



## UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, DC 20202

May 27, 2014

Dear Chief State School Officers:

We write to transmit the attached guidance document on the Uninterrupted Scholars Act (USA) (Public Law 112-278), which was signed into law by President Barack Obama on January 14, 2013, and which amends Section 444 of the General Education Provisions Act (20 U.S.C. § 1232g) (commonly known as the Family Educational Rights and Privacy Act (FERPA)). These amendments to FERPA also affect the confidentiality provisions in 20 U.S.C. § 1417(c), which apply to Parts B and C of the Individuals with Disabilities Education Act (IDEA) under the circumstances set forth in the USA and the attached guidance. The Family Policy Compliance Office (FPCO) in the U.S. Department of Education (Department) administers FERPA, and the Department's Office of Special Education and Rehabilitative Services (OSERS) administers Parts B and C of the IDEA. Accordingly, FPCO and OSERS are issuing the attached guidance to provide State educational agencies, local educational agencies, schools, State lead agencies, early intervention service programs and providers, State and local child welfare agencies, tribal organizations, parents and eligible students and children with disabilities, and other interested parties with information to implement the changes made by the USA to FERPA.

The USA amends FERPA in two ways. First, the USA amends FERPA to permit educational agencies and institutions to disclose a student's education records, without parental consent, to a caseworker or other representative of a State or local child welfare agency or tribal organization authorized to access a student's case plan "when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student." Second, the USA also allows educational agencies and institutions to disclose a student's education records pursuant to a judicial order without requiring additional notice to the parent by the educational agency or institution in specified types of judicial proceedings in which a parent is involved. These changes to FERPA (and, consequently, to the confidentiality provisions applicable to Parts B and C of the IDEA) help in improving educational and developmental outcomes for children in foster care by providing those agencies that are legally responsible for such children access to specific information that is maintained by those agencies that provide early intervention or educational services to such children.

The Department has not yet amended the FERPA regulations, codified at 34 CFR Part 99, or the IDEA regulations, codified at 34 CFR Parts 300 and 303, to incorporate the provisions of the USA. However, over the last year, the Department has collaborated with the Administration for Children and Families within the U.S. Department of Health and Human Services to provide information, including joint webinars and other presentations, regarding how the FERPA amendments may help child welfare agencies meet certain Federal child welfare requirements. Additionally, the Department has held conferences for, and made presentations to, the IDEA communities regarding the impact of the USA.

[www.ed.gov](http://www.ed.gov)

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering national educational excellence and ensuring equal access.*

The attached guidance is a question and answer document that consists of four sections: (1) General requirements related to the Uninterrupted Scholars Act; (2) State educational agency and the Uninterrupted Scholars Act; (3) Individuals with Disabilities Education Act and the Uninterrupted Scholars Act; and (4) Scenarios. The first section explains how the USA amends FERPA and its interplay with other FERPA requirements. The second section addresses redisclosure by a State educational agency, on behalf of its local school districts, of the education records of students in foster care placement to the students' child welfare agency. The third section provides direction regarding the impact of the USA on the IDEA, specifically the confidentiality of information provisions in Part B and Part C respectively. The final section includes several scenarios to enhance the understanding and implementation of the USA.

We encourage you to continue building interagency collaboration at the local and state levels between education, early intervention, and child welfare agencies to ensure continued access to services for children in foster care. We also urge child welfare and educational agencies and institutions to work together this summer to develop policies and procedures that permit the disclosure of the education records of students in foster care placement to the students' child welfare agency in the upcoming school year. Thank you for your continued efforts to ensure successful early intervention and educational outcomes for all children.

Sincerely,



Kathleen M. Styles  
Chief Privacy Officer



Michael K. Yudin  
Acting Assistant Secretary  
Office of Special Education and  
Rehabilitative Programs

Attachment

cc: State Directors of Special Education  
Section 619 Coordinators  
Part C Coordinators  
Child State Welfare Directors

