

IDEA & FERPA 101 -- for Parent Centers May 21, 2019

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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.



How do we work together?

- * IDEA Part C
- * IDEA Part B
- * FERPA



Our Goals

- * IDEA and FERPA have a lot in common.**
- * How do you read them together when facing a new issue/Q?**



Who are we?

IDEA Part C

- * Enacted 1986, last amended 2004
- * Last major regulations in 2011

IDEA Part B

- * Enacted 1975, last amended 2004
- * Last major regulations in 2006

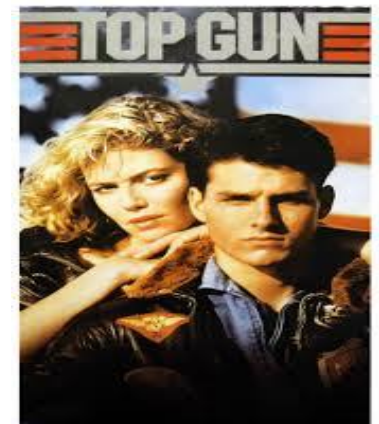
FERPA

- * Enacted 1974, last amended 2013
- * Last regulations in 2011

The World Has Changed

When IDEA Part C was passed in 1986:

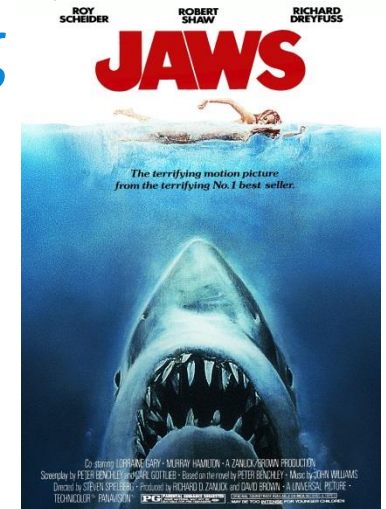
- * Ronald Reagan was president of the US
- * Nintendo introduced video games to America
- * IBM unveiled its PC- 1st laptop computer
- * Charlotte Church, the Olsen twins, and Lindsay Lohan were born
- * *Top Gun* was the top grossing film



The World Has Changed

When EHA (now IDEA, Part B) was passed in 1975:

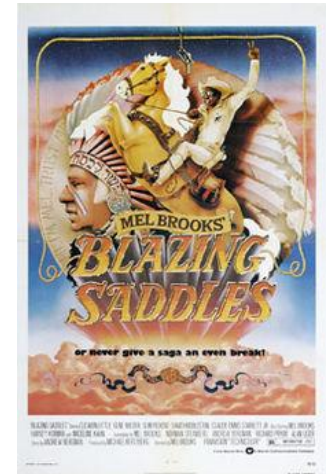
- * Gerald Ford was President
- * *One Flew Over The Cuckoo's Nest* won the big five Oscars - Best Picture, Best Director, Best Actor, Best Actress and Best Writing
- * Angelina Jolie and Bradley Cooper were born.
- * Popular holiday gifts were pet rocks and mood rings.
- * *Jaws* was the top grossing film.



The World Has Changed

When FERPA was passed in 1974:

- * Richard Nixon resigned; Gerald R. Ford became President.
- * A 26-year-old Stephen King published his debut novel “Carrie.”
- * People magazine was 1st published.
- * *Blazing Saddles* was the top grossing film.





Where can you find us?

- * IDEA Part C

Statute: 20 U.S.C. 1401-1407, 1417 &
1431 – 1443

Regulations: 34 C.F.R. §§ 303.400 – 303.417

- * IDEA Part B

Statute: 20 U.S.C. 1401 *et seq.*




Regulations: 34 C.F.R §§ 300.610 - 300.627

- * FERPA

- * Statute: 20 U.S.C. 1232g

- * Regulations: 34 C.F.R. Part 99

What is Personally Identifiable Information (PII)?

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
		



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**



Different Rules

IDEA Part C

IDEA Part B




FERPA

Who?

When?

What?

What records are covered?

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
		



What records are covered?

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)

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)

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

Who must comply?

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
		



Who must comply?

IDEA Part C

Participating agency

- ❖ Any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in part C.
- ❖ Includes any individual or entity that provides any part C services.
- ❖ Does not include primary referral sources or public agencies or private entities that act solely as funding sources for Part C services.



Who must comply?

IDEA Part B

Participating agency

- ❖ Any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B.



Who must comply?

FERPA

Educational agency or institution

- ❖ Any public or private agency or institution that provides educational services and/or instruction to students; or is authorized to direct and control public elementary or secondary, or postsecondary educational institutions; and
- ❖ to which funds have been made available under any program administered by the Secretary

When do the confidentiality provisions apply?

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
		



When do the confidentiality provisions apply?

IDEA Part C

When the child is **referred** for early intervention services...

Until the later of when the participating agency **is no longer required to maintain or no longer maintains** that information under applicable Federal and State laws

303.401(c)(2)



When do the confidentiality provisions apply?

