



IDEA and FERPA Crosswalk

A side-by-side comparison of the privacy provisions under Parts B and C of the IDEA and FERPA.

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The specific definitions that apply under Parts B and C of the IDEA and FERPA vary (e.g. to whom the confidentiality provisions apply and whose rights are protected such as child/student/parent).

The definition of education record is the same under IDEA Part B and FERPA. The definition of a “participating agency” is different under the IDEA Part B and Part C regulations and applies differently in different States under IDEA Part C depending on how the State delivers IDEA Part C services. FERPA applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of the U.S. Department of Education. The definitions of PII are generally the same across all three statutes; they are slightly different under IDEA Part B and Part C and the definition of PII under IDEA Part C is the same as FERPA.

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All three statutes (IDEA Parts B and C and FERPA) require the protection of privacy of children or eligible students covered by the respective statutes and their regulations. While the IDEA Part B and Part C provisions are consistent with, and incorporate protections under, FERPA, the IDEA Part B and Part C confidentiality provisions include several provisions that are specifically related to infants, toddlers and children with disabilities receiving services under IDEA and provide protections beyond the FERPA requirements. When analyzing the privacy and confidentiality requirements for children with disabilities, it is critical to begin by examining the IDEA requirements first.

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Consent under Parts B and C of the IDEA and FERPA requires that the consent be prior, written parental consent where for consent to disclose of PII from records, the records must be identified. The definition of consent under Parts B and C of the IDEA have broader applicability than the definition of consent under FERPA which applies only to disclosure of PII from education records. Consent under Parts B and C of the IDEA must be informed.

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Generally, under all three statutory/regulatory frameworks, Parts B and C of the IDEA and FERPA all provide parents the right to access and amend records and dispute resolution provisions. While Parts B and C of the IDEA require parents be provided copies of certain records, generally, FERPA does not require parents to be provided copies of records.

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1. **Applicability:** *IDEA section 617(c) requires the Secretary of the U.S. Department of Education (ED) to adopt confidentiality provisions that are consistent with FERPA but also include additional protections under Parts B and C of the IDEA. These provisions are reflected in IDEA Part B in 34 CFR 300.610 through 300.627 and IDEA Part C in 34 CFR 303.401 through 303.417. FERPA applies to educational agencies and institutions that receive funds from ED.*

Applicability	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ¹	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Eligibility for Specific Federal Education Funding	<u>Sec. 617(c). Confidentiality.</u> The Secretary shall take appropriate action, in accordance with the provisions of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this part. <u>Sec. 612. State eligibility.</u> (a) In General.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions: (6) Procedural safeguards.— (A) In general.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.	<u>Sec. 617(c) Confidentiality.</u> The Secretary shall take appropriate action, in accordance with the provisions of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State (lead agency) and early intervention service providers pursuant to the provisions of this part (as modified by IDEA Section 642). <u>Sec. 634. Eligibility.</u> In order to be eligible for a grant under section 633, a State shall provide assurances to the Secretary that the State— (1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and (2) has in effect	<u>Sec. 1232g. Family educational and privacy rights.</u> (a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions. (1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. (b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping (1) No funds shall be made available under any applicable program to any educational

¹The IDEA statute is codified at 20 U.S.C. 1401 *et seq.* and the IDEA statute is cited above by its public law sections (i.e., Sec. 612 is 20 U.S.C. 1412). The IDEA regulations are codified in 34 CFR Part 300 (for the 2006 IDEA Part B regulations) and 34 CFR Part 303 (for the IDEA Part C regulations). The FERPA statute is at 20 U.S.C. 1232g and the FERPA regulations are in 34 CFR Part 99.

Applicability	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ¹	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	(8) Confidentiality.—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information). <u>Sec. 615. Procedural safeguards.</u> (b) Types of Procedures.—The procedures required by this section shall include the following: (1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.	a statewide system that meets the requirements of section 635. <u>Sec. 635. Requirements for statewide system.</u> (a) In General.—A statewide system described in section 633 shall include, at a minimum, the following components: (13) Procedural safeguards with respect to programs under this part, as required by section 639. <u>Sec. 639. Procedural safeguards.</u> (a) Minimum Procedures.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following... (2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law... (4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.	agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following...

2. **Definitions:** *It is important to review the definitions under Parts B and C of the IDEA and FERPA because although conceptually there are similarities, there are also critical differences. For example, who must comply with the privacy provisions and whose rights are protected (such as child/student/parent). The definition of education record is the same under IDEA Part B and FERPA. The definition of a “participating agency” is different under the IDEA Part B and Part C regulations and applies differently in different States under IDEA Part C depending on how the State delivers IDEA Part C services. FERPA applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of the U.S. Department of Education. The definitions of PII are generally the same across all three statutes; they are slightly different under IDEA Part B and Part C and the definition of PII under IDEA Part C is the same as FERPA.*

