IDEA and FERPA Privacy Provisions – Understanding the Basics
Introductions

- Ross Lemke
- *IDEA* Data Center (IDC)
- Also work on the Privacy Technical Assistance Center (PTAC)
Questions for the Audience

Please rate your understanding of FERPA

A) What’s FERPA?
B) I know enough to be dangerous.
C) I consider myself an expert on the subject.
Follow-up Question

• Who here works with personally identifiable student data on a daily basis?
• Who here has personally identifiable student data on their computers right now?
Objectives

• Obtain a basic understanding of privacy provisions under IDEA and FERPA
• Understand your responsibility for protecting student data and become a better custodian of the data you are using
• Understand where to go to for help
Why Privacy?

• Increasing national discourse around privacy at the state and national levels
• In education we use more data than ever
• Under state and federal laws, student data are confidential
• Increasing threat of accidental disclosure of data
Family Educational Rights and Privacy Act (FERPA)

• FERPA provides parents the right to
  – inspect and review education records;
  – seek to amend education records; and
  – consent to the disclosure of personally identifiable information from education records, except as provided by law.
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].”
The World Has Changed

When *IDEA* Part C was passed in 1986:

- Ronald Reagan was president of the US.
- Gas was $.93 a gallon.
- IBM unveiled its PC- 1st laptop computer.
- Charlotte Church, the Olsen twins, and Lindsay Lohan were born.
- *Top Gun* was the top grossing film.
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.
The World Has Changed

When *FERPA* was passed in 1974:

- The average house price was $38k.
- The average income was $11k.
- Federal spending was “only” $269B.
- You could buy a PC for the low, low price of $20k.

And…

- Disco was still cool.
- Education records were papers in the principal’s office.
## Who does this apply to?

<table>
<thead>
<tr>
<th>IDEA Part C</th>
<th>IDEA Part B</th>
<th>FERPA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Participating agency</strong></td>
<td><strong>Participating agency</strong></td>
<td><strong>Educational agency or institution</strong></td>
</tr>
<tr>
<td>• Any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C</td>
<td>• Any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B</td>
<td>• 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</td>
</tr>
<tr>
<td>• Includes any individual or entity that provides any Part C services</td>
<td></td>
<td>• to which funds have been made available under any program administered by the Secretary</td>
</tr>
<tr>
<td>• Does not include primary referral sources or public agencies or private entities that act solely as funding sources for Part C services</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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?

• Federally funded
  - Student record with PII and health data: FERPA applies.
  - Health-record only. HIPAA may apply.

• NOT federally funded?
  - Not FERPA protected. HIPAA may apply.
Pop Quiz

Our district has received a request from a university to verify the employment status of several alumni of its teacher preparation program. Is it acceptable under *FERPA* and *IDEA* to disclose their employment status?
Different Laws, Similar Rules

IDEA Part C

IDEA Part B

Who?

When?

FERPA

What?
### Whose records are protected?

<table>
<thead>
<tr>
<th><strong>IDEA Part C</strong></th>
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<th><strong>FERPA</strong></th>
</tr>
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<tbody>
<tr>
<td>Child = An individual under the age of 6 and may include an infant or toddler with a disability</td>
<td>Child with a disability: Children determined eligible under one of 13 disability categories &amp; needs special education and related services as a result of disability</td>
<td>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</td>
</tr>
</tbody>
</table>

“Records relating to ... **children** that are collected, maintained or used...”
What records are covered?

<table>
<thead>
<tr>
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<tr>
<td><strong>IDEA Part C</strong></td>
<td><strong>IDEA Part B</strong></td>
<td><strong>FERPA</strong></td>
</tr>
<tr>
<td><strong>Early Intervention Records</strong></td>
<td><strong>Education Records</strong></td>
<td><strong>Education Records</strong></td>
</tr>
<tr>
<td>All records regarding a child</td>
<td>The type of records covered</td>
<td>Records that are – Directly related to</td>
</tr>
<tr>
<td>that are required to be</td>
<td>under the definition of</td>
<td>student; and Maintained by an educational</td>
</tr>
<tr>
<td>collected, maintained, or used</td>
<td>“education records” in FERPA</td>
<td>agency or institution or by a party acting</td>
</tr>
<tr>
<td>under Part C</td>
<td>Records that are collected,</td>
<td>for the agency or institution 99.3</td>
</tr>
<tr>
<td>303.403(b)</td>
<td>maintained, or used</td>
<td></td>
</tr>
<tr>
<td></td>
<td>300.611(b)</td>
<td></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 <strong>is no longer required to maintain</strong> or no longer maintains that information under applicable Federal and State laws</td>
<td></td>
<td></td>
</tr>
<tr>
<td>303.401(c)(2)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
What else applies?—**HIPAA**

- Establishes standards and imposes requirements to protect the privacy of individually identifiable health information.
- 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).
- Other **HIPAA** Rules may apply.
- Health records on students, including immunization records, maintained by an educational agency or institution subject to **FERPA** are “education records” subject to **FERPA**.
Can we share the data?

