

UNDERSTANDING THE CONFIDENTIALITY REQUIREMENTS APPLICABLE TO IDEA EARLY CHILDHOOD PROGRAMS FREQUENTLY ASKED QUESTIONS (FAQS)

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INTRODUCTION

The purpose of this document is to assist early childhood programs under the Individuals with Disabilities Education Act (IDEA)—Part B section 611 (Grants to States), Part B section 619 (Preschool Grants), and Part C (Grants for Infants and Toddlers with Disabilities)—with addressing privacy and confidentiality questions. The Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of the privacy and confidentiality provisions. This document is intended to provide responses to frequently asked questions to facilitate and enhance States' implementation of IDEA privacy and confidentiality provisions and can be used in conjunction with the 2014 side-by-side guide of the [IDEA and FERPA Confidentiality Provisions](#).¹ The Confidentiality of Information regulations under both Part B and Part C of the IDEA incorporate some of the requirements under the Family Educational Rights and Privacy Act (FERPA), but also 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. When analyzing the privacy and confidentiality requirements for children with disabilities, it is critical to begin by examining the IDEA requirements first. If you or members of your staff have questions, please contact your [State Lead](#) in OSERS Office of Special Education Program's (OSEP) Monitoring and State Improvement Planning Division.

GENERAL IDEA & FERPA PRIVACY AND CONFIDENTIALITY PROVISIONS

1. What are the confidentiality provisions under IDEA?

The IDEA Part B regulations in 34 CFR §§ 300.610 through 300.626 identify the confidentiality requirements that apply to children with disabilities under Part B of the IDEA. These requirements apply to all children with disabilities under IDEA, as well as preschool children with disabilities, aged three through five years. These Part B regulations protect the

¹ See additional guidance from the U.S. Department of Education [IDEA and FERPA Confidentiality Provisions](#) released in June 2014, which compares the confidentiality regulations of IDEA Part B, IDEA Part C, and FERPA in a side-by-side table.

personally identifiable information (PII) in education records collected, maintained, or used under Part B of the IDEA.

The IDEA Part C regulations in 34 CFR §§ 303.400 through 303.417 identify the confidentiality requirements that apply to infants and toddlers with disabilities and their families under Part C of the IDEA. These requirements apply to children with disabilities birth through age two and, at the State's option, to children with disabilities ages three through five, if the State makes Part C services available to such children. These Part C regulations protect PII in early intervention records collected, maintained, or used under Part C of the IDEA.

2. What is FERPA and to whom does it apply?

Section 444 of the General Education Provisions Act is commonly referred to as the Family Educational Rights and Privacy Act. 20 U.S.C. 1232g. FERPA's implementing regulations are in 34 CFR Part 99. FERPA sets out requirements for the protection of students' education records and gives parents and eligible students² certain rights with respect to the student's education records. FERPA applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of the U.S. Department of Education if:

- 1) the educational institution provides educational services or instruction, or both, to students; or
- 2) the educational agency is authorized to direct and control public elementary or secondary, or post-secondary educational institutions. 34 CFR § 99.1.

3. Do IDEA Part C and Part B preschool programs follow the IDEA confidentiality provisions or FERPA?

The IDEA Part C and Part B preschool program must follow the applicable IDEA Part B or Part C confidentiality provisions. While the IDEA Part B and Part C provisions are consistent with, and incorporate protections under, 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.

² Eligible students are those students to whom the rights accorded to parents under FERPA have transferred. 34 CFR § 99.5(a)(1). An eligible student refers to a student who is 18 years of age or older or attends an institution of postsecondary education. 34 CFR § 99.3.

Under Part B of the IDEA, a State educational agency (SEA) is required to enforce all Part B requirements, including the Part B Confidentiality of Information regulations.

20 U.S.C. 1412(a)(8). Similarly, under Part C of the IDEA, lead agencies (LA) and early intervention service (EIS) providers are required to comply with, and enforce, the Part C Confidentiality of Information regulations.

The Confidentiality of Information regulations under both Part B and Part C of the IDEA incorporate some of the FERPA requirements and include several provisions that are specifically related to children with disabilities that provide protections beyond the FERPA requirements. Therefore, although FERPA and IDEA intersect in many areas, it is important that when programs have a question regarding privacy and confidentiality of a child or student with a disability, the privacy and confidentiality provisions of IDEA are considered first, and then the FERPA rules and regulations are reviewed, as applicable.