Definitions	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ²	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Child/Student/Parent ³	<u>§ 300.8 Child with a disability.</u> (a) General. (1) Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. (2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a	<u>§ 303.6 Child.</u> Child means an individual under the age of six and may include an infant or toddler with a disability, as that term is defined in § 303.21. <u>§ 303.27 Parent.</u> (a) Parent means— (1) A biological or adoptive parent of a child; (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a	<u>§ 99.3 [Definitions].^{5]}</u> <u>Student</u>, except as otherwise specifically provided in this part, means 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. <u>Eligible student</u> means a student who has reached 18 years of age or is attending an institution of postsecondary education. <u>Parent</u> means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian. <u>Attendance</u> includes, but is not limited to— (a) Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic

²The IDEA statute is codified at 20 U.S.C. 1401 *et seq.* and the IDEA statute is cited above by its public law sections (i.e., Sec. 612 is 20 U.S.C. 1412). The IDEA regulations are codified in 34 CFR Part 300 (for the 2006 IDEA Part B regulations) and 34 CFR Part 303 (for the IDEA Part C regulations). The FERPA statute is at 20 U.S.C. 1232g and the FERPA regulations are in 34 CFR Part 99.

³For students who reach the age of 18, or the age of majority, see Part B regulation in 34 CFR § 300.625 and FERPA regulation in 34 CFR § 99.5.

⁵The FERPA definitions included in this column of the document are those that have parallel definitions under IDEA Parts B and C.

Definitions	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ²	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	related service and not special education, the child is not a child with a disability under this part. (ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section. <u>§ 300.30 Parent.</u> (a) Parent means— (1) A biological or adoptive parent of a child; (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act [IDEA].	grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) A surrogate parent who has been appointed in accordance with § 303.422 or section 639(a)(5) of the Act [IDEA]. (b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention service decisions for the child. (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (a)(4) of this section to act as the “parent” of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the “parent” for purposes of part C of the Act [IDEA], except that if an EIS provider⁴ or a public agency provides any services to a child or any family member of that child, that	information and telecommunications technologies for students who are not physically present in the classroom; and (b) The period during which a person is working under a work-study program. <u>Dates of attendance.</u> (a) The term means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter. (b) The term does not include specific daily records of a student's attendance at an educational agency or institution.

⁴“EIS provider” refers to the early intervention service provider under Part C of the IDEA and is defined in 34 CFR § 303.12.

Definitions	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ²	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	(b)(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.	EIS provider or public agency may not act as the parent for that child.	
Education Record	<u>§ 300.611 Definitions.</u> (b) Education records means the type of records covered under the definition of “education records” in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).	<u>§ 303.403 Definitions.</u> (b) Early intervention records mean all records regarding a child that are required to be collected, maintained, or used under part C of the Act [IDEA] and the regulations in this part.	<u>§ 99.3 [Definitions.] Education records.</u> (a) The term means those 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. (b) The term does not include: (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

Definitions	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ²	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
			(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8. (3)(i) Records relating to an individual who is employed by an educational agency or institution, that: (A) Are made and maintained in the normal course of business; Record means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.
Participating Agency/ Educational Agency or Institution	<u>§ 300.611 Definitions.</u> (c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act [IDEA].	<u>§ 303.403 Definitions.</u> (c) Participating agency means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in part C of the Act [IDEA] and the regulations in this part with respect to a particular child. A participating agency includes the lead agency and EIS [early intervention service] providers and any individual or entity that provides any part C services (including service coordination, evaluations and assessments, and other part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP [Children's Health Insurance Program]) or private entities (such as private insurance companies) that act	<u>§ 99.3 [Definitions.]</u> Educational agency or institution means any public or private agency or institution to which this part applies under § 99.1(a).

Definitions	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ²	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303 solely as funding sources for part C services.	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Personally Identifiable Information (PII)	<u>§ 300.32 Personally identifiable.</u> Personally identifiable means information that contains— (a) The name of the child, the child's parent, or other family member; (b) The address of the child; (c) A personal identifier, such as the child's social security number or student number; or (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.	<u>§ 303.29 Personally identifiable information</u> Personally identifiable information means personally identifiable information as defined in 34 CFR 99.3 [See FERPA column], as amended, except that the term “student” in the definition of personally identifiable information in 34 CFR 99.3 means “child” as used in this part and any reference to “school” means “EIS [early intervention service] provider” as used in this part.	(e) Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name; (f) 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 (g) 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. Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

3. **Confidentiality:** All three statutes (IDEA Parts B and C and FERPA) require the protection of privacy of children or eligible students covered by the respective statutes and their regulations. While the IDEA Part B and Part C provisions are consistent with, and incorporate protections under, FERPA, the IDEA Part B and Part C confidentiality provisions include several provisions that are specifically related to infants, toddlers and children with disabilities receiving services under IDEA and provide protections beyond the FERPA requirements. When analyzing the privacy and confidentiality requirements for children with disabilities, it is critical to begin by examining the IDEA requirements first.

