FERPA, IDEA and the Studies Exception

Indiana Network of Knowledge

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Privacy Technical Assistance Center
Overview of This Training

• The Family Educational Rights and Privacy Act (FERPA)
  • General Outline

• Individuals with Disabilities Education Act (IDEA)
  • General Outline
  • Specific Provisions
  • Crossover with FERPA

• FERPA Exceptions
  • Data Sharing Exceptions
Why You are Required to Take this Training

• You are either an internal INK staff member and you have contact with or handle student-level PII from education records OR:

• You are an external party that has requested access to data for research or evaluative purposes.

• The data you receive may be protected by The Family Educational Rights and Privacy Act (FERPA) or the Individuals with Disabilities Education Act (IDEA).

• Section 300.623c of the IDEA Regulations state “All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Sec. 300.123 and 34 CFR part 99.”*

*This Presentation will account for this training requirement
The Family Educational Rights and Privacy Act
What is FERPA?

A federal privacy law that affords parents the right to—

• have access to their children’s education records,

• seek to have the records amended, and

• consent to the disclosure of personally identifiable information from education records, except as provided by law.
Key Points

• FERPA protects the privacy of students by restricting access to records that contain *Personally Identifiable Information* (PII).

• FERPA does not permit the *Disclosure* of PII from education records without consent, except under certain *Exceptions*.

• FERPA requires that *Reasonable Methods* be used to protect the integrity and security of the data being maintained at the school or district.

• FERPA does permit the disclosure of certain types of PII that is previously designated as *Directory Information* by the school or district.
**FERPA and Funding**

- Elementary and secondary schools that receive funds under any program administered by the Secretary of Education

- Postsecondary institutions that receive funds under any program administered by the Secretary of Education

- Most private schools at the elementary, secondary levels do not receive such funds and are, therefore, not subject to FERPA.
**When Does FERPA Apply to EC Organizations**

- **Student Data**
  - **Federally funded**
    - Student record with PII and health data: FERPA applies.
  - **NOT federally funded**
    - Not FERPA protected.
    - Health-record only. HIPPA may apply.
    - Not FERPA protected. HIPPA may apply.
Just what is an Education Record?

“Education records” are records that are –

1) directly related to a student; and

2) maintained by an educational agency or institution or by a party acting for the agency or institution.
Education Records

Exceptions to “education records” include –

• Sole possession records used as a personal memory aid;
• Law enforcement unit records;
• Peer-graded papers before they are collected and recorded by teacher.
What about Health Insurance Portability and Accountability Act (HIPAA)?

Records that are subject to FERPA are not subject to the HIPAA Privacy Rule (see page 82483, Federal Register, Vol. 65, No. 250, December 28, 2000).

- Health records on students, including immunization records, maintained by an educational agency or institution subject to FERPA are “education records.”
- Other HIPAA Rules may apply.
What is personally identifiable information (PII)? – Examples

- **Name**
- **Address**
- **Mother’s maiden name**
- **Social Security Number**
- **Date of birth**
- **Parent’s name**
Personally Identifiable Information (PII), Cont.

- Other information that, alone or in combination, is linked or 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; or

- Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.
Guidelines for Data Suppression

- Aggregate data tables can still contain PII if they report information on small groups, or individuals with unique or uncommon characteristics.

- Small cell sizes increase disclosure risk, but suppression it and of itself may not be sufficient.

- Bigger cells/values can still be disclosive if:
  - they are extreme values (e.g., ~0% or ~100% of students in a group), or they can be used to calculate the values of protected cells elsewhere (in the same table, or even in another data release!)
“Anonymization” vs. “Deidentification”

When dealing with student-level data, stripping off the direct identifiers is seldom sufficient to prevent reidentification.

Each data point attached to a record can exponentially increase the risk of re-identification, especially when the data are longitudinal.

Stripping off the direct identifiers may “anonymize” a file, but it typically won’t be enough to deidentify the data!
Data Characteristics to Consider

Aggregate vs. Individual-level Data
• Individual-level Data
  • Snapshot vs. Longitudinal Data
  • Categorical vs. Continuous Measures
• Aggregate Data
  • Attribute vs. Outcome
  • Single metric vs. Composite Index
  • Student Count vs. Incident Count
  • Thresholds vs. Averages

• Disclosure avoidance is about risk assessment and risk mitigation.

• Different types of data carry different levels of reidentification risk, and thus require different approaches to disclosure avoidance.

