

# What Do IDEA and FERPA Tell Us About Early Childhood Data Sharing?

Meredith Miceli, OSEP

Frank Miller, FPCO

Jessica Spataro, OSERS

Kala Surprenant, OGC

# How do we play together?

- \*IDEA Part C

- \*IDEA Part B

- \*FERPA



Everyone wants the ball

Keep your eye on the ball



# Our Goals

- \* IDEA and FERPA have a lot in common.**
- \* How do you read them together when facing a new issue/Q?**
- \* Why is it important to know your records retention policies?**



# Who are we?

## IDEA Part C

- \* Enacted 1986, last amended 2004
- \* Last major regulations in 2011

## IDEA Part B

- \* Enacted 1976, last amended 2004
- \* Last major regulations in 2006

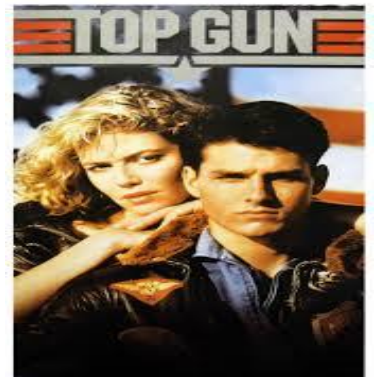
## FERPA

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

# The World Has Changed

When IDEA Part C was passed in 1986:

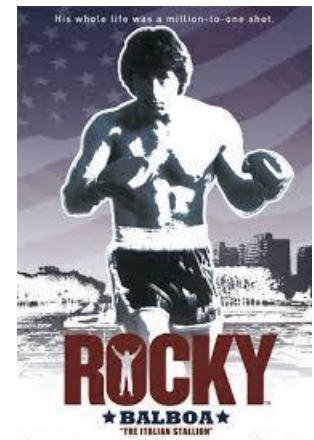
- \* Ronald Reagan was president of the US
- \* Nintendo introduced video games to America
- \* IBM unveiled its PC- 1<sup>st</sup> laptop computer
- \* Charlotte Church, the Olsen twins, and Lindsay Lohan were born
- \* *Top Gun* was the top grossing film



# The World Has Changed

When IDEA Part B was passed in 1976:

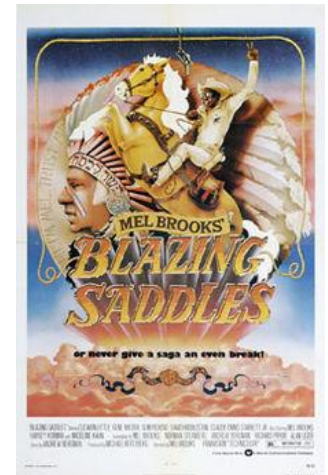
- \* Jimmy Carter was elected President
- \* The US celebrated bicentennial
- \* Filming began on George Lucas' Star Wars
- \* Freddie Prinze Jr., Reese Witherspoon, Colin Farrell, 50 Cent, Fred Savage, and Shannon Elizabeth were born
- \* *Rocky* was the top grossing film



# The World Has Changed

When FERPA was passed in 1974:

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







# Where can you find us?

- \* IDEA Part C

  - Statute: 20 U.S.C. 1401-1407 & 1432 – 1443

  - Regulations: 34 C.F.R. §§ 300.400 – 300.417

- \* IDEA Part B

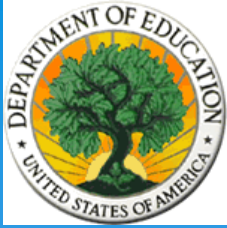
  - Statute: 20 U.S.C. 1401 *et seq.*

  - Regulations: 34 C.F.R §§ 300.610 - 300.627

- \* FERPA

  - \* Statute: 20 U.S.C. 1232g

  - \* Regulations: 34 C.F.R. Part 99



Everyone wants the ball?



What is the ball?



# What Is Personally Identifiable Information (PII)?



Name



Mother's maiden name



Address



Date of birth  
Place of birth



Social Security Number



Names of parent or  
other family members



# What Else Is Personally Identifiable Information (PII)?

## FERPA - 99.3 (PII)

- \* Info. that, alone or in combination, is linkable to a specific student that would allow a **reasonable person** in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with **reasonable certainty**.
- \* Info. **requested by a person** who the educational agency or institution reasonably believes **knows the identity** of the student to whom the education record relates.