Confidentiality	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ⁶	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Confidentiality	<u>Sec. 617. Administration.</u> (c) Confidentiality.— The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act [GEPA], to ensure the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies [SEAs] and local educational agencies [LEAs] pursuant to this part. <u>§ 300.610 Confidentiality.</u> The Secretary takes appropriate action, in accordance with section 444 of GEPA, 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 [IDEA], and consistent with §§ 300.611 through 300.627.	<u>Sec. 617. Administration.</u> (c) Confidentiality.— The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act [GEPA], to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies [SEAs] and local educational agencies [LEAs] pursuant to this part.⁷ <u>§ 303.402 Confidentiality.</u> The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by lead agencies and EIS [early intervention service] providers pursuant to part C of the Act [IDEA], and consistent with §§ 303.401	<u>§ 99.2 What is the purpose of these regulations?</u> The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 444 of the General Education Provisions Act, as amended.

⁶The IDEA statute is codified at 20 U.S.C. 1401 *et seq.* and the IDEA statute is cited above by its public law sections (i.e., Sec. 612 is 20 U.S.C. 1412). The IDEA regulations are codified in 34 CFR Part 300 (for the 2006 IDEA Part B regulations) and 34 CFR Part 303 (for the IDEA Part C regulations). The FERPA statute is at 20 U.S.C. 1232g and the FERPA regulations are in 34 CFR Part 99.

⁷IDEA Sec. 642 applies IDEA Sec. 617 to Part C with these translations terms: (1)“SEA” = State Lead Agency; (2)“LEA or SEA” = EIS [early intervention service] provider; (3)“education” = early intervention, and “children with disabilities” = infants and toddlers with disabilities.

Confidentiality	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ⁶	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
		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 the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99. <u>§ 303.401 Confidentiality and opportunity to examine records.</u> (a) General. Each State must ensure that the parents of a child referred under this part are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and State laws. (b) Confidentiality procedures. As required under sections 617(c) and 642 of the Act [IDEA], 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,	

Confidentiality	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ⁶	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
		in accordance with the protections under [FERPA] in 20 U.S.C. <u>1232g and 34 CFR part 99.</u> Each State must have procedures in effect to ensure that— (1) Participating agencies (including the lead agency and EIS providers) comply with the part C confidentiality procedures in §§ 303.401 through 303.417; and ... (c) Applicability and timeframe of procedures. The confidentiality procedures described in paragraph (b) of this section apply to the personally identifiable information of a child and the child's family that— (d) Is contained in early intervention records collected, used, or maintained under this part by the lead agency or an EIS provider; and (e) Applies from the point in time when the child is referred for early intervention services under this part 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.	

4. **Consent** under Parts B and C of the IDEA and FERPA requires that the consent be prior, written parental consent where for consent to disclose of PII from records, the records must be identified. The definition of consent under Parts B and C of the IDEA have broader applicability than the definition of consent under FERPA which applies only to disclosure of PII from education records. Consent under Parts B and C of the IDEA must be informed and the definition of consent applies to other areas of IDEA (e.g. service provision, use of insurance, etc.).

Consent	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ⁸	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Requirement of Consent	<u>§ 300.622 Consent.</u> (a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99. ... (b)(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with § 300.321(b)(3). (3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA [local educational agency] of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where	<u>§ 303.414 Consent prior to disclosure or use.</u> (a) Except as provided in paragraph (b) of this section, prior parental consent must be obtained before personally identifiable information is— (1) Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this part, subject to paragraph (b) of this section; or (2) Used for any purpose other than meeting a requirement of this part. <u>§ 303.401 Confidentiality and opportunity to examine records.</u> (a) General. Each State must ensure that the parents of a child referred under this part are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and State laws.	<u>§ 99.30 Under what conditions is prior consent required to disclose information?</u> (a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in § 99.31.

⁸The IDEA statute is codified at 20 U.S.C. 1401 *et seq.* and the IDEA statute is cited above by its public law sections (i.e., Sec. 612 is 20 U.S.C. 1412). The IDEA regulations are codified in 34 CFR Part 300 (for the 2006 IDEA Part B regulations) and 34 CFR Part 303 (for the IDEA Part C regulations). The FERPA statute is at 20 U.S.C. 1232g and the FERPA regulations are in 34 CFR Part 99.

