

FERPA and Part B of IDEA Confidentiality Provisions

OR

FERPA as it relates to IDEA and Students with Disabilities



Individuals with Disabilities Education Act (IDEA)

- Statute: 20 U.S.C. §1401 and §§1411-1419
- Regulations: 34 CFR Part 300



Part B of the Individuals with Disabilities Education Act (IDEA)

- §300.610 Confidentiality of Information
- “The Secretary takes appropriate action, in accordance with section 444 of GEPA [FERPA], to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627.”



§300.625 of IDEA “Children’s rights”

If the rights accorded to parents under Part B are transferred to a student who reaches the age of majority, consistent with §300.520, the rights regarding education records in §§300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the IDEA to the student and the parents. (§300.625(c)).



Educations Records under IDEA and FERPA

Reminder: Educational records are those that are directly related to the student and maintained.

- Records maintained by an educational agency or institution, or by a party acting for the educational agency or institution, that are subject to FERPA on students with disabilities receiving services under Part B of IDEA are “education records” subject to FERPA.
- Just like with FERPA, an agency under IDEA may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce (§300.613(c)).



Record Maintenance

- The school district is required to maintain each IEP folder and ensure that all educational record is securely maintained. In the WCSD, the file of record is located electronically in OnBase.

Therefore, it is mandatory that all educational records are scanned and/or uploaded into the electronic file. Scanning and/or uploading the educational record must be done in a timely fashion, optimum immediately following any IEP or related meeting. All data collected towards progress towards goals and objectives is also an educational record and must be maintained in the electronic file. The expectation is that these records would be scanned and/or uploaded minimally once a month.

Inspection & Review of Education Records

- §300.613 of the IDEA regulations requires each participating agency to comply with a request to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under part 300 without unnecessary delay and **before** any meeting regarding an IEP, or any hearing pursuant to §300.507 (due process complaint regarding identification, evaluation, or educational placement or provision of a free appropriate public education to the child) or §§300.530 through 300.532 (discipline procedures), or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.



Charging Fee for Copies

§99.11 of FERPA and §300.617 of the IDEA regulations states that an educational agency or institution may charge a fee for copies of education records, unless imposing a fee would effectively prevent a parent or eligible student from exercising his or her rights to inspect and review education records.



Limitations on Right to Inspect and Review

§99.12 of FERPA and §300.615 of the IDEA regulations state that if records contain information on more than one student, the parent has the right to inspect, review, or be informed of only the specific information about his or her child's education records.



Amending Education Records under IDEA

§§300.618-300.621 of the IDEA regulations govern the amendment of education records and reflect the FERPA requirements.

§300.621 states that a hearing held under §300.619 must be conducted according to the procedures in §99.22 of the FERPA regulations.



Consent for Disclosures under IDEA

- §300.622 of the IDEA regulations requires
 - Parental consent before PII is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of §300.622, unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA;
 - Parental consent, or consent of eligible child who has reached age of majority under State law, must be obtained before PII is disclosed to officials providing or paying for transition services in accordance with §300.321(b)(3); and
 - 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 parents' residence if the child is enrolled or is going to enroll in a private school that is not located in the LEA of the parent's residence.



Destruction of Information is VERY DIFFERENT under IDEA

- §300.624 of the IDEA regulations requires a public agency to inform parents when PII that is collected, maintained, or used under the IDEA is no longer needed to provide educational services to the child.
- Under the IDEA, information must be destroyed at the request of the parents, but certain information, such as directory information, may be maintained without time limitation.



Record of Access for both FERPA and IDEA

- §99.32 of FERPA contains recordkeeping requirements for both schools and SEAs.
 - Record of disclosure must 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.
- §300.614 of the IDEA regulations contains recordkeeping requirements for participating agencies.
 - Keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees);
 - Include name of party, day access given, and purpose for which the party is authorized to use the records.



IDEA Enforcement of Regulations and Policies

- §300.626 of the IDEA regulations provides that the SEA must have in effect policies and procedures, including sanctions, to ensure that the confidentiality requirements in §§300.611 –300.625 are followed.
- An organization or individual, including from another State, may file a signed written complaint under procedures described in §§300.151-300.153 alleging that a public agency has violated a requirement of Part B of the IDEA or the IDEA regulations. This could include the Confidentiality of Information provisions in §§300.611-300.626. Such complaints are filed with, and resolved by, the State educational agency (SEA) (or the LEA if allowed by State procedures).



Questions?

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