

FERPA and Educational Records



Pennsylvania Training and Technical Assistance Network



PaTTAN's Mission

The mission of the Pennsylvania Training and Technical Assistance Network (PaTTAN) is to support the efforts and initiatives of the Bureau of Special Education, and to build the capacity of local educational agencies to serve students who receive special education services.

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PDE's Commitment to Least Restrictive Environment (LRE)

Our goal for each child is to ensure Individualized Education Program (IEP) teams begin with the general education setting with the use of Supplementary Aids and Services before considering a more restrictive environment.

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How do IDEA B and FERPA work together?

- IDEA Part B
- FERPA

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Our Goals

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

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IDEA Part B and FERPA

IDEA Part B

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

FERPA

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

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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.



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The World Has Changed



When FERPA was passed in 1974:

- * Richard Nixon resigned; Gerald R. Ford became President
- * Hank Aaron hit 715th home run to beat Babe Ruth's record
- * People magazine was 1st published
- * Kate Moss, Alanis Morissette, Leonardo DiCaprio, & Ryan Seacrest were born
- * *Blazing Saddles* was the top grossing film

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Where can you find IDEA Part B and FERPA?

- 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

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What is Personally Identifiable Information? (PII)

- IDEA PART B
- 20 U.S.C. 1400 and 34 CFR Part 300
- FERPA
- 20 U.S.C. 1232g and 34 CFR Part 99

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What is Personally Identifiable Information (PII)?



Name



Mother's Maiden Name



Address



Date of Birth
Place of Birth



Social Security
Number and
Card



Names of Parent(s) or
other Family Members

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What Else is Personally Identifiable Information?

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.

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What Else is Personally Identifiable Information?

IDEA Part B –300.32 (d)

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

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Different Rules

IDEA Part B

FERPA

Who?

When?

What?

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What records are covered?

- **IDEA PART B**
- **20 U.S.C. 1400 and 34 CFR Part 300**
- **FERPA**
- **20 U.S.C. 1232g and 34 CFR Part 99**

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What records are covered?

- 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

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Who must comply?

- **IDEA PART B**
- **20 U.S.C. 1400 and 34 CFR Part 300**
- **FERPA**
- **20 U.S.C. 1232g and 34 CFR Part 99**

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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.

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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

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When do the confidentiality provisions apply?

- IDEA PART B
- 20 U.S.C. 1400 and 34 CFR Part 300
- FERPA
- 20 U.S.C. 1232g and 34 CFR Part 99

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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

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When do the confidentiality provisions apply?

- FERPA
- When the student is “in attendance at an educational agency or institution”
- 99.3 (Definition of student)

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Whose records are covered?

- IDEA PART B
- 20 U.S.C. 1400 and 34 CFR Part 300
- FERPA
- 20 U.S.C. 1232g and 34 CFR Part 99

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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

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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

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What are those rights/responsibilities?

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

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What is confidentiality Consent decision?

- IDEA PART B
- 20 U.S.C. 1400 and 34 CFR Part 300
- FERPA
- 20 U.S.C. 1232g and 34 CFR Part 99

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What is confidentiality?

- Consent – IDEA Part B
- Written
- Voluntary
- **Informed**

Part B 300.9,

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What is confidentiality?

- Consent - FERPA
- Signed
- **Dated**
- Written

99.30

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What are the exceptions to consent?

- IDEA PART B
- 20 U.S.C. 1400 and 34 CFR Part 300
- FERPA
- 20 U.S.C. 1232g and 34 CFR Part 99

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Exceptions to Consent

IDEA Part B

- Officials of participating agency
- Age of majority
- FERPA exceptions

303.622(b)(1) and (2)

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Exceptions to Consent

FERPA – a number of exceptions including:

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

99.31

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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.

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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.”

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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.

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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.

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What are the rights regarding access to records?

- **IDEA PART B**
- **20 U.S.C. 1400 and 34 CFR Part 300**
- **FERPA**
- **20 U.S.C. 1232g and 34 CFR Part 99**

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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.**

300.613

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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

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When can the records be reviewed?

FERPA

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

99.10

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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

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What if the records don't seem correct?

- IDEA PART B
- 20 U.S.C. 1400 and 34 CFR Part 300
- FERPA
- 20 U.S.C. 1232g and 34 CFR Part 99

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What if the records don't seem correct?

IDEA Part 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, student grades, etc.

300.618 (Part B)

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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

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What about the “record of access?”

- **IDEA PART B**
- **20 U.S.C. 1400 and 34 CFR Part 300**
- **FERPA**
- **20 U.S.C. 1232g and 34 CFR Part 99**

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What about the “record of access?”

IDEA Part 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.

300.614 (Part B)

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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

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How long do I have to keep the record?

- IDEA PART B
- 20 U.S.C. 1400 and 34 CFR Part 300
- FERPA
- 20 U.S.C. 1232g and 34 CFR Part 99

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How long do I have to keep the record?

- IDEA 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 B: grades, attendance, classes, and grade level and year completed).

300.611(a), 300.624 (Part B)

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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)

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What if we can't agree?

- **IDEA PART B**
- **20 U.S.C. 1400 and 34 CFR Part 300**
- **FERPA**
- **20 U.S.C. 1232g and 34 CFR Part 99**

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What if we can't agree?

IDEA Part B

- State complaint
- Mediation
- Due process hearing

FERPA

- Complaint with FPCO

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What else do I need to know about IDEA records?

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

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Where do I 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.**

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Resources

- **IDEA and FERPA Confidentiality Provisions** (5/31/2014)
<http://www2.ed.gov/policy/gen/guid/ptac/pdf/idea-ferpa.pdf>
- **How FERPA was amended by the Uninterrupted Scholars Act** (5/27/2014)
<http://www2.ed.gov/policy/gen/guid/fpc/ferpa/uninterrupted-scholars-act-guidance.pdf>
- **OSEP Policy letters** (various)
<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/index.html#topiclisting>
- **OSEP Letter to ITCA** (7/19/2013)
<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-019399r-itca-faq-final-7-19-13.pdf>
- **FPCO Letter to Edmunds** (12/7/2012)
<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/edmunds.pdf>
- **Joint FERPA-HIPAA Guidance** (11/2008)
<http://www2.ed.gov/policy/gen/guid/fpc/doc/ferpa-hipaa-guidance.pdf>
- **FERPA Webinars** (Ongoing) <http://www2.ed.gov/policy/gen/guid/fpc/index.html>

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

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FPCO contact information

- For technical assistance on FERPA:
Family Policy Compliance Office (FPCO)
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-8520

(202) 260-3887 Telephone
(202) 260-9001 Fax
- Or email us at: FERPA@ed.gov
- FPCO Web site: www.ed.gov/fpc

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- <http://dasycenter.org/what-do-idea-and-ferpa-tell-us-about-data-sharing/>

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Commonwealth of Pennsylvania

Tom Wolf, Governor

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