Consent	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ⁸	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	the private school is located and officials in the LEA of the parent's residence.		
Exceptions to Consent	<u>§ 300.622 Consent.</u> (a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99. (b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.	<u>§ 303.414 Consent prior to disclosure or use.</u> (b) A lead agency or other participating agency may not disclose personally identifiable information, as defined in § 303.29, to any party except participating agencies (including the lead agency and EIS providers [early intervention services providers]) that are part of the State's part C system without, parental consent unless authorized to do so under— 1. [Opt-Out Policy Exception—see below] Sections 303.401(d), 303.209(b)(1)(i) and (b)(1)(ii), and 303.211(b)(6)(ii)(A); or 2. [FERPA—see FERPA column] One of the exceptions enumerated in 34 CFR 99.31 (where applicable to part C), which are expressly adopted to apply to part C through this reference. In applying the exceptions in 34 CFR 99.31 to this part, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39;⁹	<u>§ 99.31 Under what conditions is prior consent not required to disclose information?</u> [Under FERPA, a school may not disclose personally identifiable information (PII) from a student's education record unless the parent or eligible student has provided written consent, or unless the disclosure meets an exception to FERPA's general consent requirement. These exceptions are found in FERPA § 99.31, and the Uninterrupted Scholars Act, and Secretary of Agriculture exceptions currently found only in the statute at 20 U.S.C. § 1232g. Listed below are the FERPA exceptions in § 99.31 that are generally applicable to children/students served under the IDEA regarding disclosures made. Exceptions have been summarized for brevity.] (1) To "school officials" who have been determined to have "legitimate educational interests" applying the criteria specified in the school's or school district's annual notification of FERPA rights; (2) To another school or school system in which the student seeks or intends to enroll

⁹ § 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; (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

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		<u>Opt-Out Policy Exception:</u> <u>§ 303.401 Confidentiality and opportunity to examine records.</u> (d) Disclosure of information. (1) Subject to paragraph (e) of this section, the lead agency must disclose to the SEA and the LEA [State and local educational agency] where the child resides, in accordance with § 303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information under the Act: (i) A child's name. (ii) A child's date of birth. (iii) Parent contact information (including parents' names, addresses, and telephone numbers). 3. The information described in paragraph (d)(1) of this section is needed to enable the lead agency, as well as LEAs and SEAs under part B of the Act [IDEA], to identify all children potentially eligible for services under § 303.211 and part B of the Act. (e) Option to inform a parent about intended disclosure. (1) A lead agency, through its policies and procedures, may require EIS providers, prior to making the limited disclosure described in paragraph (d)(1) of this section, to inform parents of a toddler with a disability of the intended disclosure and allow the parents a specified time period to object to the disclosure in writing. (2) If a parent (in a State that has adopted the policy described in paragraph (e)(1) of this section) objects during the time period	provided certain notification requirements are met; (3) To "authorized representatives" of the U.S. Secretary of Education, the Comptroller General of the United States, the Attorney General of the United States, and State and local educational authorities for audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs (subject to the requirements of § 99.35); (4) To appropriate parties in connection with financial aid for which the student has applied or which the student has received; (5) To State and local authorities pursuant to a State statute concerning the juvenile justice system and the system's ability to effectively serve the student whose records are being disclosed; for state statutes adopted after November 19, 1974, the State statute must concern the juvenile justice system's ability to serve the student prior to the student's adjudication and the official and authorities to whom the records are disclosed must certify in writing that the records/information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student. (6) To organizations conducting studies for, or on behalf of, educational agencies and institutions for the purposes of developing, validating, or administering predictive tests,

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		provided by the State, the lead agency and EIS provider are not permitted to make such a disclosure under paragraph (d) of this section and § 303.209(b)(1)(i) and (b)(1)(ii).	administering student aid programs, or improving instruction; (7) To accrediting organizations to carry out their accrediting functions; (8) To the parents of an eligible student if the student is a “dependent student” as defined in Section 152 of the Internal Revenue Code; (9) To comply with a judicial order or a lawfully issued subpoena; (10) To appropriate parties in connection with a health or safety emergency; (11) “Directory information” provided the school gave public notice of the types of information it has designated as directory information, the parent or eligible student's right to restrict the disclosure of such information, and the period of time within which a parent or eligible student has to notify the school that he or she does not want any or all of those types of information designated as directory information; and (12) To the parent of a student who is not an eligible student or to the student.

5. **Inspection and Review:** *Generally, under all three statutory/regulatory frameworks, Parts B and C of the IDEA and FERPA all provide parents the right to access and amend records and dispute resolution provisions. While Parts B and C of the IDEA require parents be provided copies of certain records, generally, FERPA does not require parents to be provided copies of records.*

Inspection and Review	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ¹⁰	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Access Rights	<u>§ 300.613 Access rights.</u> (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made. (b) The right to inspect and review education records under this section includes— (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and (3) The right to have a representative of the parent inspect and review the records.	<u>§ 303.405 Access rights.</u> (a) Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to §§ 303.430(d) and 303.435 through 303.439, and in no case more than 10 days after the request has been made. (b) The right to inspect and review early intervention records under this section includes— (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records; (2) The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and	<u>§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?</u> (a) Except as limited under § 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to— (1) Any educational agency or institution; and (2) Any State educational agency (SEA) and its components. (i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution. (ii) An SEA and its components are subject to subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part. (b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

¹⁰The IDEA statute is codified at 20 U.S.C. 1401 *et seq.* and the IDEA statute is cited above by its public law sections (i.e., Sec. 612 is 20 U.S.C. 1412). The IDEA regulations are codified in 34 CFR Part 300 (for the 2006 IDEA Part B regulations) and 34 CFR Part 303 (for the IDEA Part C regulations). The FERPA statute is at 20 U.S.C. 1232g and the FERPA regulations are in 34 CFR Part 99.

