the right to:
 - have access to their children's education records,
 - seek to have the records amended, and
 - consent to the disclosure of PII or personally identifiable information from education records, except as provided by law.
- FERPA protects the personally identifiable information or PII in records of eligible students maintained by educational agencies and institutions.
- FERPA Privacy Provisions - 34 CFR Part 99 and 20 U.S.C. § 1232g.



Updated Resource



IDEA and FERPA Crosswalk

U.S. Department of Education

08/24/2022

Kala Shah Surprenant – Senior Counsel, Office of the General Counsel
Frank Miller - Deputy Director, Student Privacy Policy Office



Crosswalk – A side-by-side comparison of Parts C and B of the IDEA and FERPA

8 Key Areas

1. Applicability
2. Definitions (e.g. PII and Records vs. Parent and Participating Agency)
3. Confidentiality Provisions – General rule is parent consent is required before disclosure of PII from a child’s record unless an exception applies.
4. Consent (Some similarities but some key differences)
5. Inspection, Review and Amendment of Records – Access & Amendment Rights
6. Retention of Records (More under IDEA than FERPA)
7. Notice to Parents (Required but content varies across all 3 laws)
8. Complaint Process (IDEA – State processes; FERPA – Federal)



Applicability

Who

- IDEA applies to “participating agencies” (Part C vs. Part B).
- FERPA applies to “educational agencies and institutions” that receive funds from the U.S. Department of Education.

When

- IDEA’s privacy provisions apply once child is referred to IDEA.
- FERPA applies to eligible students enrolled in school (preschool, K12, Higher education)



Definitions

- It is important to review the definitions under Parts B and C of the IDEA and FERPA because although conceptually there are similarities, there are also critical differences. For example,
 - while the definition of education record is the same under IDEA Part B and FERPA, IDEA Part C uses early intervention records to includes records that are collected, maintained or *used*.
 - the definition of a “participating agency” is different under the IDEA Part B and Part C regulations and applies differently in different States under IDEA Part C depending on how the State delivers IDEA Part C services. In contrast, FERPA uses educational agency or institution to which funds have been made available
 - all three have similar definitions for parent and student, but Part B and C include provisions for child, and FERPA includes eligible student.
 - the definitions of PII are generally the same across all three statutes; they are slightly different under IDEA Part B and Part C and the definition of PII under IDEA Part C is the same as FERPA.



Confidentiality Provisions

- All three legal frameworks (IDEA Parts B and C and FERPA) require the protection of privacy of children or eligible students covered by the respective statutes and their regulations.
- While the IDEA Part B and Part C provisions are consistent with, and incorporate protections of, FERPA, the IDEA Part B and Part C confidentiality provisions include several provisions that are specifically related to infants, toddlers and children with disabilities receiving services under IDEA and provide protections beyond the FERPA requirements.
- As stated earlier, when analyzing the privacy and confidentiality requirements for children with disabilities, it is critical to begin by examining the IDEA requirements first.



Consent

- Parts B and C of the IDEA, as well as, FERPA generally require prior, written parental consent before the disclosure of PII from records, the records must be identified.
- The definition of consent under Parts B and C of the IDEA have broader applicability than the definition of consent under FERPA which applies only to disclosure of PII from education records.
- Consent under Parts B and C of the IDEA must be informed and the definition of consent applies to other areas of IDEA (e.g. service provision, use of insurance, etc.).



Inspection, Review and Amendment of Records

- Generally, all three statutory and regulatory frameworks for Parts B and C of the IDEA and FERPA provide parents the right to:
 - inspect and review education records. While Parts B and C of the IDEA require parents be provided copies of certain records, FERPA, generally, does not require parents be provided copies of records.
 - request the amendment of records that are inaccurate, misleading, or violates the student’s privacy.
 - Request, aside from substantive decisions, a hearing to relating to those amendment requests and the ability to submit an explanation or statement where the hearing does not result in the requested amendment.



