

NOTE: This letter was reformatted to make it more accessible on the Student Privacy Policy Office's (SPPO's) website. Please note that SPPO administers FERPA and the office's prior name was the Family Policy Compliance Office (FPCO). Some citations in this letter may not be current due to amendments of the law and regulations. SPPO has not revised the content of the original letter. Any questions about the applicability and citations of the FERPA regulations included in this letter may be directed to FERPA@ed.gov.

December 7, 2012

Ms. Carmela N. Edmunds
Assistant Attorney General
Office of the State Superintendent of Education
810 First Street, N.E. 9th Floor
Washington, DC 20002

Dear Ms. Edmunds:

This is in response to your email of October 4, 2012, in which you ask whether the use of the term "early intervention records" under the new Part C of the Individuals with Disabilities Education Act (IDEA) regulations is the same as "education records" for purposes of IDEA, the Family Educational Rights and Privacy Act (FERPA), and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. As you know, the final IDEA Part C regulations were published on September 28, 2011, and contained a number of changes including confidentiality provisions that incorporate specific protections under FERPA. This office administers FERPA; however, we consulted with our colleagues that administer Part C of the IDEA in order to provide you with this response.

The use of the term "early intervention records" was added in the 2011 final Part C regulations and is the same as "education records" for purposes of the confidentiality protections under Part C of the IDEA and FERPA. FERPA applies to records subject to Part C of the IDEA and the more specific provisions in the new Part C regulations published on September 28, 2011, (which regulations are consistent with, and incorporate the protections under, FERPA) govern the confidentiality rights of infants and toddlers with disabilities and their parents. The HIPAA Privacy Rule at 45 CFR 160.103 exempts from the definition of "Protective Health Information" (PHI) "education records" covered by FERPA. "Early Intervention Records" under Part C of the IDEA are equivalent to or the same as "education records" under FERPA for purposes of the PHI exemption under the HIPAA Privacy Rule. Thus, if Part C records are covered under IDEA Part C confidentiality provisions (which are consistent with, and incorporate specific protections under FERPA), those records are exempt as PHI under the HIPAA Privacy Rule.

We trust this is responsive to your inquiry. The Department's Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services (OSERS) administers Part C of the IDEA and the confidentiality provisions in the IDEA Part C regulations. For questions about those requirements, please contact:

Mary Louise Dirrigl
Acting Director
Office of Policy and Planning
Office of Special Education Programs
U.S. Department of Education
550 12th Street, SW Room 5156
Washington DC 20202
202-245-7324
Mary.Louise.Dirrigl@ed.gov

Should you have any questions about FERPA, you may contact us again at this address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-8520
202-260-3887
FERPA@ed.gov

Sincerely,

/s/

Dale King
Director
Family Policy Compliance Office

cc: Mary Louise Dirrigl
OSEP