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	(c) An agency 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.	(3) The right to have a representative of the parent inspect and review the early intervention records. (c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce. <u>§ 303.401 Confidentiality and opportunity to examine records.</u> (b)(2) The parents of infants or toddlers who are referred to, or receive services under this part, are afforded the opportunity to inspect and review all part C early intervention records about the child and the child's family that are collected, maintained, or used under this part, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this part.	(c) The educational agency or institution, or SEA or its component shall respond to reasonable requests for explanations and interpretations of the records. (d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall— (1) Provide the parent or eligible student with a copy of the records requested; or (2) Make other arrangements for the parent or eligible student to inspect and review the requested records. (e) The 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 under this section. (f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of Education records in § 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice. <u>§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?</u> (c) The following parties may inspect the record relating to each student: (1) The parent or eligible student.

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			(2) The school official or his or her assistants who are responsible for the custody of the records. (3) Those parties authorized in § 99.31(a)(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.
Fees for Records	<u>§ 300.617 Fees.</u> (a) Each 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. (b) A participating agency may not charge a fee to search for or to retrieve information under this part.	<u>§ 303.409 Fees for records.</u> (a) Each 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. (b) A participating agency may not charge a fee to search for or to retrieve information under this part. (c) A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP [Individualized Family Service Plan] as soon as possible after each IFSP meeting.	<u>§ 99.11 May an educational agency or institution charge a fee for copies of education records?</u> (a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student. (b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.
Amendment of Record at Parent's Request	<u>§ 300.618 Amendment of records at parent's request.</u> A parent who believes that information in the education records 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	<u>§ 303.410 Amendment of records at a parent's request.</u> A parent who believes that information in the early intervention records collected, maintained, or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency	<u>§ 99.20 How can a parent or eligible student request amendment of the student's education records?</u> (a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may

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	maintains the information to amend the information. (a) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 300.619.	that maintains the information amend the information. The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 303.411.	ask the educational agency or institution to amend the record. (b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request. (c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under § 99.21.
Opportunity for Hearing	<u>§ 300.619 Opportunity for a hearing.</u> The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.	<u>§ 303.411 Opportunity for a hearing.</u> The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in § 303.430(d)(1) provided that such hearing procedures meet the requirements of the hearing procedures in § 303.413 or may request a hearing directly under the State's procedures in § 303.413 (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).	<u>§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?</u> (a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student.
Result of Hearing	<u>§ 300.620 Result of hearing.</u> (a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the	<u>§ 303.412 Result of hearing.</u> (a) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in	<u>§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?</u>

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	privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing. (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. (c) Any explanation placed in the records of the child under this section must— (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.	violation of the privacy or other rights of the child or parent, it must amend the information accordingly and so inform the parent in writing. (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must inform the parent of the right to place in the early intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. (c) Any explanation placed in the early intervention records of the child under this section must— (1) Be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency; and (2) If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.	(b) (1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall: (i) Amend the record accordingly; and (ii) Inform the parent or eligible student of the amendment in writing. (2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both. (c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall: (1) Maintain the statement with the contested part of the record for as long as the record is maintained; and (2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

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Hearing Procedures	<u>§ 300.621 Hearing procedures.</u> A hearing held under § 300.619 must be conducted according to the procedures in 34 CFR 99.22.	<u>§ 303.413 Hearing procedures.</u> A hearing held under § 303.411 must be conducted according to the procedures under 34 CFR 99.22.	<u>§ 99.22 What minimum requirements exist for the conduct of a hearing?</u> The hearing required by § 99.21 must meet, at a minimum, the following requirements: (a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student. (b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing. (c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing. (d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under § 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney. (e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing. The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

6. **Retention of Records:** *While IDEA includes provisions for retention and destruction of records and record of access, FERPA has a recordation requirement concerning requests to access. Parts B and C of the IDEA (unlike FERPA) contain express provisions regarding the retention and destruction of records.*

Retention of Records	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ¹¹	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Record of Access	<u>§ 300.614 Record of access.</u> Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act [IDEA] (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.	<u>§ 303.406 Record of access.</u> Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under part C of the Act [IDEA] (except access by parents and authorized representatives and employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.	<u>§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?</u> (a)(1) An educational agency or institution must maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student, as well as the names of State and local educational authorities and Federal officials and agencies listed in § 99.31(a)(3) that may make further disclosures of personally identifiable information from the student's education records without consent under § 99.33(b). (2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained. (3) For each request or disclosure the record must include: (i) The parties who have requested or (ii) received personally identifiable information from the education records; and (iii) The legitimate interests the parties had in requesting or obtaining the information. (4) An educational agency or institution must obtain a copy of the record of further disclosures maintained under paragraph

¹¹The IDEA statute is codified at 20 U.S.C. 1401 *et seq.* and the IDEA statute is cited above by its public law sections (i.e., Sec. 612 is 20 U.S.C. 1412). The IDEA regulations are codified in 34 CFR Part 300 (for the 2006 IDEA Part B regulations) and 34 CFR Part 303 (for the IDEA Part C regulations). The FERPA statute is at 20 U.S.C. 1232g and the FERPA regulations are in 34 CFR Part 99.