Retention of Records

- While both Part C and B IDEA include express provisions for record retention and destruction of records, FERPA only discusses the destruction of records in the context of prohibition on destroying education records if there is an outstanding request to inspect and review the records.
- All three have record keeping requirements in terms of requests for access/disclosures and limitations on records related to multiple students.
- In contrast, only Part C and B of IDEA, have safeguarding provisions for the designation of a specific individual responsible for ensuring the confidentiality of personally identifiable information.



Notice to Parents

- Parts B and C of IDEA and FERPA all require regular notice of privacy rights to be provided to parents.
- However, the content of the notice and when it must be provided, vary across the three legal frameworks.



Complaint Process

- IDEA and FERPA require some form of dispute resolution or complaint process.
- IDEA's complaint process focuses on the role of the State agency while FERPA permits complaints to be filed at the federal level with the Student Privacy Policy Office within the U.S. Department of Education. See <https://studentprivacy.ed.gov/file-a-complaint>.
- Dispute resolution under IDEA provides parents with three options-
 - State complaints ;
 - Mediation at [34 CFR § 300.506](#) and [34 CFR § 303.431](#); and
 - Due process hearing requests at [34 CFR §§ 300.507 through 300.518](#) and [34 CFR § 303.430](#).



Who are we?

- PTAC is a technical assistance center under the Student Privacy Policy Office (SPPO)
- Provide guidance on FERPA, student privacy & data security
- Resources on our website: <https://studentprivacy.ed.gov/>
 - Trainings and Webinars
 - Documents
 - FAQs
- We are not the FERPA Police



DaSy and ECTA

The Center for Early Childhood Data Systems

The DaSy Center designs and delivers technical assistance (TA) for Part C early intervention and Part B 619 early childhood special education state staff, supporting their efforts to collect, report, and analyze high-quality data. We provide a continuum of TA for state staff and data managers from all US states and territories.

Early Childhood Technical Assistance Center

The ECTA Center supports state Part C and Part B, Section 619 programs in developing high-quality early intervention and preschool special education service systems, increasing local implementation of evidence-based practices, and enhancing outcomes for young children with disabilities and their families.



Crosswalk – A side-by-side comparison of Parts C and B of the IDEA and FERPA

Comparison of Parts C and B of IDEA and FERPA

- Scenario 1 - Referral & Consent
- Scenario 2 - Early Childhood Transition
- Scenario 3 - Consent under IDEA & FERPA
- Scenario 4 - Definition of Parent (USA Amendment)
- Scenario 5 - Use of Technology
- Scenario 6 - Data sharing - Audit/Evaluation Exception to Consent



Scenario 1 – Referral & Consent



- Primary referral sources, such as EHDI programs, physicians, and other primary referral sources, are interested in receiving follow-up information when they refer a child to the IDEA Part C program.
- What information can be shared with referral sources (e.g. the IDEA program has not able to make contact with the child's parent or whether the child is determined eligible).
- Is the answer different under Part B of the IDEA when a child is referred to Part B Section 619 preschool services?

Scenario 2 – Early Childhood Transition – Participating Agency & Consent



- A child is approaching age three and the Part C system is ready to conduct the Transition Notification to the state educational agency (SEA) and the local educational agency (LEA) (child's name, the parent's name and contact information). What else can Part C provide to the LEA?
- The LEA requests the service coordinator send the IFSP and any current evaluations to them to expedite the evaluation process. Can this be done without parental consent?
- What parent consent must be obtained if the service coordinator is invited to the initial IEP meeting or if other individuals show up?

Scenario 3 – Definition of Parent



- Two parents are divorced and the mother has physical custody of the children, one child has an IFSP and is served by the local early intervention service provider under IDEA Part C and the other has an IEP and is served by the IDEA Part B program in the local school district.
- The father asks for access to his children's education records. Knowing that the father does not live with his children, the IDEA programs deny the request. Is that consistent with IDEA and FERPA?