IDEA Part B confidentiality provisions

Apply to records that are **collected, maintained, or used**

300.610 through 300.626






When do the confidentiality provisions apply?

FERPA

When the student is “in attendance at an educational agency or institution”

99.3 (Definition of student)

Whose records are covered?

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
		



Whose records are covered?

IDEA Part C

Child = An individual under the age of 6 and may include an infant or toddler with a disability

303.6



Whose records are covered?

IDEA Part B

Child with a disability: Children determined eligible under one of 13 disability categories & needs special education and related services as a result of disability.

300.8

“Records relating to ... **children** that are collected, maintained or used...”

300.610



Whose records are covered?

FERPA

Student = Any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.




99.3



What are those rights/responsibilities?

- ❖ Confidentiality
- ❖ Review/amend records
- ❖ Retain records
- ❖ Dispute resolution

What is confidentiality Consent definition

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
 A yellow emoji with a wide smile, wearing black sunglasses, and giving a thumbs-up with its right hand.	 A yellow emoji with a wide smile, wearing black sunglasses, and giving a thumbs-up with its right hand.	 A yellow emoji with a wide smile, winking with its right eye, and giving a thumbs-up with its right hand.



What is confidentiality?

Consent – IDEA Part B & C

- * Written
- * Voluntary
- * **Informed**

Part C 303.7, Part B 300.9,






What is confidentiality?

Consent - FERPA

- * Signed
- * **Dated**
- * Written

99.30

What are the exceptions to consent?

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
		



Exceptions to Consent

IDEA Part C

- * Remember definition of participating agency
- * Transition notification/opt out
- * FERPA exceptions - Translation provisions
(e.g., school officials)

303.14(b)



IDEA Part C

Translation provisions

Crosswalk of Terms

FERPA	IDEA Part C
Education Record	Early intervention record
Education	Early intervention
Educational agency or institution	Participating agency
School official	Qualified early intervention service (EIS) personnel/Service coordinator
State educational authority	Lead agency
Student	Child under IDEA Part C



Exceptions to Consent

IDEA Part B

- * Officials of participating agency

- * Age of majority

- * FERPA exceptions

303.622(b)(1) and (2)



Exceptions to Consent

FERPA – a number of exceptions including:

- * Audit and Evaluation
- * Uninterrupted Scholars Act
- * Compliance with Judicial Order/Subpoena
- * Health/safety

99.31



Exceptions to Consent

FERPA

Audit and Evaluation

Federal, State, and local officials listed under § 99.31(a)(3), or their authorized representative, may have access to education records only –

- * in connection with 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.**



Exceptions to Consent

FERPA

Uninterrupted Scholars Act

- * Permits disclosure of PII from education records of children in **foster care** to: “agency caseworker or other representative” of a State or local child welfare agency (CWA) who has the right to **access a student’s case plan** under State or tribal law.
- * Disclosure permitted when: the CWA is “legally responsible ... for the care and protection of the student.”



Exceptions to Consent

FERPA

Compliance with Judicial Order/Subpoena

- * School may disclose PII from education records necessary to **comply with a judicial order** or lawfully issued **subpoena**.
- * School must make a **reasonable effort to notify** the parent or eligible student of the order or subpoena before complying with it in order to allow parent or eligible student opportunity to seek protective action.






Exceptions to Consent

FERPA

Health and Safety Emergencies

- * Disclosure is necessary to **protect the health or safety** of the student or others.
- * There is an **articulable and significant threat** to the health or safety of a student or other individuals.
- * **Appropriate parties** typically means local, State, or federal law enforcement, trained medical personnel, public health officials, and parents.
- * Must be related to an **actual, impending, or imminent** emergency.

What are the rights regarding access to records?

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
		



When can the records be reviewed ?

IDEA Part C

- * Inspect and review any early intervention records ... collected, maintained, or used by the agency ... without unnecessary delay and **before any meeting regarding an IFSP, or any due process hearing, and in no case more than 10 days after the request has been made.**



What about copies of the records?

IDEA Part C

Participating agency --

- * May charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in paragraph (c) of this section.
- * May not charge a fee to search for or to retrieve information.
- * Must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.
- * **Must make available at no cost an initial copy of early intervention record.**

303.400(c) and 303.409



When can the records be reviewed ?

IDEA Part B

- * Inspect and review any education records ... that are collected, maintained, or used by the agency ... without unnecessary delay and **before any meeting regarding an IEP, or any due process hearing, or resolution session, and in no case more than 45 days after the request has been made.**



What about copies of the records?

IDEA Part B

Participating agency

- * May charge a fee for copies ... unless imposing a fee effectively prevents a parent or eligible student from exercising his or her rights to inspect and review education records.
- * May not charge a fee to search for or to retrieve the education records of a student.

300.617



When can the records be reviewed ?

FERPA

- * Inspect and review education records, **within 45 days** of receiving a request.

99.10



What about copies of the records?