Under *FERPA* and *IDEA*, there are no restrictions because the people involved work at your district and are not students.
Pop Quiz

Robert is a high school teacher. He wants to post the results of a math test so he runs a report that has the names, scores, gender, special education status, and race/ethnicity of the students. Robert wants to preserve the privacy of his students so he deletes the column with student name. Is Robert’s approach ok?
What is personally identifiable information (PII)?

- Name
- Date of birth
- Place of birth
- Mother’s maiden name
- Address
- Social Security Number
- Names of parent or other family members
What is personally identifiable information (PII) under FERPA?

- PII is information from education records that would make the student’s identity easily recognized (by itself or in combination with other factors).
- Some examples of PII:
  - Full Name
  - Student ID Number
  - Grade Level AND Race/Ethnicity
What does *IDEA* say?

<table>
<thead>
<tr>
<th>IDEA Part C</th>
<th>IDEA Part B</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>IDEA</em> Part C - 303.32</td>
<td><em>IDEA</em> Part B - 300.29</td>
</tr>
<tr>
<td>PII definition refers to <em>FERPA</em> PII definition</td>
<td>List of personal characteristics or other information that would make it possible to identify the child with reasonable certainty</td>
</tr>
<tr>
<td>Except--</td>
<td></td>
</tr>
<tr>
<td>student=child</td>
<td></td>
</tr>
<tr>
<td>school=EIS provider</td>
<td></td>
</tr>
</tbody>
</table>
So is what Robert did OK?

No. While the student’s name is a direct identifier, gender, special education status, and race/ethnicity are also considered to be personally identifiable information.
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.
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.
What does *IDEA* say about this?

<table>
<thead>
<tr>
<th><strong>IDEA Part C</strong></th>
<th><strong>IDEA Part B</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspect and review any early intervention records ... collected, maintained, or used by the agency ... without unnecessary delay and <strong>before any meeting regarding an IFSP, or any due process hearing, and in no case more than 10 days after the request has been made</strong></td>
<td>Inspect and review any education records ... that are collected, maintained, or used by the agency ... without unnecessary delay and <strong>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</strong></td>
</tr>
</tbody>
</table>
What does *IDEA* say about this?

<table>
<thead>
<tr>
<th><strong>IDEA Part C</strong></th>
<th><strong>IDEA Part B</strong></th>
</tr>
</thead>
</table>
| 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** | 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 |
What are the procedures for amending 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
What does IDEA say about this?

IDEA Parts C and 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, etc.

303.410 (Part C) & 300.618 (Part B)
# Record of Access

<table>
<thead>
<tr>
<th><strong>IDEA Part C and B</strong></th>
<th><strong>FERPA</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contain recordkeeping requirements for participating agencies</td>
<td>Contains recordkeeping requirements for both schools and SEAs</td>
</tr>
<tr>
<td>Keep a record of parties obtaining access to records collected, maintained, or used under <em>IDEA</em> (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.</td>
<td>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.</td>
</tr>
</tbody>
</table>
## Record Retention

<table>
<thead>
<tr>
<th><strong>IDEA Part C and B</strong></th>
<th><strong>FERPA</strong></th>
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</thead>
<tbody>
<tr>
<td>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 C: DOB, exit data and names of service coordinator and EIS provider; Part B: grades, attendance, classes, and grade level and year completed).</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>
</tbody>
</table>
Annual Notification

Schools must annually notify parents of students and eligible students in attendance of their rights under FERPA.
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;
What are exceptions to general consent? (cont.)

• To parents of a dependent student;
• 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><strong>IDEA Part C</strong></th>
<th><strong>IDEA Part B</strong></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><em>FERPA</em> exceptions—Translation provisions (e.g., school officials)</td>
<td><em>FERPA</em> exceptions</td>
</tr>
</tbody>
</table>
# Translation provisions

## Crosswalk of 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>
Privacy Scenario

• A community-based organization that has programs for children with special needs approaches you regarding their programs and asks for the name, address, and telephone number of parents with students in your school who have a disability in order to contact parents regarding their programs.