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			(b)(2) of this section and make it available in response to a parent's or eligible student's request to review the record required under paragraph (a)(1) of this section. (5) An educational agency or institution must record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception in § 99.31(a)(10) and § 99.36: (i) The articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and (ii) The parties to whom the agency or institution disclosed the information. (b) (1) Except as provided in paragraph (b)(2) of this section, if an educational agency or institution discloses personally identifiable information from education records with the understanding authorized under § 99.33(b), the record of the disclosure required under this section must include: (ii) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and (iii) The legitimate interests under § 99.31 which each of the additional parties has in requesting or obtaining the information. (2)(i) A State or local educational authority or Federal official or agency listed in § 99.31(a)(3) that makes further disclosures

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			of information from education records under § 99.33(b) must record the names of the additional parties to which it discloses information on behalf of an educational agency or institution and their legitimate interests in the information under § 99.31 if the information was received from: (d) An educational agency or institution that has not recorded the further disclosures under paragraph (b)(1) of this section; or (e) Another State or local educational authority or Federal official or agency listed in § 99.31(a)(3). (1) A State or local educational authority or Federal official or agency that records further disclosures of information under paragraph (b)(2)(i) of this section may maintain the record by the student's class, school, district, or other appropriate grouping rather than by the name of the student. (2) Upon request of an educational agency or institution, a State or local educational authority or Federal official or agency listed in § 99.31(a)(3) that maintains a record of further disclosures under paragraph (b)(2)(i) of this section must provide a copy of the record of further disclosures to the educational agency or institution within a reasonable period of time not to exceed 30 days. ...

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			(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to: (1) The parent or eligible student; (2) A school official under § 99.31(a)(1) ; (3) A party with written consent from the parent or eligible student; (4) A party seeking directory information; or (5) A party seeking or receiving records in accordance with § 99.31(a)(9)(ii)(A) through (C).
Records on More Than One Child	<u>§ 300.615 Records on more than one child.</u> If any education 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.	<u>§ 303.407 Records on more than one child.</u> If any 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.	<u>§ 99.12 What limitations exist on the right to inspect and review records?</u> (a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.
Types and Locations of Information	<u>§ 300.616 List of types and locations of information.</u> Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.	<u>§ 303.408 List of types and locations of information.</u> Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.	
Safeguards	<u>§ 300.623 Safeguards.</u> (a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. (b) One official at each participating agency must assume responsibility for ensuring the	<u>§ 303.415 Safeguards.</u> (a) Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.	

Retention of Records	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ¹¹	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	confidentiality of any personally identifiable information. (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.123 and 34 CFR part 99. (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.	(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §§ 303.401 through 303.417 and 34 CFR part 99. (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.	
Destruction of Information	<u>§ 300.611 Definitions.</u> (a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. <u>§ 300.624 Destruction of information.</u> (a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year	<u>§ 303.403 Definitions.</u> (a) Destruction means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under § 303.29. <u>§ 303.416 Destruction of information.</u> (a) The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under part C of the Act [IDEA], the GEPA [General Education Provisions Act] provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76, and 2 CFR part 200, as adopted in 2 CFR part 3474. (b) Subject to paragraph (a) of this section, the information must be destroyed at the	See above under "Access Rights" the reference to 34 CFR § 99.10(e) (prohibition on destroying education record if there is an outstanding request to inspect and review the records). See also destruction requirements related to specific FERPA exceptions in 34 CFR § 99.31(a)(6)(iii)(B) regarding the studies exception and 34 CFR §99.35(b)(2) regarding the "authorized representatives" exception in 34 CFR § 99.31(a)(3).

Retention of Records	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ¹¹	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	completed may be maintained without time limitation.	request of the parents. However, 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 EIS [early intervention services] provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.	

7. **Procedural Safeguards:** *Parts B and C of IDEA and FERPA all require notice of privacy rights to be provided to parents, but the content of the notice and when it must be provided, vary across the three statutory/regulatory frameworks.*

Parents have the right to file a state complaint, request mediation or request a due process hearing under IDEA. This chart only covers state complaints (see below). For mediation, see IDEA [Part B regulation in 34 CFR § 300.506](#) and IDEA [Part C regulation in 34 CFR § 303.431](#). For due process hearings, see IDEA [Part B regulations in 34 CFR §§ 300.507 through 300.518](#) and IDEA [Part C regulations referenced in 34 CFR § 303.430](#).