4. Who has to comply with the confidentiality requirements under IDEA Parts B and C and what is a participating agency?

Under both IDEA Parts B and C, the participating agency must comply with the IDEA confidentiality requirements. 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. The IDEA Part B regulations define a “participating agency” as “any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.” 34 CFR § 300.611(c). The IDEA Part C regulations define a “participating agency” as “any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in [Part C] of the Act and the regulations in this part with respect to a particular child. A participating agency [under Part C] includes the lead agency and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments, and other Part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or [Children’s Health Insurance Program] (CHIP)) or private entities (such as private insurance companies) that act solely as funding sources for [Part C] services.” 34 CFR § 303.403(c).

5. What is the personally identifiable information or PII that is protected under the IDEA confidentiality provisions?

The IDEA Part B and Part C regulations protect the PII contained respectively in education and early intervention records. The definition of PII under IDEA Part B and Part C is slightly different.

The IDEA Part B regulations in 34 CFR § 300.32 define PII as information that contains:

- The name of the child, the child’s parent, or other family member;
- The address of the child;
- A personal identifier, such as the child’s social security number or student number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

The IDEA Part C regulations in 34 CFR § 303.29 references the FERPA definition for PII and refers to “student” as “child” and “school” as “Early Intervention Service Provider.” Thus under IDEA Part C, PII is defined as information that includes, but is not limited to:

- The child’s name;
- The name of the child’s parents or other family members;
- The address of the child or child’s family;
- A personal identifier, such as the child’s social security number, program identification number, or biometric record;
- Other indirect identifiers, such as the child’s date of birth, place of birth, and mother’s maiden name; other information that, alone or in combination, is linked or linkable to a specific child that would allow a reasonable person in the program or school community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or
- Information requested by a person who the educational agency reasonably believes knows the identity of the child to whom the education record relates. 34 CFR § 99.3.

See also the U.S. Department of Education (2014), [IDEA and FERPA Confidentiality Provisions](#).

6. What are “education records” and “early intervention records” under IDEA? Are these the same as the definitions under FERPA?

Under IDEA Part B, the definition of “education records” refers to the definition in FERPA. 34 CFR § 300.611(b). FERPA defines, with a few exceptions, “education records” as those records that:

- 1) contain information directly related to a student; and
- 2) are maintained by an educational agency or institution or by a party acting for the agency or institution. 20 U.S.C. 1232g(a)(4)(A); 34 CFR § 99.3.

Among other exceptions, the term does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. 20 U.S.C. 1232g(a)(4)(B)(i); 34 CFR § 99.3.

The IDEA Part C regulations define “early intervention records” as all records regarding a child that are required to be collected, maintained, or used under IDEA Part C. 34 CFR § 303.403(b). When applying the requirements of FERPA to Part C EIS programs and providers, the IDEA Part C regulations in 34 CFR § 303.414(b) provide for a reference of how the FERPA terms or definitions apply to the IDEA Part C terms of definitions including the reference that an education record under FERPA is equivalent to the early intervention record under the IDEA Part C regulations.

7. When do the IDEA confidentiality requirements apply?

The IDEA Part B and Part C confidentiality requirements apply from the time a child is referred to IDEA. The IDEA Part B confidentiality regulations apply to records collected or maintained once the child is referred to IDEA Part B. 34 CFR §300.610. The IDEA Part C confidentiality regulations apply from when a child is referred to IDEA. 34 CFR § 303.401(c)(2).³ The Analysis of Comments and Changes included in the final publication of the Part C 2011 regulations states, “[s]ection 303.401(c)(2) provides that the [Part C] confidentiality procedures apply from the point in time when the child is referred for early intervention services, and thus, do not apply prior to a referral.” 76 Fed. Reg. 60,140, 60,208 (Sept. 28, 2011).

PARENTAL CONSENT REQUIREMENTS AND EXCEPTIONS

8. What is parental consent under the IDEA Part B and Part C regulations?

The IDEA Part B regulations in 34 CFR § 300.9 define “consent” to mean that:

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

³ These regulations also provide that the confidentiality provisions continue to apply until the child’s early intervention records are no longer maintained or required to be maintained. 34 CFR §303.401(c)(2).

- (c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
- (3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

The IDEA Part C regulations in 34 CFR § 303.7 define “consent” to mean that:

- (d) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language, as defined in § 303.25;
- (e) The parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and
- (f) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

9. When is parental consent to disclose PII required for a child being served under IDEA?

In general, parental consent must be obtained before disclosing PII to a third party unless a specific exception applies. See Question 11 for an overview of the major exceptions that might apply to disclosure of PII for children being served under IDEA.