# What Else Is Personally Identifiable Information (PII)?

## IDEA Part C - 303.32

PII definition refers to  
FERPA PII definition

Except--




student=child

school=EIS provider

## IDEA Part B - 300.29

List of personal  
characteristics or other  
information that would  
make it possible to identify  
the child with **reasonable  
certainty** (note FERPA also  
applies to IDEA Part B)

# What is Personally Identifiable Information (PII)?

<b>IDEA PART C</b> 20 U.S.C. 1400 and 34 CFR Part 303	<b>IDEA PART B</b> 20 U.S.C. 1400 and 34 CFR Part 300	<b>FERPA</b> 20 U.S.C. 1232g and 34 CFR Part 99
		



# Different Rules

IDEA Part C

IDEA Part B

FERPA

Who?

When?

What?



# *What is a record?*

## **IDEA Part C Early Intervention Records**

All records regarding a child that are required to be collected, maintained, or used under Part C

303.403(b)

## **IDEA Part B Education Records**

The type of records covered under the definition of “education records” in FERPA

303.611(b)




## **FERPA Education Records**

Records that are –  
Directly related to student; and  
Maintained by an educational agency or institution or by a party acting for the agency or institution

99.3



# *What is a record?*

<b>IDEA PART C</b> <b>20 U.S.C. 1400 and</b> <b>34 CFR Part 303</b>	<b>IDEA PART B</b> <b>20 U.S.C. 1400 and</b> <b>34 CFR Part 300</b>	<b>FERPA</b> <b>20 U.S.C. 1232g and</b> <b>34 CFR Part 99</b>
		



# Who must comply?

## IDEA Part C

### Participating agency

- ❖ Any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in part C.
- ❖ Includes any individual or entity that provides any part C services.
- ❖ Does not include primary referral sources or public agencies or private entities that act solely as funding sources for Part C services.



# Who must comply?

## IDEA Part B

### Participating agency

- ❖ Any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B.






# Who must comply?

## FERPA

### **Educational agency or institution**

- ❖ Any public or private agency or institution that provides educational services and/or instruction to students; or is authorized to direct and control public elementary or secondary, or postsecondary educational institutions; and
- ❖ to which funds have been made available under any program administered by the Secretary

# Who must comply?

<b>IDEA PART C</b> 20 U.S.C. 1400 and 34 CFR Part 303	<b>IDEA PART B</b> 20 U.S.C. 1400 and 34 CFR Part 300	<b>FERPA</b> 20 U.S.C. 1232g and 34 CFR Part 99
		



# *Whose* records are covered?

## IDEA Part C Child

An individual under the age of 6 and may include an infant or toddler with a disability

303.6



# *Whose* records are covered?

## IDEA Part B

Child with a disability

Determined eligible under one of 13 disability categories & needs special education and related services as a result of disability.

300.8



# *Whose* records are covered?




## FERPA Student

Any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

99.3



# Whose records are covered?

<b>IDEA PART C</b> 20 U.S.C. 1400 and 34 CFR Part 303	<b>IDEA PART B</b> 20 U.S.C. 1400 and 34 CFR Part 300	<b>FERPA</b> 20 U.S.C. 1232g and 34 CFR Part 99
		



# What are those rights?

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



# What is confidentiality?

## Consent – IDEA Part B & C

- \* Informed
- \* Written
- \* Voluntary

Part C 303.7, Part B 300.9,






# What is confidentiality?

## Consent - FERPA

- \* Signed
- \* Dated
- \* Written

99.30

# Definition of consent

<b>IDEA PART C</b> 20 U.S.C. 1400 and 34 CFR Part 303	<b>IDEA PART B</b> 20 U.S.C. 1400 and 34 CFR Part 300	<b>FERPA</b> 20 U.S.C. 1232g and 34 CFR Part 99
		



# Exceptions to Consent

## IDEA Part C

- \* Remember definition of participating agency
- \* Transition notification/opt out
- \* FERPA exceptions - Translation provisions (e.g., school officials)

303.14(b)



# IDEA Part C

## Translation provisions

Crosswalk of Terms	
FERPA	IDEA Part C
Education Record	Early intervention record
Education	Early intervention
Educational agency or institution	Participating agency
School official	Qualified early intervention service (EIS) personnel/Service coordinator
State educational authority	Lead agency
Student	Child under IDEA Part C



# Exceptions to Consent

## IDEA Part B

- \* Officials of participating agency

- \* Age of majority

- \* FERPA exceptions

303.622(b)(1) and (2)





# Exceptions to Consent

FERPA – a number of exceptions including:

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



# Exceptions to Consent

## **FERPA**

### **Audit and Evaluation**

**Federal, State, and local officials listed under § 99.31(a)(3), or their authorized representative, may have access to education records only –**

- \* in connection with an audit or evaluation of Federal or State supported education programs, or**
- \* for the enforcement of or compliance with Federal legal requirements which relate to those programs.**



# Exceptions to Consent

## FERPA

### Uninterrupted Scholars Act

- \* Permits disclosure of PII from education records of children in **foster care** to: “agency caseworker or other representative” of a State or local child welfare agency (CWA) who has the right to **access a student’s case plan** under State or tribal law.
- \* Disclosure permitted when: the CWA is “legally responsible ... for the care and protection of the student.”



