



Data Sharing Agreement Checklist for IDEA Part C and Part B 619 Agencies and Programs

Overview

The U.S. Department of Education (the Department) established two national technical assistance (TA) centers, the Privacy Technical Assistance Center (PTAC) and the Center for IDEA Early Childhood Data Systems (DaSy), to assist States in complying with the privacy, security, and confidentiality requirements of the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA) as they implement longitudinal data systems. DaSy collaborated with PTAC to adapt and develop resources to help IDEA Part C early intervention and Part B 619 preschool special education staff address data confidentiality, data sharing, and data privacy questions and issues as they build and use early childhood data systems. This document is part of a series of documents that address data systems issues to specifically meet the needs of IDEA Part C early intervention and Part B 619 preschool special education. Some of the documents in this series were originally developed by PTAC and adapted by DaSy for this audience.

Purpose

This document is an adaptation of the 2012 “Data Sharing Agreement Checklist” that was intended for K–12 audiences. This adaptation of the original document is intended for IDEA Part C early intervention and Part B 619 preschool special education. This document summarizes the requirements for the written agreements under the audit or evaluation exception¹ that is specified in FERPA and that also applies to the IDEA. The FERPA regulations on the audit or evaluation exception require that the State or local educational authority or agency headed by an official listed in [34 CFR §99.31\(a\)\(3\)](#) must use a written agreement when disclosing *personally identifiable information* (PII) from education records without consent to designate any *authorized representative* other than an employee. See [34 CFR §99.35\(a\)\(3\)](#). There are mandatory elements that must be included in the agreement. The following checklist delineates the minimum requirements under the audit or evaluation exception. The list of the mandatory elements is followed by best practice suggestions that may help to further enhance the transparency and effectiveness of the agreements.

It is important to keep in mind that individual State privacy or procurement laws may contain more stringent requirements for data sharing written agreements, and other Federal privacy laws, such as the IDEA and the Health Insurance Portability and Accountability Act, may be applicable depending on the type of data being shared and the entities with whom the data are shared. Therefore, parties entering into an agreement are advised to always consult with their procurement staff and/or legal staff to ensure compliance with all applicable Federal, State, and local laws and regulations. See Glossary for definitions of the italicized terms.

¹ The 2012 Data Sharing Agreement Checklist applies to the “Audit/Evaluation” exception to consent under FERPA in 34 CFR §§99.31(a)(3) and 99.35 and the “Studies” exception in 34 CFR §99.31(a)(6) and provides technical assistance on the content of data sharing agreements under these two exceptions. The focus of this 2014 “Data Sharing Agreement Checklist for IDEA Part C and Part B 619 Agencies and Programs” is to provide technical assistance on data sharing agreements under the “Audit/Evaluation” exception in 34 CFR §§99.31(a)(3) and 99.35, as that is the most appropriate exception under IDEA and FERPA for data sharing arrangements for the IDEA early childhood community. In the very limited instance in which IDEA Part C or IDEA Part B section 619 agencies or programs propose to consider using the “Studies” exception under FERPA, such agencies and programs will want to consult with the Department’s Office of Special Education Programs (OSEP) and Family Policy Compliance Office (FPCO) regarding how the proposed data sharing would meet the requirements in 34 CFR §§99.31(a)(6) and 303.414 (for IDEA Part C) and 34 CFR §§99.31(a)(6) and 300.622 (for IDEA Part B Section 619).

Written Agreements—Mandatory Elements

The **Audit or Evaluation Exception** allows for the disclosure of PII without consent to authorized representatives of the FERPA-permitted entities (i.e., Comptroller General of U.S., U.S. Attorney General, U.S. Secretary of Education, and State or local educational authorities). PII must be used to audit or evaluate a Federal- or State-supported *education program (this includes Part C and 619 preschool programs and other early childhood programs including Head Start)* or to enforce or comply with Federal legal requirements that relate to those education programs (audit, evaluation, or enforcement or compliance activity).

Under this exception, written agreements **must**

- Designate an authorized representative of a FERPA-permitted entity;
- Specify what PII will be disclosed and for what purpose
 - **Note:** Under the audit or evaluation exception, the purpose of data sharing can only be to carry out an audit or evaluation of Federal- or State-supported education programs, or to enforce or to comply with Federal legal requirements that relate to those programs;
- Describe the activity to make clear that it falls within the audit or evaluation exception;
- Require an authorized representative to destroy PII upon completion of the audit or evaluation and specify the time period in which the information must be destroyed; and
- Establish policies and procedures, consistent with FERPA and other Federal, State, and local confidentiality and privacy laws, to protect PII from further disclosure and unauthorized use.