• **Remember, not all data is created equal!**

• Note: individual-level data is referred to as record-level data by INK staff
FERPA’s Confidentiality Standard

*Can a “reasonable person” in the school community reidentify the individual with any reasonable certainty?*

**Tabular Data:**
A small degree of uncertainty (“reasonable doubt”) is often sufficient. [e.g., “the rule of 3”]

**Individual-level Data:**
The abundance of data points for each individual, the availability of easy to use data-manipulation and data mining tools, and the ability to link to external data sources make the risk of reidentification much higher.
What rights do parents and eligible students have?

• Right to inspect and review education records;
• Right to request amendment of education records;
• Right to consent to disclosures, with certain exceptions; and
• Right to file a complaint with U.S. Department of Education.
IDEA Provisions and Crossover with FERPA
Part B of the Individuals with Disabilities 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 of the Act, and consistent with §§ 300.611 through 300.627.”
Part C of the Individuals with Disabilities Act (IDEA)

§ 303.402 Confidentiality

“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 lead agencies and EIS providers pursuant to part C of the Act, and consistent with §§ 303.401 through 303.417. The regulations in §§ 303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with [FERPA].”
## Crosswalk of Applicable Terms

<table>
<thead>
<tr>
<th>FERPA</th>
<th>IDEA Part C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education Record</td>
<td>Early intervention record</td>
</tr>
<tr>
<td>Education</td>
<td>Early intervention</td>
</tr>
<tr>
<td>Educational agency or institution</td>
<td>Participating agency</td>
</tr>
<tr>
<td>School official</td>
<td>Qualified early intervention service (EIS) personnel/Service coordinator</td>
</tr>
<tr>
<td>State educational authority</td>
<td>Lead agency</td>
</tr>
<tr>
<td>Student</td>
<td>Child under IDEA Part C</td>
</tr>
</tbody>
</table>
### Who does this apply to?

**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 does this apply to?

<table>
<thead>
<tr>
<th>IDEA Part B</th>
<th>FERPA</th>
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</table>
| Participating agency  
- Any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B. | 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 |
## Whose Records are Protected?

<table>
<thead>
<tr>
<th>IDEA Part C</th>
<th>IDEA Part B</th>
<th>FERPA</th>
</tr>
</thead>
</table>
| **Child** = An individual under the age of 6 and may include an infant or toddler with a disability | **Child with a disability:** Children determined eligible under one of 13 disability categories & needs special education and related services as a result of disability.  
“Records relating to ... children that are collected, maintained or used...” | **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. |
## What Records are Covered?

<table>
<thead>
<tr>
<th>IDEA Part C</th>
<th>IDEA Part B</th>
<th>FERPA</th>
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</thead>
<tbody>
<tr>
<td>IDEA Part C Early Intervention Records</td>
<td>IDEA Part B Education Records</td>
<td>FERPA Education Records</td>
</tr>
<tr>
<td>All records regarding a child that are required to be collected, maintained, or used under Part C.</td>
<td>The type of records covered under the definition of “education records” in FERPA.</td>
<td>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.</td>
</tr>
<tr>
<td>303.403(b)</td>
<td>Records that are collected, maintained, or used</td>
<td>99.3</td>
</tr>
</tbody>
</table>
## When Does this Apply?

<table>
<thead>
<tr>
<th>IDEA Part C</th>
<th>IDEA Part B</th>
<th>FERPA</th>
</tr>
</thead>
<tbody>
<tr>
<td>When the child is <strong>referred</strong> for early intervention services...</td>
<td>Apply to records that are <strong>collected, maintained, or used</strong></td>
<td>When the student is “in attendance at an educational agency or institution”</td>
</tr>
<tr>
<td>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)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Does the Definition of PII Differ?

<table>
<thead>
<tr>
<th>IDEA Part C</th>
<th>IDEA Part B</th>
<th>FERPA</th>
</tr>
</thead>
<tbody>
<tr>
<td>IDEA Part C - 303.32 PII definition refers to FERPA PII definition</td>
<td>IDEA Part B - 300.29 List of personal characteristics or other information that would make it possible to identify the child with reasonable certainty</td>
<td>▪ Information that, alone or in combination, is linked or 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; or</td>
</tr>
<tr>
<td>Except-- student=child school=EIS provider</td>
<td></td>
<td>▪ Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.</td>
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</tbody>
</table>
Inspection and Review of Education Records - FERPA

• School must comply with request within 45 days.
• Schools are generally required to give copies only if failure to do so would effectively deny access, or make other arrangements to inspect and review – example would be a parent or student who does not live within commuting distance.
• School may not destroy records if request for access is pending.
Inspection and Review of Education Records – FERPA (cont.)

May an educational agency or institution charge a fee for copies of education records?

• Yes – unless imposing a fee effectively prevents a parent or eligible student from exercising his or her right to inspect and review education records.

What limitations exist on the right to inspect and review education records?

