



IDEA Part C Confidentiality Checklist

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IDEA Part C Confidentiality Checklist

The IDEA Data Center (IDC) designed the following checklist to aid state agencies and early intervention programs and service providers in identifying actions, policies, and procedures needed to meet confidentiality provisions outlined in the implementing regulations for Part C of the *Individuals with Disabilities Education Act* (IDEA), at 34 CFR Part 303. This checklist is organized by broad categories, and within those categories, the checklist provides a detailed description of what participating agencies must do to meet the confidentiality provision for each category. The evidence column can be used to document how confidentiality requirements are being implemented or to identify the location of source documentation. The action item column can be used to identify actions participating agencies may need to take to implement the required confidentiality provisions.

Confidentiality provision	What agencies and providers must do to meet the provision	Evidence (such as source document, policy)	Action items
<i>Safeguards</i>			
§303.415 Procedures participating agencies must have in place to ensure the privacy of data related to infants and toddlers with disabilities and their families	<ul style="list-style-type: none"> <input type="checkbox"/> Each participating agency must protect the confidentiality of personally identifiable information at collection, maintenance, use, storage, disclosure, and destruction stages. <input type="checkbox"/> One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. <input type="checkbox"/> All persons collecting or using personally identifiable information must receive training or instruction regarding the state’s policies and procedures under Confidentiality of Personally Identifiable Information, 34 CFR §§303.401 through 303.417, and the <i>Family Educational Rights and Privacy Act</i> (FERPA), 34 CFR Part 99. <input type="checkbox"/> Each participating agency must maintain for public inspection a current listing of the names and positions of agency employees who may have access to personally identifiable information. 	Possible Examples: <i>data governance policies and procedures, training plan for participating agency employees using personally identifiable information, database or document that lists employees with access to personally identifiable information</i>	

Confidentiality provision	What agencies and providers must do to meet the provision	Evidence (such as source document, policy)	Action items
<i>Destruction of Information</i>			
§303.416 Requirements for data that are no longer needed	<ul style="list-style-type: none"> <input type="checkbox"/> Each participating agency must inform parents when the agency no longer needs personally identifiable information the agency collected, maintained, or used under Part C to provide educational services to the child under Part C of IDEA, the <i>General Education Provisions Act</i> (GEPA) provisions in 20 U.S.C. 1232f, and Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 76 and 80. <input type="checkbox"/> Subject to the bullet above, the agency must destroy information at the request of the parents. However, the agency may maintain, without time limitation, a permanent record of a child’s name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and early intervention services (EIS) provider(s), and exit data (including year and age upon exit, and any programs the child entered into upon exiting). 	Possible Examples: <i>parent notification form letter, Individual Family Service Plan, Parent’s Rights Document, data governance destruction policy and procedures that contain a timeline for record retention and destruction.</i>	
<i>Enforcement</i>			
§303.417 Procedures to ensure compliance with IDEA Part C and FERPA	<ul style="list-style-type: none"> <input type="checkbox"/> The lead agency must have in effect the policies and procedures, including sanctions and the right to file a complaint under §§303.432 through 303.434, that the state uses to ensure that its policies and procedures, consistent with §§303.401 through 303.417, are followed and that the requirements of IDEA and the regulations in Part C are met. 	Possible Examples: <i>data governance or privacy program charter and policies, monitoring and complaint procedures</i>	

Confidentiality provision	What agencies and providers must do to meet the provision	Evidence (such as source document, policy)	Action items
<i>Transparency</i>			
§303.408 List of types and locations of information	<input type="checkbox"/> On request, each participating agency must provide parents with a list of the types and locations of early intervention records the agency collects, maintains, or uses.	Possible Example: <i>IDEA data inventory or agency data dictionary</i>	
§303.404 Notice to parents about rights under IDEA Part C	<input type="checkbox"/> The lead agency must give notice to parents to fully inform them about the confidentiality requirements of IDEA Part C, including the following: <ul style="list-style-type: none"> ○ a description of the children about whom the agency maintains personally identifiable information, the types of information the agency seeks, the methods the state intends to use in gathering the information (including the sources from which the state will gather information), and the uses the state will make 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 personally identifiable information; ○ 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 to which the agency provides notice in the native languages of the various population groups in the state. 	Possible Examples: <i>public notice on confidentiality requirements of IDEA Part C, location of the summary of participating agency policies and procedures</i>	

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<i>Record of Access</i>			
§303.406 Maintaining list of parties accessing early intervention records	<input type="checkbox"/> Each participating agency must keep a record of parties obtaining access to early intervention records the agency collected, maintained, or used under Part C of IDEA (except access by parents and authorized representatives and employees of the participating agency), including the name of the party, the date the agency gave access, and the purpose for which the party is authorized to use the early intervention records.	Possible Examples: <i>data governance policy on record of access, audit access logs in child/family information system, access logs for paper records</i>	
<i>Consent</i>			
§303.7 §303.414 Consent requirements	<input type="checkbox"/> Consent forms must describe the activity for which the agency is seeking parental consent and list the early intervention records (if any) that the agency will release and to whom the agency will release them. <input type="checkbox"/> The agency must seek consent in the native language of parents, as defined in §303.25 . <input type="checkbox"/> Requests must clearly indicate consent is voluntary and parents can revoke consent at any time. <ul style="list-style-type: none"> ○ 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). 	Possible Examples: <i>data governance policy on release of records, consent form that lists records covered and uses for those records, opt-out policy, repository (electronic and/or paper) for gathering opt-outs</i>	

