

A Little Privacy Please?

Safeguarding the Privacy of Young Children with Disabilities under IDEA and FERPA



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This presentation by U.S. Department of Education representatives reviews the applicable requirements under the IDEA and FERPA statute and regulations and does not establish or confer any additional rights other than those in these applicable laws.



New FAQs Released

Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs Frequently Asked Questions (FAQs)

- * Released October 20 2016
- * Available on OSERS' policy webpage
<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/index.html>
- * FAQs can be used in used in conjunction with the 2014 side-by-side guide of the IDEA and FERPA Confidentiality Provisions
<https://www2.ed.gov/policy/gen/guid/ptac/pdf/idea-ferpa.pdf>
- * December 2014 webinar
<http://dasycenter.org/what-do-idea-and-ferpa-tell-us-about-data-sharing/>



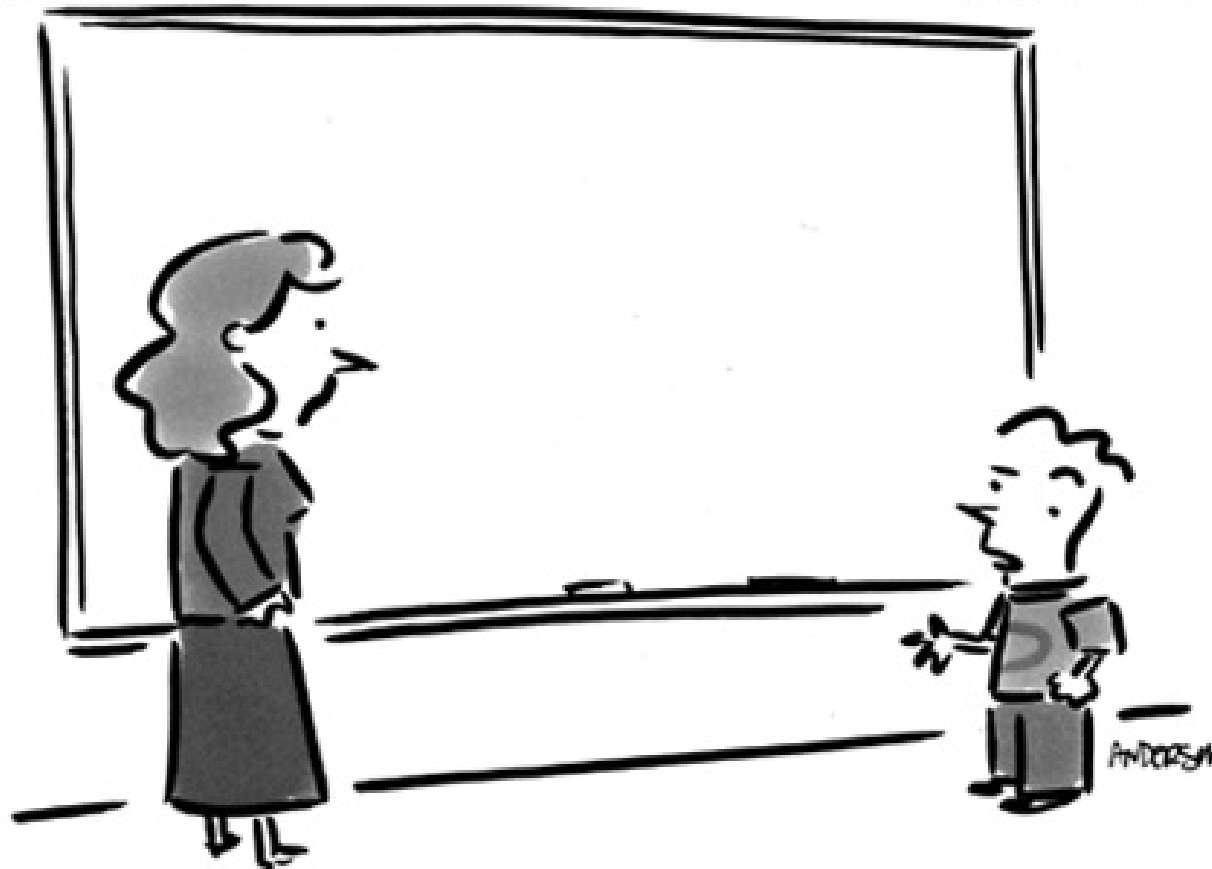
Organization of FAQs

- * General IDEA and FERPA Privacy and Confidentiality Provisions
 - * What are they? To whom do they apply?
- * Parental Consent Requirements
- * Exceptions to Parental Consent Requirements
- * Notification to Parents
- * Destruction of Records



IDEA & FERPA

- * Part B and Part C of the IDEA:
 - * incorporate FERPA
 - * provide protections beyond FERPA
- * Begin by examining the IDEA requirements first



"Before I write my name on the board, I'll need to know how you're planning to use that data."