Scenario 4 – Definition of Parent & USA Amendment to FERPA & IDEA

- A child is referred to the IDEA Part C program from the child welfare agency. The child is placed in foster care and living with foster parents. The child's biological parents decline to consent to disclose information back to the child welfare agency. How can the IDEA Part C program communicate with the child welfare agency?
- Is the answer different if the child is living with the biological parents?
- Is the answer different under IDEA Part B?
- See Qs 19 – 23 of May 2014 ED Guidance at--
https://studentprivacy.ed.gov/sites/default/files/resource_document/file/uninterrupted-scholars-act-guidance.pdf.



Scenario 5 – Use of Technology



- IDEA (B&C) early childhood programs want to use email to communicate with parents. How can they use email?
- Some IDEA programs are considering contracting with a third party (e.g. apps, child outcomes tool, or Education technology) to enhance the provision of IDEA or educational services. How can the IDEA programs use this technology consistently with IDEA & FERPA requirements?

Scenario 5 – Use of Technology: Relevant Resources

- ED Tech Resources
- Protecting Student Privacy While Using Educational Resources - <https://studentprivacy.ed.gov/resources/protecting-student-privacy-while-using-online-educational-services-requirements-and-best>
- Model Terms of Service - <https://studentprivacy.ed.gov/resources/protecting-student-privacy-while-using-online-educational-services-model-terms-service>



Scenario 6 – Data Sharing: Consent and Audit/Evaluation Exception

- A State health agency is working with the CDC on -- (1) an EHDI project; or (2) the registry on children with autism. The agency has reached out to the IDEA Part C State lead agency (which is the SEA) requesting data on the Part C children to evaluate how the program improves outcomes for children served under IDEA.
- A researcher from the local university is requesting child-level data on IDEA children with a disability. The researcher would like to link these data with data from the state education agency on child performance in KG-3rd grade.
- How can the IDEA program share these data? Can the IDEA program use parent consent or the studies and/or audit/evaluation exception to share these data?



Scenario 6 – Data Sharing: Relevant Resources

<https://studentprivacy.ed.gov/resources/written-agreement-checklist>

<https://studentprivacy.ed.gov/resources/guidance-reasonable-methods-and-written-agreements>

<https://studentprivacy.ed.gov/resources/checklist-mapping-data-flows>

<https://dasycenter.org/data-sharing-agreement-checklist-for-idea-part-c-and-part-b-619-agencies-and-programs-2/>



Resources on IDEA/FERPA Privacy

- IDEA/FERPA Crosswalk – <https://studentprivacy.ed.gov/resources/ferpaidea-cross-walk>
- Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs FAQs Oct. 2016 – https://studentprivacy.ed.gov/sites/default/files/resource_document/file/idea-confidentiality-requirements-faq_0.pdf
- FERPA 101 Training Modules - <https://studentprivacy.ed.gov/training/ferpa-101-local-education-agencies>
- Student Privacy Newsletter - <https://studentprivacy.ed.gov/subscribe-student-privacy-newsletter>



Time for Q and A Discussion

- Questions and Answers
- Remember TA and clarification is available
- “There is no wrong door”
- Thank you
- Please complete the evaluation



Contact information

United States Department of Education
Student Privacy Policy Office
Privacy Technical Assistance Center



(855) 249-3072
(202) 260-3887



privacyTA@ed.gov



<https://studentprivacy.ed.gov>



(855) 249-3073



Thank you!



www.ed.gov

Twitter: [@usedgov](https://twitter.com/usedgov)



studentprivacy.ed.gov



dasycenter.org

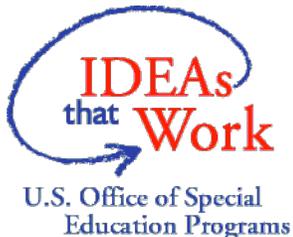
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