Specifically, under 34 CFR § 300.622(a) of the IDEA Part B regulations, parental consent must be obtained before PII is disclosed to parties, other than officials of participating agencies, unless the information is contained in education records and one of the FERPA exceptions to consent (See Question 11 below) applies. Additionally, if a child is enrolled, or going to enroll, in a private school that is not located in the local educational agency (LEA) of the parent’s residence, parental consent must be obtained before any PII about the child is

released between officials of the LEA where the private school is located and officials of the LEA of the parent's residence. 34 CFR § 300.622(b)(3).⁴

Under the IDEA Part C requirements, parental consent must be obtained before PII is 1) disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under Part C, or 2) used for any purpose other than meeting a requirement of Part C. 34 CFR § 303.414. In addition, parental consent may not be needed if the PII is contained in an early intervention record and a specific exception to consent applies. 34 CFR § 303.414(b).

10. What is the right to prior written consent under FERPA?

Under the FERPA regulations, the parent or eligible student must provide a signed and dated written consent before an educational agency or institution discloses PII from the student's education records, unless an exception to the requirement of prior written consent applies. 34 CFR § 99.30(a). The FERPA regulations address the elements of the signed and dated written consent in 34 CFR § 99.30(b), which states that the prior written consent also must:

- 1) specify the records that may be disclosed;
- 2) state the purpose of the disclosure; and
- 3) identify the party or class of parties to whom the disclosure may be made.
34 CFR § 99.30(b).

Further, the FERPA regulations in 34 CFR § 99.30(c) specify that when a disclosure is made under these provisions, if a parent or eligible student requests, the educational agency or institution shall provide him or her with a copy of the records. Under FERPA, "disclosure" means "to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record." 34 CFR § 99.3.

11. What are the exceptions to the general requirement to obtain prior written consent prior to disclosing PII for a young child with a disability receiving services under IDEA Part B or Part C?

In general, parental consent of a young child ages birth to five under IDEA Part B or Part C is required before disclosing PII from education or early intervention records. However, there

⁴ This document is focused on young children served under IDEA, but please note that for older children served under IDEA, parental consent, must also be obtained before PII is released to officials of participating agencies providing or paying for transition services. 34 CFR § 300.622(b)(2).

are some instances in which parental consent does not have to be obtained before PII can be disclosed. These are called “exceptions” to consent and are mainly found under FERPA. The IDEA Part B regulations in 34 CFR § 300.622(a) identify specific IDEA Part B exceptions and also indicate that FERPA exceptions to prior written consent apply to Part B, and this includes preschool special education programs. The IDEA Part C regulations at 34 CFR § 303.414(b)(2) identify the IDEA Part C exceptions that apply (which includes the exception for transmitting child find information when a child transitions from Part C to Part B) and these regulations also indicate that FERPA exceptions to prior written consent apply to Part C (as applicable). The IDEA Part C regulations also provide references to some of FERPA’s defined terms in the context of early intervention. The FERPA “exceptions” that may apply to IDEA early childhood programs are described in Questions 11a-d below. These FERPA exceptions are permissive, which means that participating agencies may, but are not required to, disclose PII without parental consent. The IDEA Part B SEA or the IDEA Part C LA may have separate State or other policies or procedures that require parental notification or parental consent.

11a. What is the exception to consent for school officials with a legitimate educational interest, and is there a comparable exception to consent for children served under IDEA Part C?

Under IDEA Part B and pursuant to the FERPA regulations at 34 CFR § 99.31(a)(1), prior written consent is not required to disclose PII from student education records to school officials, including teachers, within the educational agency or institution, whom the agency or institution has determined to have legitimate educational interests.

34 CFR § 99.31(a)(1)(i)(A). School officials with legitimate educational interests may also include a contractor, consultant, volunteer, or other party to whom an educational agency or institution has outsourced institutional services or functions, provided the outside party:

- performs an institutional service or function for which the agency or institution would otherwise use employees;
 - is under the direct control of the agency or institution with respect to the use and maintenance of education records; and
 - is subject to the requirements of 34 CFR § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.
- 34 CFR § 99.31(a)(1)(i)(B).

Under the FERPA regulations at 34 CFR § 99.7(a)(3)(iii), if an educational agency or institution has a policy of disclosing education records to school officials, the educational agency or institution must include in its annual notification of FERPA rights a specification of the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. Under the FERPA regulations at 34 CFR § 99.31(a)(1)(ii), an

educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. Further, an educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement. 34 CFR § 99.31(a)(1)(ii).