Please see [34 CFR §99.35\(a\)\(3\)](#) for more information.

Written Agreements—Best Practices

In addition to the minimum mandatory requirements there are a number of best practices that organizations should consider when entering into written agreements. (For details, see [Guidance for Reasonable Methods and Written Agreements](#) issued by the Family Policy Compliance Office.) These practices represent general suggestions and may be applied under either of the two exceptions to assist with FERPA compliance efforts.

Disclosing entities are encouraged to examine the list provided below and tailor the practices as necessary and appropriate to their specific circumstances.

- Bind individuals to the agreement.
- Agree on limitations on use of the PII, including any methodological restrictions, such as linking to other data sets.
- Specify points of contact and data custodians.
- Mention Institutional Review Board review and approval.
- State ownership of PII.
- Identify penalties for inappropriate disclosure.
- Set terms for data destruction.
- Include funding terms.
- Maintain the right to audit.
- Identify and comply with all applicable legal requirements, including maintaining the data in a secure manner by applying appropriate technical, physical, and administrative safeguards to properly protect the PII, both at rest and in transit.
- Have plans that are in accordance with any applicable State and Federal laws for responding to a data breach, including, when appropriate or required, responsibilities and procedures for notification and mitigation.
- Review and approve reported results.

- Define terms for conflict resolution.
- Specify modification and termination procedures, including approved destruction methods for each specific type of media (e.g., data wiping, degaussing, shredding, etc.).
- Inform the public about written agreements.

Note: Parties are encouraged to review and redact, prior to publication, any data security provisions that may aid those seeking unauthorized access to systems. In some cases, a separate confidential IT Security Plan may be appropriate.

Additional Resources

The U.S. Department of Education established PTAC as a “one-stop” resource for education stakeholders to learn about data privacy, confidentiality, and security practices related to student-level longitudinal data systems. PTAC provides timely information and updated guidance on privacy, confidentiality, and security practices through a variety of resources, including training materials and opportunities to receive direct assistance with privacy, security, and confidentiality of longitudinal data systems. More information on PTAC is available on <http://ptac.ed.gov>.

The DaSy Center is a national TA center funded by the U.S. Department of Education, [Office of Special Education Programs \(OSEP\)](#). DaSy works with States to support IDEA Part C early intervention and Part B 619 preschool special education State programs in the development or enhancement of integrated early childhood longitudinal data systems. DaSy’s work is organized around three areas to support IDEA Part C early intervention and Part B 619 preschool special education State staff: (1) generating new knowledge and useful products for States to use in the development and enhancement of statewide early childhood data systems; (2) designing and implementing a continuum of TA strategies in working with States that are evidence-based, relevant, useful, and cost-effective; and (3) providing national leadership and coordination around early childhood data systems. More information about DaSy is available on <http://dasycenter.org/index.html>.

Please direct questions to PTAC at PrivacyTA@ed.gov or 855-249-3072 or to the DaSy Center at dasycenter@sri.com or 650-859-3881.

The following links provide more detailed discussions on requirements and best practices to consider when disclosing PII:

- Data Stewardship: Managing Personally Identifiable Information in Student Education Records (NCES 2011-602) <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2011602>
- Federal regulations resources webpage at the U.S. Department of Education www.ed.gov/policy/gen/reg/edpicks.jhtml?src=ln
- FERPA regulations amendment released in 2011 www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf
- Guidance for Reasonable Methods and Written Agreements by the Family Policy Compliance Office www.ed.gov/policy/gen/guid/fpco/pdf/reasonablemtd_agreement.pdf
- Guidance on the Amendments to the Family Educational Rights and Privacy Act by the Uninterrupted Scholars Act <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf>
- IDEA Part B regulations, U.S. Department of Education (2006) <http://www.ecfr.gov/cgi-bin/text-idx?SID=d74c644d5aeea44a16267317b21601be&node=34:2.1.1.1.1&rgn=div5>
- IDEA Part C regulations, U.S. Department of Education (2011) <http://www.ecfr.gov/cgi-bin/text-idx?SID=d74c644d5aeea44a16267317b21601be&node=34:2.1.1.1.2&rgn=div5>
- *Letter to Edmunds* (December 2012), U.S. Department of Education’s Office of Special Education Programs response regarding whether or not “early intervention records” under IDEA Part C are considered “education records” under FERPA. <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/edmunds.pdf>

Glossary

The 2014 IDEA Part C regulations clarified the relationship between terms used under IDEA Part C and terms used under FERPA. Below is the translation of terms as clarified under IDEA Part C regulation §303.414(b)(2).