# Exceptions to Consent

## FERPA

### Compliance with Judicial Order/Subpoena

- \* School may disclose PII from education records necessary to **comply with a judicial order** or lawfully issued **subpoena**.
- \* School must make a **reasonable effort to notify** the parent or eligible student of the order or subpoena before complying with it in order to allow parent or eligible student opportunity to seek protective action.






# Exceptions to Consent

## FERPA

### Health and Safety Emergencies

- \* Disclosure is necessary to **protect the health or safety** of the student or others.
- \* There is an **articulable and significant threat** to the health or safety of a student or other individuals.
- \* **Appropriate parties** typically means local, State, or federal law enforcement, trained medical personnel, public health officials, and parents.
- \* Must be related to an **actual, impending, or imminent** emergency.

# Exceptions to Consent

<b>IDEA PART C</b> <b>20 U.S.C. 1400 and</b> <b>34 CFR Part 303</b>	<b>IDEA PART B</b> <b>20 U.S.C. 1400 and</b> <b>34 CFR Part 300</b>	<b>FERPA</b> <b>20 U.S.C. 1232g and</b> <b>34 CFR Part 99</b>
		



# When can the records be reviewed ?

## IDEA Part C

- \* Inspect and review any early intervention records ... collected, maintained, or used by the agency ... without unnecessary delay and **before any meeting regarding an IFSP, or any due process hearing, and in no case more than 10 days after the request has been made.**



# When can the records be reviewed ?

## IDEA Part B

- \* Inspect and review any education records ... that are collected, maintained, or used by the agency ... without unnecessary delay and before any meeting regarding an IEP, or any due process hearing, or resolution session, and in no case more than 45 days after the request has been made.








# When can the records be reviewed ?

## FERPA

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

99.10

# When can the records be reviewed ?

<b>IDEA PART C</b> 20 U.S.C. 1400 and 34 CFR Part 303	<b>IDEA PART B</b> 20 U.S.C. 1400 and 34 CFR Part 300	<b>FERPA</b> 20 U.S.C. 1232g and 34 CFR Part 99
		



# What if the records don't seem correct?

## IDEA Parts C and B

- \* A parent who believes that the information in the record is inaccurate, misleading, or violates the privacy or other rights of the child can request that the record be amended.
- \* The agency must decide whether to amend the information within a reasonable period of time.
- \* If the agency refuses to amend the information, it must inform the parent of the refusal and advise the parent of right to a hearing.
- \* After hearing, if decision is still not to amend, parent has a right to insert a statement in the record.
- \* Cannot seek to amend substantive decisions, such as determination of IDEA eligibility or goals on the IEP/IFSP, etc.

303.410 (Part C) & 300.618 (Part B)






# What if the records don't seem correct?

## FERPA

- \* A parent or eligible student who believes that the information in the record is inaccurate, misleading, or violates the privacy rights of the student can request that the record be amended.
- \* The educational agency/institution must decide whether to amend the information within a reasonable period of time
- \* If educational agency/institution decides not to amend, it must inform parent of the refusal and right to a hearing.
- \* After hearing, if decision is still not to amend, parent has a right to insert a statement in the record.
- \* Cannot seek to amend substantive decisions, such as grades, etc.

99.20, 99.21, & 99.22

# What if the records don't seem correct?

<b>IDEA PART C</b> <b>20 U.S.C. 1400 and</b> <b>34 CFR Part 303</b>	<b>IDEA PART B</b> <b>20 U.S.C. 1400 and</b> <b>34 CFR Part 300</b>	<b>FERPA</b> <b>20 U.S.C. 1232g and</b> <b>34 CFR Part 99</b>
		



# What about copies of the records?

## IDEA Part C

### Participating agency --

- \* May charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in paragraph (c) of this section.
- \* May not charge a fee to search for or to retrieve information.
- \* Must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.
- \* Must make available at no cost an initial copy of early intervention record.

303.400(c) and 303.409



# What about copies of the records?

## IDEA Part B

### Participating agency

- \* May charge a fee for copies ... unless imposing a fee effectively prevents a parent or eligible student from exercising his or her rights to inspect and review education records.
- \* May not charge a fee to search for or to retrieve the education records of a student.

300.617



# What about copies of the records?

## FERPA

Educational agency or institution --

- May charge a fee for copies ... unless imposing a fee effectively prevents a parent or eligible student from exercising his or her rights to inspect and review education records.
- May not charge a fee to search for or to retrieve the education records of a student.