Although the IDEA Part C regulations (pursuant to 34 CFR § 303.414(b)(2)) translates “school official” used in FERPA to “qualified personnel or service provider” in IDEA Part C, these qualified personnel or EIS providers generally would be working for a participating agency under Part C and would have access to PII as part of providing services under Part C of the IDEA. Therefore the “school officials” exception would not be as applicable under IDEA Part C.

11b. What is the audit and evaluation exception to consent?

Prior written consent is not required under the “audit and evaluation” exception when PII from student education records (or, under IDEA Part C, from child early intervention records) is disclosed to “authorized representatives” of FERPA-permitted entities⁵ in connection with an audit or evaluation of the Federal- or State-supported education program (or an early childhood program such as the IDEA Part C early intervention program), or for the enforcement of, or compliance with, Federal legal requirements that relate to those programs. 34 CFR §§ 99.31(a)(3) and 99.35. These FERPA-permitted entities are the Comptroller General of U.S., the U.S. Attorney General, the U.S. Secretary of Education, and State or local educational authorities. The FERPA regulations at 34 CFR § 99.35(a)(3) provide specific information on the written agreement requirements that must be met. Under the audit and evaluation exception, the entity disclosing PII from education (or other early childhood programs such as Part C early intervention) records also must use “reasonable methods” to ensure, to the greatest extent practicable, that the “authorized representative” of the FERPA-permitted entity uses the PII only to carry out an audit or evaluation of Federal- or State-supported education programs (or other early childhood programs, such as the IDEA Part C early intervention program or Head Start), or for the enforcement of or compliance with Federal legal requirements related to these programs; protects the PII from further unauthorized disclosure or unauthorized uses; and destroys the PII in accordance with FERPA requirements. 34 CFR § 99.35(a)(2).

⁵ FERPA regulations define “authorized representative” as any entity or individual designated by the Comptroller General of the United States, the Attorney General of the United States, the Secretary of Education, or a State or local educational authority to conduct -- with respect to Federal- or State-supported education programs -- any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs. 34 CFR § 99.3.

The “audit and evaluation” exception (34 CFR §§ 99.31(a)(3) and 99.35) may be an appropriate mechanism under IDEA and FERPA for data sharing arrangements for the IDEA early childhood (Part B preschool and Part C) community, provided that all other consent requirements are met and there is a data sharing agreement when using this exception if PII is disclosed to an “authorized representative” who is not employed by the FERPA-permitted entity. PII must be used to audit or evaluate a Federal- or State-supported education program (this includes Part C and 619 preschool programs and other early childhood programs including Head Start) or to enforce or comply with Federal legal requirements that relate to those education programs (audit, evaluation, or enforcement or compliance activity).

There are many specific requirements that have to be met under this exception when used in conjunction with data sharing arrangements. See [Data Sharing Agreement Checklist for IDEA Part C and Part B 619 Agencies and Programs](#) (2014) for more information about developing data sharing agreements.

11c. What is the studies exception to consent?

Another exception to the general requirement of prior written consent in FERPA (34 CFR § 99.31(a)(6)), permits the disclosure of PII from education records to organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction. 34 CFR § 99.31(a)(6). In the very limited instance in which IDEA Part C or IDEA Part B section 619 agencies or programs propose to consider using this FERPA exception, such agencies and programs will want to consult with the Department’s Office of Special Education Programs (OSEP) and Family Policy Compliance Office (FPCO) regarding how the proposed data sharing would meet the requirements set forth in 34 CFR § 99.31(a)(6) and 34 CFR § 303.414 (for IDEA Part C) or 34 CFR § 300.622 (for IDEA Part B Section 619). Written agreements with the organization conducting the study are also required under this exception. 34 CFR § 99.31(a)(6)(iii)(C).

11d. What is the Uninterrupted Scholars Act (USA) and its exception to the prior written consent requirement in FERPA? Does USA apply to agencies administering IDEA Part B special education preschool and IDEA Part C early intervention programs?

The Uninterrupted Scholars Act (USA), Pub. L. No. 112-278, was enacted on January 14, 2013, and added an additional exception to the general requirement of consent in FERPA. This exception permits LEAs and schools to disclose education records of students, without consent of the parent or eligible student, to an agency caseworker or other representative of a State or local child welfare agency (CWA) or tribal organization authorized to access a student’s case plan when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student. While most of the

exceptions to the general consent requirement are set forth in 34 CFR § 99.31, the FERPA regulations have not yet been amended to add the exception in the USA. However, LEAs and schools are nevertheless permitted to use the exception to consent that the USA added to FERPA. The USA also amended a notice requirement that generally applies when a disclosure is made under the exception for disclosures necessary to comply with a lawfully issued subpoena or judicial order. Specifically, while a school or LEA generally must provide advance written notice to the parent or eligible student before making a disclosure under this exception to consent, the USA added an exception to this notice requirement when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note)) or dependency matters and the judicial order is issued in the context of that proceeding.