• You like the programs offered by the organization and believe the programs may be of benefit to the students with disabilities in your school and their parents. Can you share the data with the organization?
Directory Information Exception

Information in a student’s education records that would not generally be considered harmful or an invasion of privacy if disclosed.
Directory Information Exception

• May include:
  ✓ name, address, phone number, and email address
  ✓ photograph
  ✓ date and place of birth
  ✓ most recent school attended; grade level and major field of study
  ✓ dates of attendance (e.g., year or semester)
  ✓ participation in officially recognized sports and activities; height and weight of athletes
  ✓ degrees, honors, and awards received, and

• Can never include Social Security number
• Can’t disclose non-directory information with directory information
Directory Information

- Public notice must be given to parents of students in attendance and eligible students in attendance.
- Parents may choose to “opt-out” of the disclosure of directory information on their child.
- School may adopt a limited directory information policy that allows for the disclosure of directory information to specific parties, for specific purposes, or for both.
Pop Quiz

Mr. Gray is a parent volunteer in your resource classroom for students with learning disabilities. Mr. Gray’s assignment is to work with a small group of students on math skills. You provide him with the math achievement scores, classroom test reports, and other math-related information from the special education records of each individual student he is assisting.

Is it permissible for you to share the individual math test scores and other related information with Mr. Gray without the consent or knowledge of the parents of the students?
School Official Exception

- Schools may disclose PII from education records without consent if the disclosure is to other school officials, including teachers, within the school whom the school has determined to have legitimate educational interest.

- Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.
School Official Exception, Cont.

• Outsourcing services under school official exception
  – Schools may outsource institutional services or functions that involve the disclosure of education records to contractors, consultants, volunteers, or other third parties provided certain conditions are met.
  – If these outside parties meet the conditions for outsourcing, they may have access to education records.
School Official Exception, Cont.

- Conditions for outsourcing:
  - 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;
  - PII from education records may be used only for the purposes for which the disclosure was made;
  - Meets the criteria specified in the school, LEA, or institution’s annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.
Can Mr. Gray see the student data?

Yes. In this case, Mr. Gray is providing a service the school would otherwise be performing.

Remember to check the definition of a school official in your annual notification.
Disclosure to Officials of Another School

• Consent is not required to disclose personally identifiable information from education records to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for the purposes related to the student’s enrollment or transfer.
Parents of a Dependent Student Exception

- Consent is not required if the disclosure is to parents, as defined in §99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.
Health or Safety Emergencies Exception

- 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
- School makes determination on case-by-case basis
Uninterrupted Scholars Act

New exception to the general consent rule passed by Congress January, 2013, P.L. 112-278.

• Disclosure permitted to: “agency caseworker or other representative” of a State or local child welfare agency (CWA) or tribal organization who has the right to access a student’s case plan

• Disclosure permitted when: the CWA or tribal organization is “legally responsible … for the care and protection of the student”
POP QUIZ: Judicial Order or Subpoena

• Does FERPA require schools to disclose information from education records pursuant to a judicial order or subpoena?

• Yes or No
Judicial Orders & Subpoenas

Exception

- 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.

- Some judicial orders and subpoenas are exempt from FERPA’s notification requirement.
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.
What are written agreements?

- Mandatory for LEA or SEA disclosing PII without consent under audit/evaluation
- Mandatory for school or LEA for disclosing to outside organization under the studies exception, or for SEA redisclosing for, or on behalf of, school or LEA
FAQ – Emailing Public Records

Can you email IEP’s?

IDEA Answer

– Yes, providing the agency and the parent agree providing that there are sufficient safeguards in the process
Where do I go for help?
Resources

• *IDEA and FERPA Confidentiality Provisions* (5/31/2014)
• *How FERPA was amended by the Uninterrupted Scholars Act* (5/27/2014)
• *OSEP Policy letters* (various)
  http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/index.html#topiclist
• *OSEP Letter to ITCA* (7/19/2013)
• *FPCO Letter to Edmunds* (12/7/2012)
• *Joint FERPA-HIPAA Guidance* (11/2008)
• *FERPA Webinars* (Ongoing)
FERPA Training Videos

- Interactive quizzes, animated vignettes, and more

In the following vignette, Liam is an elementary-school student and Nurse Ginny is a school nurse. After you view the vignette, you will be asked to answer a question about the information contained in a student’s school health records.
Training Videos

Student Privacy 101: FERPA for Parents and Students

Protecting Student Privacy While Using Online Educational Services
USED-Funded TA Centers

For questions on IDEA data contact:
• ideadata@westat.com
  888-819-7024

For questions on FERPA and data privacy contact:
• PrivacyTA@ed.gov | Toll-Free Phone: 855-249-3072
Questions?
Thank you

• Visit the IDC website at: http://ideadata.org/
• Follow us on Twitter: https://twitter.com/ideadatacenter
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