Procedural Safeguards	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ¹²	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Safeguards	<u>Sec. 612. State eligibility.</u> (a)(6) Procedural safeguards.— (A) In general.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615. <u>§ 300.626 Enforcement.</u> The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§ 300.611 through 300.625 are followed and that the requirements of the Act [IDEA] and the regulations in this part are met.	<u>Sec. 635. Requirements for statewide system.</u> (a) In General.—A statewide system described in section 633 shall include, at a minimum, the following components: (13) Procedural safeguards with respect to programs under this part, as required by section 639. <u>§ 303.417 Enforcement.</u> 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 the Act [IDEA] and the regulations in this part are met.	
Notice to Parents	<u>§ 300.612 Notice to parents.</u> (a) The SEA [State educational agency] must give notice that is adequate to fully inform parents about the requirements of § 300.123, including— (1) A description of the extent that the notice is given in the native languages	<u>§ 303.404 Notice to parents.</u> The lead agency must give notice when a child is referred under part C of the Act [IDEA] that is adequate to fully inform parents about the requirements in § 303.402, including— (a) A description of the children on whom	<u>§ 99.7 What must an educational agency or institution include in its annual notification?</u> (a) (1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act [FERPA] and this part.

¹²The IDEA statute is codified at 20 U.S.C. 1401 *et seq.* and the IDEA statute is cited above by its public law sections (i.e., Sec. 612 is 20 U.S.C. 1412). The IDEA regulations are codified in 34 CFR Part 300 (for the 2006 IDEA Part B regulations) and 34 CFR Part 303 (for the IDEA Part C regulations). The FERPA statute is at 20 U.S.C. 1232g and the FERPA regulations are in 34 CFR Part 99.

Procedural Safeguards	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ¹²	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	of the various population groups in the State; (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information; (3) 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; and (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99. (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.	personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information; (b) 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; (c) 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 (d) A description of the extent that the notice is provided in the native languages of the various population groups in the State.	(2) The notice must inform parents or eligible students that they have the right to— (i) Inspect and review the student's education records; (ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights; (iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and § 99.31 authorize disclosure without consent; and (iv) File with the Department a complaint under §§ 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of the Act [FERPA] and this part. (3) The notice must include all of the following: (i) The procedure for exercising the right to inspect and review education records. (ii) The procedure for requesting amendment of records under § 99.20. (iii) If the educational agency or institution has a policy of disclosing education records under § 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. (b) An educational agency or institution may provide this notice by any means that

Procedural Safeguards	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 ¹²	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
			are reasonably likely to inform the parents or eligible students of their rights. (1) An educational agency or institution shall effectively notify parents or eligible students who are disabled. (2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

8. **Dispute Resolution:** While Parts B and C of the IDEA and FERPA all require some form of dispute resolution, IDEA focuses on the role of the State agency and FERPA permits complaints to be filed at the federal level with the U.S. Department of Education. The term dispute resolution is a term under IDEA which provides for three different options.

Parents have the right to file a state complaint, request mediation or request a due process hearing under IDEA. This chart only covers state complaints (see below). For mediation, see IDEA [Part B regulation in 34 CFR § 300.506](#) and IDEA [Part C regulation in 34 CFR § 303.431](#). For due process hearings, see IDEA [Part B regulations in 34 CFR §§ 300.507 through 300.518](#) and IDEA [Part C regulations referenced in 34 CFR § 303.430](#).

Dispute Resolution	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 30013	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
State Complaint— Adopting Procedures	<u>§ 300.151 Adoption of State complaint procedures.</u> (a) General. Each SEA [State educational agency] must adopt written procedures for— (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 300.153 by— (i) Providing for the filing of a complaint with the SEA; and (ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§ 300.151 through 300.153.	<u>§ 303.432 Adoption of State complaint procedures.</u> (a) General. Each lead agency must adopt written procedures for— (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in § 303.434 by providing for the filing of a complaint with the lead agency; and (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, the State procedures under §§ 303.432 through 303.434. (b) Remedies for denial of appropriate services. In resolving a complaint in which the lead agency has found a failure to provide appropriate services, the lead agency, pursuant to its general supervisory	

¹³The IDEA statute is codified at 20 U.S.C. 1401 *et seq.* and the IDEA statute is cited above by its public law sections (i.e., Sec. 612 is 20 U.S.C. 1412). The IDEA regulations are codified in 34 CFR Part 300 (for the 2006 IDEA Part B regulations) and 34 CFR Part 303 (for the IDEA Part C regulations). The FERPA statute is at 20 U.S.C. 1232g and the FERPA regulations are in 34 CFR Part 99.