The USA applies to agencies administering IDEA Part B and Part C programs. [Guidance on the Amendments to the Family Education Rights and Privacy Act by the Uninterrupted Scholars Act](#) issued jointly in May 2014 by the Department’s Family Policy Compliance Office and the Office of Special Education and Rehabilitative Services (OSERS) states, “[a]lthough the exception has not been incorporated into the FERPA regulations, the Department interprets the confidentiality provisions in IDEA Part B and Part C to also incorporate the USA’s permissible exception to prior written consent requirements in [34 CFR §§] 300.622(a) and 303.414(b).”

For more specific details about the Department’s guidance on the USA, we encourage you to visit [Guidance on the Amendments to the Family Education Rights and Privacy Act by the Uninterrupted Scholars Act](#).

12. Can an electronic signature be used as parental consent pursuant to the IDEA and FERPA?

Under both Parts B and C of the IDEA, States may use electronic or digital signatures for consent, provided they take the necessary steps to ensure that there are appropriate safeguards to protect the integrity of the process. Under Part B of the IDEA, the use of electronic consent is consistent with 34 CFR § 300.9(b), and a parent must understand and agree to the carrying out of the activity for which the parent’s consent is sought.⁶

Additionally, under Part C of the IDEA, if a State lead agency chooses to do so, prior written consent may be provided by the parent in electronic form under IDEA Part C provided that the State lead agency or participating agency ensures that there are appropriate safeguards

⁶ See OSEP Policy Letter dated March 21, 2014, available at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acc-14-000862r-me-breton-email-3-21-14.pdf>.

consistent with the requirements in Part B and FERPA. Under Part C of the IDEA, these safeguards were identified to include that the electronic signature:

- 1) is dated;
- 2) identifies and authenticates a particular person as the source of the electronic consent;
- 3) indicates such person's approval of the information contained in the electronic consent; and
- 4) is accompanied by a statement that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for Part C services.⁷

In cases where FERPA requires a signed and dated written consent, 34 CFR § 99.30(d) specifies that "signed and dated written consent" may include a record and signature in electronic form that 1) identifies and authenticates a particular person as the source of the electronic consent; and 2) indicates such person's approval of the information contained in the electronic consent. 34 CFR § 99.30(d).

13. May the early intervention service provider accept a referral without parental consent under IDEA Part C?

The Analysis of Comments and Changes included in the final publication of the Part C 2011 regulations states, "[s]ection 303.401(c)(2) provides that the [P]art C confidentiality procedures apply from the point in time when the child is referred for early intervention services, and thus, do not apply prior to a referral. Under § 303.401(c)(2), the confidentiality provisions under [P]art C of the Act do not apply to primary referral sources. Thus, [P]art C does not prohibit the lead agency or an EIS provider from accepting a referral of a child to the State [P]art C system from a primary referral source. However, the primary referral source may be required to obtain parental consent prior to making a referral under other applicable laws (such as HIPAA, CAPTA, or State laws)." 76 Fed. Reg. 60,140, 60,208 (Sept. 28, 2011).

NOTIFICATION TO PARENTS

14. What are the IDEA requirements regarding the annual notification to parents?

Annual notification to parents must be provided to inform parents of the IDEA Part B and Part C privacy and confidentiality requirements as required under 34 CFR § 300.123 and

⁷ See OSEP Policy Letter dated July 19, 2013 available at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-019399r-itca-faq-final-7-19-13.pdf>.

§ 303.402. Notification must be provided to parents at the time of referral to IDEA Part C and at other appropriate times, and adequate notice must be provided under IDEA Part B of the Act. This notice must include:

- A description of the children on whom PII is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of PII;
- A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR Part 99 and a description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in §§ 303.401 through 303.417; and
- A description of the extent that the notice is provided in the native languages of the population groups in the State.

See the IDEA Part B and Part C regulations for complete information at 34 CFR § 300.612 and 34 CFR § 303.404.

15. What are the FERPA requirements regarding the annual notification to parents and eligible students under Part B?

Each educational agency and institution must annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under FERPA.