• If the records contain information on more than one student, the requesting parent or eligible student may inspect, review, or be informed of only the specific information about his or her child’s records.
# IDEA Inspection and Review Provisions

<table>
<thead>
<tr>
<th>IDEA Part C</th>
<th>IDEA Part B</th>
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</thead>
<tbody>
<tr>
<td>Inspect and review any early intervention records ... collected, maintained, or used by the agency ... without unnecessary delay and <strong>before</strong> any meeting regarding an IFSP, or any due process <strong>hearing</strong>, and in no case more than <strong>10 days</strong> after the request has been made. 303.405</td>
<td>Inspect and review any education records ... that are collected, maintained, or used by the agency ... without unnecessary delay and <strong>before</strong> any meeting regarding an IEP, or any due process <strong>hearing</strong>, or resolution session, and in no case more than <strong>45 days</strong> after the request has been made.</td>
</tr>
</tbody>
</table>
IDEA Inspection and Review Provisions

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.
**IDEA Inspection and Review Provisions**

<table>
<thead>
<tr>
<th>IDEA Part B</th>
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</thead>
<tbody>
<tr>
<td>Participating agency</td>
</tr>
<tr>
<td>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.</td>
</tr>
<tr>
<td>May not charge a fee to search for or to retrieve the education records of a student.</td>
</tr>
</tbody>
</table>
Procedures for Amendment of Education Records - FERPA

• Parent or eligible student should identify portion of record believed to contain inaccurate or misleading information.

• School must decide within reasonable period of time whether to amend as requested.

• If school decides not to amend, must inform parent or eligible student of right to a hearing.

• After a hearing, if decision is still not to amend, parent or eligible student has a right to insert a statement in the record.
Procedures for Amendment of Education Records - IDEA

• 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.
# Record of Access

<table>
<thead>
<tr>
<th>IDEA Part C and B</th>
<th>FERPA</th>
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</thead>
</table>
| 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. | 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. |
# Record Retention

<table>
<thead>
<tr>
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<th>FERPA</th>
</tr>
</thead>
<tbody>
<tr>
<td>The participating agency-- Must inform parents when PII collected, maintained,</td>
<td>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.</td>
</tr>
<tr>
<td>or used is no longer needed to provide services. Must destroy information at parent’s</td>
<td></td>
</tr>
<tr>
<td>request (once it is no longer needed). May keep permanent record with child’s</td>
<td></td>
</tr>
<tr>
<td>name, contact and other info. - Part C: DOB, exit data and names of service</td>
<td></td>
</tr>
<tr>
<td>coordinator and EIS provider; Part B: grades, attendance, classes, and grade</td>
<td></td>
</tr>
<tr>
<td>level and year completed).</td>
<td></td>
</tr>
</tbody>
</table>
FERPA Exceptions

*Exceptions May Apply
Right to Consent to Disclosures

Under FERPA: Except for specific exceptions, a parent or eligible student shall provide a signed and dated written consent before a school may disclose education records.

The consent must:

• specify records that may be disclosed;
• state purpose of disclosure; and
• identify party or class of parties to whom disclosure may be made.
What are the exceptions to general consent?

• To school officials with legitimate educational interests (defined in annual notification);
• To schools in which a student seeks or intends to enroll;
• To State and local officials pursuant to a State statute in connection with serving the student under the juvenile justice system;
• To comply with a judicial order or subpoena (reasonable effort to notify parent or student at last known address);
• To accrediting organizations;
• To parents of a dependent student;
What are exceptions to general consent? (cont.)

• To authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs;
• To organizations conducting studies for specific purposes on behalf of schools;
• In a health or safety emergency;
• To child welfare agency or tribal organization for those children in foster care; and
• Directory information.
## Exceptions to Consent - IDEA

<table>
<thead>
<tr>
<th>IDEA Part C</th>
<th>IDEA Part B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remember definition of participating agency</td>
<td>Officials of participating agency</td>
</tr>
<tr>
<td>Transition notification/opt out</td>
<td><strong>Age of majority</strong></td>
</tr>
<tr>
<td>FERPA exceptions - Translation provisions (e.g., school officials)</td>
<td>FERPA exceptions</td>
</tr>
</tbody>
</table>
Audit or Evaluation Exception

• Federal, State, and local officials listed under § 9.31(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.

• The information must be:
  • protected in a manner that does not permit disclosure of PII to anyone; and
  • destroyed when no longer needed for the purposes listed above.
Studies Exception

• Studies conducted “for or on behalf of” schools, school districts, or postsecondary institutions

• Studies must be for the purpose of
  • Developing, validating, or administering predictive tests; or
  • Administering student aid programs; or
  • Improving instruction
CONTACT INFORMATION

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