For a side-by-side comparison of the primary legal provisions and definitions in IDEA Part B, IDEA Part C and FERPA that relate to the requirement to protect the confidentiality of personally identifiable information of students and children served under the IDEA, please the IDEA and FERPA Confidentiality Provisions crosswalk available: <http://www2.ed.gov/policy/gen/guid/ptac/pdf/idea-ferpa.pdf>.

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

FERPA Definitions

- **Authorized representative** means any entity or individual designated by a State or local educational authority or an agency headed by an official listed in 34 CFR §99.31(a)(3) [i.e., Comptroller General of U.S., U.S. Attorney General, U.S. Secretary of Education, and State or local educational authorities] to conduct—with respect to Federal- or State-supported education programs—any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs. For more information, see the Family Educational Rights and Privacy Act regulations, [34 CFR §99.3](#).
- **Early childhood education program** means—(a) A Head Start program or an Early Head Start program carried out under the Head Start Act ([42 U.S.C. 9831](#) et seq.), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding; (b) A State licensed or regulated child care program; or (c) A program that (1) Serves children from birth through age six that addresses the children’s cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and (2) Is—(i) A State prekindergarten program; (ii) A program authorized under section 619 or Part C of the Individuals with Disabilities Education Act; or (iii) A program operated by a local educational agency. For more information, see the Family Educational Rights and Privacy Act regulations, [34 CFR §99.3](#).
- **Education program** is defined as any program principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution. For more information, see the Family Educational Rights and Privacy Act regulations, [34 CFR §99.3](#).
- **Education records** means records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. For more information, see the Family Educational Rights and Privacy Act regulations, [34 CFR §99.3](#).
- **Personally identifiable information from education records (PII)** from education records includes information, such as a student’s name or identification number, that can be used to distinguish or trace an individual’s identity either directly or indirectly through linkages with other information. See Family Educational Rights and Privacy Act regulations, [34 CFR §99.3](#), for a complete definition of PII specific to education records and for examples of other data elements that are defined to constitute PII.

IDEA Part B and Part C Definitions

- **Child**, as defined by Part C regulations, means an individual under the age of six and may include an infant or toddler with a disability, as that term is defined in [34 CFR §303.21](#). For more information, see the Individual with Disabilities Education Act regulations, [34 CFR §303.6](#).
- **Child with a disability**, as defined by Part B regulations, means a child 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. For more information, see the Individual with Disabilities Education Act regulations, [34 CFR §300.8](#).
- **Education records**, as defined by Part B regulations, mean 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]). ([34 CFR §300.611](#))
- **Early intervention records**, as defined by Part C regulations, 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. ([34 CFR §303.403](#))
- **Participating agency**, as defined by Part B regulations, 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]. ([34 CFR §300.611](#))
- **Participating agency**, as defined by Part C regulations, 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 solely as funding sources for Part C services. ([34 CFR §303.403](#))
- **Personally identifiable**, as defined by Part B regulations, 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. ([34 CFR §300.32](#))
- **Personally identifiable information**, as defined by Part C regulations, means personally identifiable information as defined in [34 CFR §99.3](#) [See FERPA], 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. ([34 CFR §303.29](#))

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 - Office of the General Counsel (OGC)
 - Office of Management (OM), Privacy, Information, and Records Management Services (PIRMS)
 - OM's Family Policy Compliance Office (FPCO)
- The Center for IDEA Early Childhood Data Systems (DaSy)
- The Privacy Technical Assistance Center (PTAC)

Although many offices within the U.S. Department of Education provided input into, and review of, the content in this document to make available technical assistance on best practices, the content should not be read as representing the policy of, or endorsement by, the U.S. Department of Education. For further information, you may contact the DaSy grant project officers, Meredith Miceli and Richelle Davis.