99.10



# What about copies of the records?

## **IDEA PART C**

**20 U.S.C. 1400 and  
34 CFR Part 303**



## **IDEA PART B**

**20 U.S.C. 1400 and  
34 CFR Part 300**



## **FERPA**

**20 U.S.C. 1232g and  
34 CFR Part 99**





# What about the “record of access?”

## IDEA Parts C and B

Contain recordkeeping requirements for participating agencies.

- \* Keep a record of parties obtaining access to records collected, maintained, or used under IDEA (except for parents and authorized employees, and for Part C, authorized representatives);
- \* Include name of party, day access given, and purpose for which the party is authorized to use the records.

303.406 (Part C) and 300.614 (Part B)






# What about the “record of access?”

## FERPA

Contains recordkeeping requirements for both schools and SEAs.

- \* Be maintained as long as record is maintained;
- \* Include parties who requested or received information; and
- \* Include legitimate interest the parties had in receiving information.
- \* Exceptions include parents, school officials, those to whom parent provided consent and more.
- \* 99.32

# What about the “record of access?”

<b>FERPA</b> <b>20 U.S.C. 1232g and</b> <b>34 CFR Part 99</b>	<b>IDEA PART B</b> <b>20 U.S.C. 1400 and</b> <b>34 CFR Part 300</b>	<b>IDEA PART C</b> <b>20 U.S.C. 1400 and</b> <b>34 CFR Part 303</b>
		



# How long do I have to keep the record?

## \* IDEA Part C and Part B

The participating agency--

- \* Must inform parents when PII collected, maintained, or used is no longer needed to provide services.
- \* Must destroy information at parent's request (once it is no longer needed).
- \* May keep permanent record with child's name, contact and other info. -- Part C: DOB, exit data and names of service coordinator and EIS provider; Part B: grades, attendance, classes, and grade level and year completed).

300.403(a), 300.416 (Part C) and 300.611(a), 300.624 (Part B)






# How long do I have to keep the record?

## FERPA

An educational agency or institution, or SEA or its component, shall not destroy any education records if there is an outstanding request to inspect and review the records.

99.10(e)

# How long do I have to keep the record?

<b>IDEA PART C</b> <b>20 U.S.C. 1400 and</b> <b>34 CFR Part 303</b>	<b>IDEA PART B</b> <b>20 U.S.C. 1400 and</b> <b>34 CFR Part 300</b>	<b>FERPA</b> <b>20 U.S.C. 1232g and</b> <b>34 CFR Part 99</b>
 A yellow emoji wearing black sunglasses, with one hand adjusting the temple of the glasses and the other hand giving a thumbs-up.	 A yellow emoji wearing black sunglasses, with one hand adjusting the temple of the glasses and the other hand giving a thumbs-up.	 A yellow emoji with a wide, toothy grin and squinted eyes, appearing to be laughing or smiling broadly.



# What if we can't agree?

## IDEA Part C & Part B




- \* State complaint
- \* Mediation
- \* Due process hearing

## FERPA

- \* Complaint with FPCO



# What if we can't agree?

<b>IDEA PART C</b> 20 U.S.C. 1400 and 34 CFR Part 303	<b>IDEA PART B</b> 20 U.S.C. 1400 and 34 CFR Part 300	<b>FERPA</b> 20 U.S.C. 1232g and 34 CFR Part 99
 A yellow emoji wearing black sunglasses, with one hand adjusting the temple of the glasses and the other hand giving a thumbs-up.	 A yellow emoji wearing black sunglasses, with one hand adjusting the temple of the glasses and the other hand giving a thumbs-up.	 A yellow emoji with a wide, toothy grin and squinted eyes, appearing to be laughing or smiling broadly.



# What else do I need to know about records?

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



# Where do we go from here?

- \* IDEA & FERPA share much in common.**
- \* When facing a new issue/Q, read IDEA Part C/Part B together with FERPA.**
- \* It's important to know the records are collected, used, and maintained.**

Take the ball and  
run with it.

QUESTIONS?





# Resources

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



# OSEP Contact Information

- \* **For technical assistance on IDEA:**

**Office of Special Education Programs (OSEP)  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-8520**

**(202) 245-7629 Telephone**

**(202) 245-7614 Fax**

- \* **OSEP Web site:**

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



# FPCO Contact Information

- \* **For technical assistance on FERPA:**

**Family Policy Compliance Office (FPCO)**  
**U.S. Department of Education**  
**400 Maryland Avenue, S.W.**  
**Washington, D.C. 20202-8520**

**(202) 260-3887 Telephone**

**(202) 260-9001 Fax**

- \* **Or email us at: [FERPA@ed.gov](mailto:FERPA@ed.gov)**

- \* **FPCO Web site: [www.ed.gov/fpc](http://www.ed.gov/fpc)**