Dispute Resolution	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 30013	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act [IDEA], must address— (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) Appropriate future provision of services for all children with disabilities.	authority under part C of the Act [IDEA], must address— (1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and (2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.	
Minimum Procedures	<u>§ 300.152 Minimum State complaint procedures.</u> (a) Time limit; minimum procedures. Each SEA [State educational agency] must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.153 to— (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum— (i) At the discretion of the public agency, a proposal to resolve the complaint; and	<u>§ 303.433 Minimum State complaint procedures.</u> (a) Time limit; minimum procedures. Each lead agency must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 303.434 to— (1) Carry out an independent on-site investigation, if the lead agency determines that an investigation is necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Provide the lead agency, public agency, or EIS [early intervention service] provider with an opportunity to respond to the complaint, including, at a minimum— (i) At the discretion of the lead agency, a proposal to resolve the complaint; and	

Dispute Resolution	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 30013	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 300.506; (4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act [IDEA] or of this part; and (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains— (i) Findings of fact and conclusions; and (ii) The reasons for the SEA's final decision. (b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must— (1) Permit an extension of the time limit under paragraph (a) of this section only if— (i) Exceptional circumstances exist with respect to a particular complaint; or (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and	(ii) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with §§ 303.430(b) and 303.431; (4) Review all relevant information and make an independent determination as to whether the lead agency, public agency, or EIS provider is violating a requirement of part C of the Act [IDEA] or of this part; and (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains— (i) Findings of fact and conclusions; and (ii) The reasons for the lead agency's final decision. (b) Time extension; final decision; implementation. The lead agency's procedures described in paragraph (a) of this section also must— (1) Permit an extension of the time limit under paragraph (a) of this section only if— (i) Exceptional circumstances exist with respect to a particular complaint; or (ii) The parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the lead agency, public agency or EIS provider involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; and (2) Include procedures for effective implementation of the lead agency's final decision, if needed, including—	

Dispute Resolution	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 30013	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	(2) Include procedures for effective implementation of the SEA's final decision, if needed, including— (i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance. (c) Complaints filed under this section and due process hearings under § 300.507 or § 300.530 through 300.532. (1) If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section. (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties— (i) The due process hearing decision is binding on that issue; and (ii) The SEA must inform the complainant to that effect. (3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.	(i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance. (c) Complaints filed under this section and due process hearings under § 303.430(d). (1) If a written complaint is received that is also the subject of a due process hearing under § 303.430(d), or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section. (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties— (i) The due process hearing decision is binding on that issue; and (ii) The lead agency must inform the complainant to that effect. (3) A complaint alleging a lead agency, public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by the lead agency.	

Dispute Resolution	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 30013	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Filing a Complaint	<u>§ 300.153 Filing a complaint.</u> (a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152. (b) The complaint must include— (1) A statement that a public agency has violated a requirement of Part B of the Act [IDEA] or of this part; (2) The facts on which the statement is based; (3) The signature and contact information for the complainant; and (4) If alleging violations with respect to a specific child— (i) The name and address of the residence of the child; (ii) The name of the school the child is attending; (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending; (iv) A description of the nature of the problem of the child, including facts relating to the problem; and (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.	<u>§ 303.434 Filing a complaint.</u> (a) An organization or individual may file a signed written complaint under the procedures described in §§ 303.432 and 303.433. (b) The complaint must include— (1) A statement that the lead agency, public agency, or EIS [early intervention service] provider has violated a requirement of part C of the Act [IDEA]; (2) The facts on which the statement is based; (3) The signature and contact information for the complainant; and (4) If alleging violations with respect to a specific child— (i) The name and address of the residence of the child; (ii) The name of the EIS provider serving the child; (iii) A description of the nature of the problem of the child, including facts relating to the problem; and (iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.	<u>§ 99.64 What is the investigation procedure?</u> (a) A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act [FERPA] or this part has occurred. A complaint does not have to allege that a violation is based on a policy or practice of the educational agency or institution, other recipient of Department funds under any program administered by the Secretary, or any third party outside of an educational agency or institution.

Dispute Resolution	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 30013	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Timeline for Filing Complaint	<u>§ 300.153 Filing a complaint.</u> (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 300.151.	<u>§ 303.434 Filing a complaint.</u> (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 303.432.	<u>§ 99.64 What is the investigation procedure?</u> (c) A timely complaint is defined as an allegation of a violation of the Act [FERPA] that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation. (d) The Office may extend the time limit in this section for good cause shown.
Who Gets Complaint?	<u>§ 300.153 Filing a complaint.</u> (c) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA. Parents have the right to file a state complaint, request mediation or request a due process hearing under IDEA. This chart only covers state complaints (see below). For mediation, see IDEA Part B regulation in 34 CFR § 300.506 and IDEA Part C regulation in 34 CFR § 303.431. For due process hearings, see IDEA Part B regulations in 34 CFR §§ 300.507 through 300.518 and IDEA Part C regulations referenced in 34 CFR § 303.430.	<u>§ 303.434 Filing a complaint.</u> (c) The party filing the complaint must forward a copy of the complaint to the public agency or EIS [early intervention service] provider serving the child at the same time the party files the complaint with the lead agency. Parents have the right to file a state complaint, request mediation or request a due process hearing under IDEA. This chart only covers state complaints (see below). For mediation, see IDEA Part B regulation in 34 CFR § 300.506 and IDEA Part C regulation in 34 CFR § 303.431. For due process hearings, see IDEA Part B regulations in 34 CFR §§ 300.507 through 300.518 and IDEA Part C regulations referenced in 34 CFR § 303.430.	<u>§ 99.63 Where are complaints filed?</u> A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Student Privacy Policy Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202.