General Confidentiality & Privacy Provisions

- * What are the Confidentiality Provisions under IDEA?
- * What is FERPA?



General Confidentiality & Privacy Provisions

Who has to comply with these requirements?

- * IDEA Part B – the participating agency
- * IDEA Part C – the participating agency
- * FERPA – recipient of ED funds



What Is Personally Identifiable Information (PII)?



Name



Mother's maiden name



Address



Date of birth
Place of birth



Social Security Number



Names of parent or
other family members



What Else Is Personally Identifiable Information (PII)?

FERPA - 99.3 (PII)

- * Info. that, alone or in combination, is linkable to a specific student that would allow a **reasonable person** in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with **reasonable certainty**.
- * Info. **requested by a person** who the educational agency or institution reasonably believes **knows the identity** of the student to whom the education record relates.





What Else Is Personally Identifiable Information (PII)?

IDEA Part C - 303.32

PII definition refers to FERPA PII definition

Except--

student=child

school=EIS provider

IDEA Part B - 300.29

List of personal characteristics or other information that would make it possible to identify the child with **reasonable certainty**



What records are covered?

FERPA Education Records

Records that are –
Directly related to student; and
Maintained by an educational agency or institution or by a party acting for the agency or institution
99.3

IDEA Part B Education Records

The type of records covered under the definition of “education records” in FERPA.

Records that are **collected, maintained, or used**
300.611(b)

IDEA Part C Early Intervention Records

All records regarding a child that are required to be **collected, maintained, or used** under Part C.

303.403(b)



General Confidentiality & Privacy Provisions

When do the confidentiality requirements apply?

- * IDEA Part B and Part C – Upon referral to IDEA
- * FERPA – Student is in attendance at an educational agency or institution



General Confidentiality & Privacy Provisions

- * Do IDEA Part C and Part B-Preschool Programs follow the IDEA confidentiality provisions or FERPA?



Parental Consent

- * What is consent under Part B and Part C of IDEA?
 - * Prior & Written
 - * Voluntary
 - * Informed



Parental Consent

- * What is consent under FERPA?
 - * Signed
 - * Dated
 - * Written



Parental Consent

- * When is parental consent required prior to disclosing PII?



Parental Consent

*Can agencies obtain parental consent using electronic signature?



Exceptions to Parental Consent

Applicability of Exceptions under FERPA & IDEA

- * School Officials
- * Audit and Evaluation
- * Studies
- * Uninterrupted Scholars Act



Notification to Parents

- * Notification to parents
 - * FERPA requirements
 - * IDEA requirements



Notification to Parents

- * Can agencies provide parents electronic copies of the IEP and related documentation under Part B of IDEA and FERPA?



Destruction of Records





Destruction of Records

- * What is the IDEA requirement for maintaining a child's record?
- * When can the records be destroyed under IDEA and FERPA?



Additional Resources

- * **Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs**
 - * <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/idea-confidentiality-requirements-faq.pdf>
- * **IDEA and FERPA Confidentiality Provisions**
 - * <http://ptac.ed.gov/sites/default/files/IDEA%20FERPA%20Confidentiality%20Provisions%20Comparison%20Chart%2006.06.14.pdf>
- * **DaSy Center's privacy & confidentiality resources**
 - * <http://dasycenter.org/other-resources/privacy-and-confidentiality/>
- * **Privacy Technical Assistance Center**
 - * <http://ptac.ed.gov/>
- * **New Head Start Performance Standards – Part 1303 Subpart C—Protections for the Privacy of Child Records**
 - * http://eclkc.ohs.acf.hhs.gov/policy/45-cfr-chap-xiii/1303-subpart-c-protections-privacy-child-records?language_content_entity=en



OSEP Contact Information

- * **For technical assistance on IDEA:**

**Office of Special Education Programs (OSEP)
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-8520**

(202) 245-7629 Telephone

(202) 245-7614 Fax

- * **OSEP State Contacts:**

<http://www2.ed.gov/policy/speced/guid/idea/monitor/state-contact-list.html>



FPCO Contact Information

*** For technical assistance on FERPA:**

**Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520**

Telephone: (202) 260-3887

**Websites: www.ed.gov/fpco; familypolicy.ed.gov ;or
ptac.ed.gov.**

*** For informal requests for technical assistance, go to the “Contact Us” page on <http://familypolicy.ed.gov>.**

*** To sign up for the FPCO GovDelivery Announcement ListServ, please visit our website page for school officials at <http://familypolicy.ed.gov/ferpa-school-officials>**



Questions?



Email your questions to:

Elaine.Mulligan@sri.com

Image:
<https://apilgriminnarnia.files.wordpress.com/2016/06/question-kid.jpg>