20 U.S.C. 1232g(e); 34 CFR § 99.7(a)(1). The notice must address the following primary rights:

- Right to inspect and review education records (34 CFR §§ 99.10-12);
- Right to seek to amend education records (34 CFR §§ 99.20-22);
- Right to consent to the disclosure of PII from education records, except as provided by law (34 CFR §§ 99.30 and 99.31); and
- Right to file a complaint with the Department of Education concerning the alleged failure by the educational agency or institution to comply with the requirements of FERPA (34 CFR §§ 99.7(a)(2) and 99.63).

The specific content required in the annual notification is addressed in 34 CFR §§ 99.7(a)(2) and 99.7(a)(3). A model notification may be found at

<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>.

These FERPA requirements do not apply to IDEA Part C.

16. Can electronic mail be used to provide parents with their child’s individualized education programs (IEPs), and related documentation, such as progress reports under IDEA Part B?

Under IDEA Part B, parents may elect to receive prior written notices, procedural safeguards notices, and due process complaint notices by an electronic mail communication, if the public agency makes that option available. Section 615(n) of the IDEA; 34 CFR § 300.505. The IDEA statute and regulations do not explicitly address the use of electronic mail for other documents required under the IDEA. However, OSEP has stated that the IDEA statute and regulations do not prohibit the use of electronic mail to carry out administrative matters under section 615 of the IDEA, and electronic mail can be used as long as the parent of the child with a disability and the public agency both agree to this alternative method of communication (Analysis of Comments and Changes to the 2006 Final Part B Regulations, 71 Fed. Reg. 46540, 46687 Aug. 14, 2006) and there are appropriate safeguards in place. OSEP has indicated under IDEA Part B in a [letter issued March 21, 2014](#), that email communications are permitted for providing parents copies of their child’s IEP and progress reports if a public agency has implemented the following security procedures when delivering such information via electronic mail: the district obtains prior signed permission from the parents; the parents provide the address of their confidential email account; a secure password is used to access documents; and the parents may request hard copies at any time and/or refuse the electronic mail option.

DUTY TO MAINTAIN, AND PROVISION FOR DESTRUCTION OF, RECORDS

17. What should IDEA programs know about destruction of records under IDEA and FERPA?

IDEA affords parents with the right to request that their child’s records be destroyed once those records are no longer required to be maintained by the IDEA Part B or Part C program and subject to other specific conditions. The maintenance requirements vary by State and by the type of record that contains the PII. Additionally a number of Federal and State laws apply (including fiscal, audit, insurance, statutes of limitation, etc.) regarding how long records must be maintained. The purpose of the destruction option is to allow parents the opportunity to decide that records about a child’s performance, abilities and behavior (that could be potentially stigmatizing and are highly personal) are not maintained after they are no longer needed. OSEP discusses destruction of records under the IDEA Part B regulations further in a [November 23, 2015 policy letter](#).

Under section 300.611(a) of the IDEA Part B regulations and section 303.403 of the IDEA Part C regulations, “destruction means to physically destroy the record or ensure that personal identifiers are removed from a record so that the record is no longer personally identifiable.” However, a permanent record of certain information or PII about the student (or child) can be maintained under IDEA without limitation. 34 CFR §§ 300.624 and 303.416. Parents must be given notice as to the State’s record retention policies and be provided notice regarding when the records are no longer needed and can potentially be destroyed (i.e., typically when PII is no longer needed to provide early intervention or educational services to the child. This notice is most frequently provided when a child exits the program or leaves the agency.)

Under FERPA, parents do not have a right to request the destruction of their student’s education records. However, students’ education records must be safeguarded and cannot be destroyed if there is an outstanding request to inspect or review such records. 34 CFR § 99.10(e). FERPA’s “school official exception” also requires an educational agency or institution to maintain “direct control” with respect to the use and maintenance of education records by a contractor, consultant, volunteer, or other party to which the school has outsourced institutional services or functions, which encompasses controlling their destruction when the education records are no longer needed to perform such institutional services or functions. 34 CFR § 99.31(a)(1)(i)(B). There are also destruction requirements related to specific FERPA exceptions to consent in 34 CFR § 99.31(a)(6)(iii)(B) regarding disclosures to organizations conducting studies under the studies exception and 34 CFR § 99.35(b)(2) regarding disclosures under the audit and evaluation exception to consent in 34 CFR §§ 99.31(a)(3) and 99.35. See Question 11 for a summary of some of the FERPA exceptions to the prior written parental consent requirements.