FERPA

Educational agency or institution --

- May charge a fee for copies ... unless imposing a fee effectively prevents a parent or eligible student from exercising his or her rights to inspect and review education records.
- May not charge a fee to search for or to retrieve the education records of a student.

99.10

What if the records don't seem correct?

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
		



What if the records don't seem correct?

IDEA Parts C and B

- * **A parent who believes that the information in the record is inaccurate, misleading, or violates the privacy or other rights of the child can request that the record be amended.**
- * The agency must decide whether to amend the information within a reasonable period of time.
- * If the agency refuses to amend the information, it must inform the parent of the refusal and advise the parent of right to a hearing.
- * After hearing, if decision is still not to amend, **parent has a right to insert a statement in the record.**
- * **Cannot seek to amend substantive decisions**, such as determination of IDEA eligibility or goals on the IEP/IFSP, etc.

303.410 (Part C) & 300.618 (Part B)






What if the records don't seem correct?

FERPA

- * A parent or eligible student who believes that the information in the record is inaccurate, misleading, or violates the privacy rights of the student can request that the record be amended.
- * The educational agency/institution must decide whether to amend the information within a reasonable period of time
- * If educational agency/institution decides not to amend, it must inform parent of the refusal and right to a hearing.
- * After hearing, if decision is still not to amend, parent has a right to insert a statement in the record.
- * Cannot seek to amend substantive decisions, such as grades, etc.

99.20, 99.21, & 99.22

What about the “record of access?”

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
 A yellow emoji with a wide smile, wearing black sunglasses, and giving a thumbs-up with its right hand.	 A yellow emoji with a wide smile, wearing black sunglasses, and giving a thumbs-up with its right hand.	 A yellow emoji with a wide smile, winking with its right eye, and giving a thumbs-up with its right hand.



What about the “record of access?”

IDEA Parts C and B

Contain recordkeeping requirements for participating agencies.

- * Keep a record of parties obtaining access to records collected, maintained, or used under IDEA (except for parents and authorized employees, and for Part C, authorized representatives);
- * Include name of party, day access given, and purpose for which the party is authorized to use the records.

303.406 (Part C) and 300.614 (Part B)






What about the “record of access?”

FERPA

Contains recordkeeping requirements for both schools and SEAs.

- * Be maintained as long as record is maintained;
- * Include parties who requested or received information; and
- * Include legitimate interest the parties had in receiving information.
- * Exceptions include parents, school officials, those to whom parent provided consent and more.
- * 99.32

How long do I have to keep the record?

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
 A yellow emoji with a wide smile, wearing black sunglasses, and giving a thumbs-up with its right hand.	 A yellow emoji with a wide smile, wearing black sunglasses, and giving a thumbs-up with its right hand.	 A yellow emoji with a wide smile, winking with its right eye, and giving a thumbs-up with its right hand.



How long do I have to keep the record?

* IDEA Part C and Part B

The participating agency--

- * Must inform parents when PII collected, maintained, or used is no longer needed to provide services.
- * Must destroy information at parent's request (once it is no longer needed).
- * May keep permanent record with child's name, contact and other info. -- Part C: DOB, exit data and names of service coordinator and EIS provider; Part B: grades, attendance, classes, and grade level and year completed).

300.403(a), 300.416 (Part C) and 300.611(a), 300.624 (Part B)






How long do I have to keep the record?

FERPA

An educational agency or institution, or SEA or its component, shall not destroy any education records if there is an outstanding request to inspect and review the records.

99.10(e)

What if we can't agree?

<p>IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303</p>	<p>IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300</p>	<p>FERPA 20 U.S.C. 1232g and 34 CFR Part 99</p>
 A yellow emoji wearing black sunglasses, with one hand adjusting the sunglasses and the other giving a thumbs-up.	 A yellow emoji wearing black sunglasses, with one hand adjusting the sunglasses and the other giving a thumbs-up.	 A yellow emoji with a wide, toothy smile and winking eyes.



What if we can't agree?

IDEA Part C & Part B

- * State complaint
- * Mediation
- * Due process hearing

FERPA

- * Complaint with FPCO



What else do I need to know about IDEA records?

- * Why is this so important?
- * What is your State's retention policy?
- * What records should be in it?
- * How long should the records be kept?
- * Are there any resources?



Where do we go from here?

- * **IDEA & FERPA share much in common in the goal to protect PII.**
- * **When facing a question under IDEA, read IDEA first, then FERPA.**
- * **It's important to know for IDEA the records that are collected, used, and maintained.**



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

* OSEP Web sites:



<http://www2.ed.gov/about/offices/list/osers/osep/index.html>

<https://sites.ed.gov/idea/>

<https://www2.ed.gov/policy/speced/guid/idea/monitor/state-contact-list.html> [State contacts]



SPPO Contact Information

*** For technical assistance on FERPA:**

**Student Privacy Policy Office
Privacy Technical Assistance Center
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-8520**



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<http://studentprivacy.ed.gov>



Questions?