Confidentiality provision	What agencies and providers must do to meet the provision	Evidence (such as source document, policy)	Action items
<i>Consent (Continued)</i>			
§303.29 §303.414 §303.401 Process or procedure to ensure parents have granted consent before sharing personally identifiable information	<input type="checkbox"/> A lead agency or other participating agency may not disclose personally identifiable information (PII), as defined in §303.29, to any party except participating agencies (including the lead agency and EIS providers) that are part of the state’s Part C system without parental consent unless authorized to do so under any of the following: <ul style="list-style-type: none"> ○ one of the exceptions under FERPA, which are expressly adopted to apply to Part C¹; ○ the Opt-Out Policy Exception, which states that the lead agency must disclose to the state and local education agency where the child resides the following PII—child’s name, child’s date of birth, and parent contact information (including parents’ names, addresses, and telephone numbers)—in order to identify all children potentially eligible for services under IDEA Part B; or 	Possible Examples: <i>documented procedure for gathering consent, storage repository for signed and dated consent forms, opt-out exception policy, repository (electronic and/or paper) for gathering opt-outs</i>	

¹ §303.414(b)(2)(i)-(iv) applies FERPA to Part C with these translations terms: (1) “34 CFR 99.30(2)” = Sec 304.414(a); (2) “education records” = early intervention records; (3) “educational” = early intervention; (4) “educational agency or institution” = participating agency; (5) “school officials and officials of another school or school system” = qualified personnel or service coordinators; (6) “state and local authorities” = lead agency; and (7) “student” = child.

Confidentiality provision	What agencies and providers must do to meet the provision	Evidence (such as source document, policy)	Action items
<i>Consent (Continued)</i>			
	<ul style="list-style-type: none"> ○ policies and procedures adopted by the lead agency that require EIS providers to inform parents of the intended disclosure under the Opt-Out Exception and to give those parents a specified time to oppose to the disclosure in writing. <ul style="list-style-type: none"> ▪ If a parent objects during the time period the state provides, the lead agency and EIS providers are not permitted to make a disclosure under this exception. 		
<i>Parental Inspection</i>			
<p>§303.401 §303.405 §303.407 §303.409 Process/ procedure to allow parental inspection, including charging fees for copies of early intervention records</p>	<ul style="list-style-type: none"> □ The state affords parents of infants or toddlers who are referred to or receive services under Part C the opportunity to inspect and review all Part C early intervention records about the child and the child’s family that the state collects, maintains, or uses under this part, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of individualized family service plans (IFSPs), provision of early intervention services, individual complaints involving the child, or any part of the child’s early intervention record under this part. □ Participating agencies must permit parents to inspect and review any early intervention records relating to their child without unnecessary delay and before an IFSP meeting or any hearing and in no case more than 10 days after the parents have made the request. 	Possible Examples: <i>data governance policies on access and security, record review request procedure, record request form, state/local process handbook or procedure manual.</i>	

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<i>Parental Inspection (Continued)</i>			
	<ul style="list-style-type: none"> <input type="checkbox"/> Participating agencies must respond to reasonable requests for explanations and interpretations of the early intervention records. <input type="checkbox"/> If an early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information. <input type="checkbox"/> Participating agencies must provide copies of the early intervention records containing the information parents request if failure to provide these copies would effectively prevent the parents from exercising their right to inspect and review the records. <input type="checkbox"/> Parents have a right to have a representative inspect and review the early intervention records. <input type="checkbox"/> Participating agencies may charge a fee for copies of a record if charging a fee does not effectively prevent the parents from exercising their right to inspect and review those records. <input type="checkbox"/> Participating agencies may NOT charge a fee to search or retrieve information under Part C. <input type="checkbox"/> Participating agencies 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. 		

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<i>Parental Inspection (Continued)</i>			
<p>§303.410 §303.411 §303.412 §303.413 Process to request amendment of records including the right to a hearing</p>	<ul style="list-style-type: none"> <input type="checkbox"/> A parent who believes that information in the early intervention records the state collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. <input type="checkbox"/> If a parent requests an amendment, agencies <ul style="list-style-type: none"> ○ can amend the record within a reasonable time; or ○ inform the parent that the agency refused the amendment request and of the opportunity to request a hearing. <input type="checkbox"/> Upon request, agencies must provide an opportunity for a hearing to challenge information in the early intervention record of a child. <input type="checkbox"/> If the early intervention record of a child is amended as a result of a hearing, the agencies must inform the parent in writing. <ul style="list-style-type: none"> ○ The agency must conduct a hearing held under §303.411 according to the procedures under FERPA. 	<p>Possible Examples: <i>record amendment procedure, storage repository (electronic and/or) for signed and completed forms, procedure for hearings, parents rights document, state/local process handbook or procedure manual.</i></p>	

Confidentiality provision	What agencies and providers must do to meet the provision	Evidence (such as source document, policy)	Action items
<i>Parental Inspection (Continued)</i>			
	<input type="checkbox"/> If the agency does not amend an early intervention record of a child as a result of the hearing, agencies must inform the parent of his/her right to include a statement explaining that he/she disagrees with the respective agency's decision and why. <ul style="list-style-type: none"> ○ The agency must maintain the statement of disagreement as part of the child's records. ○ If the agency discloses the child's early intervention record or the contested portion to any party, the agency must also disclose the explanation to the party. 		