# Guidance on the Amendments to the Family Educational Rights and Privacy Act by the Uninterrupted Scholars Act May 2014

---

On January 14, 2013, the President signed into law the Uninterrupted Scholars Act (USA), Public Law 112-278, which amended the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g. These amendments permit educational agencies and institutions to disclose personally identifiable information (PII) from the education records of students in foster care placement, without parental consent, to an agency caseworker or other representative of a State or local child welfare agency (CWA) or tribal organization authorized to access a student's case plan "when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student." See 20 U.S.C. § 1232g(b)(1)(L). The USA also amended FERPA to allow educational agencies and institutions to disclose a student's education records pursuant to a judicial order issued in specified types of judicial proceedings in which the parent is already a party, without requiring additional notice to the parent by the educational agency or institution. See 20 U.S.C. § 1232g(b)(2)(B). The Department has not yet amended the FERPA regulations, which are codified at 34 C.F.R. Part 99, to incorporate the provisions of the USA. Accordingly, this guidance represents the Department's current interpretation of the statutory changes to FERPA made by the USA, and does not address the applicability of State laws or regulations that may have more stringent provisions. In addition to discussing the direct impact on FERPA, this guidance also addresses how the USA amendment to FERPA affects the confidentiality provisions in the Individuals with Disabilities Education Act (IDEA) by permitting disclosure without prior consent of PII from the early intervention and education records of infants and toddlers and children with disabilities.

The Department's Family Policy Compliance Office (FPCO) is issuing this guidance to provide State educational agencies (SEAs), local educational agencies (LEAs), schools, State and local child welfare agencies, tribal organizations, parents and eligible students, and other interested parties with information to implement the USA amendment to FERPA. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. FPCO, the office that administers FERPA, and the Department's Office of Special Education and Rehabilitative Services (OSERS), the office that administers the IDEA, are available to respond to questions regarding this guidance. If you are interested in commenting on this guidance, please e-mail us your comments at [FERPA@ed.gov](mailto:FERPA@ed.gov) or call FPCO at (202) 260-3887. You also may write to FPCO or OSERS at the following addresses:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Ave., S.W.  
Washington, D.C. 20202-8520

Office of Special Education and Rehabilitative Services  
U.S. Department of Education  
400 Maryland Ave., S.W.  
Washington, D.C. 20202-7100

# Table of Contents

<b>General Requirements Related to the Uninterrupted Scholars Act.....</b>	<b>4</b>
Q.1. What is the Family Educational Rights and Privacy Act (FERPA) and to which entities does it apply? .....	4
Q.2. How did the Uninterrupted Scholars Act (USA) amend FERPA?.....	4
Q.3. When did the Uninterrupted Scholars Act become effective? .....	5
Q.4. Does the USA permit the disclosure of PII from education records, without consent, only for those children in foster care placement?.....	5
Q.5. Does the USA permit educational agencies and institutions to disclose PII from education records to CWAs or tribal organizations, without consent, when the student reaches 18 years of age or attends a postsecondary institution but remains in foster care placement?.....	6
Q.6. Do the USA amendments to FERPA require educational agencies and institutions to disclose PII from education records to CWAs or tribal organizations whenever requested?.....	6
Q.7. Must educational agencies and institutions record any disclosure of PII from education records to the CWA or tribal organization? .....	7
Q.8. May a CWA or tribal organization redisclose PII from education records to other individuals or entities?.....	7
Q.9. Must the CWA or tribal organization record any redisclosure of PII from education records made by the welfare agency or tribal organization to an individual or entity?.....	7
Q.10. May a CWA or tribal organization that receives PII from education records under the USA exception use the PII for purposes other than addressing the education needs of the child? .....	8
Q.11. When an SEA or LEA discloses PII from education records to a CWA or tribal organization under the USA exception, may the SEA or LEA and the CWA or tribal organization collaborate to conduct an audit or evaluation of an education program or child welfare program using the education records disclosed under the USA exception? .....	8
Q.12. How long must the CWA or tribal organization maintain the education records of a child, and what must the CWA or tribal organization do with the education records when no longer needed? .....	8
Q.13. Did the Fostering Connections Act passed by Congress in 2008 give CWAs access to education records?.....	9
Q.14. Are schools or LEAs required to have written agreements with the CWA or tribal organization prior to disclosing PII from education records to the welfare agency or tribal organization?.....	9
Q.15. Would a CWA or tribal organization be subject to FERPA’s “five-year rule” if it improperly redisclosed PII from education records?.....	9
<b>State Educational Agency and the Uninterrupted Scholars Act .....</b>	<b>10</b>
Q.16. May an SEA redisclose, on behalf of its LEAs, the education records of students in foster care placement to the students’ CWAs or tribal organizations that are legally responsible for their care and protection? .....	10

Q.17. Must the SEA record the redisclosure of education records to the CWA or tribal organization? .....	10
Q.18. Are SEAs required to have written agreements with the CWA or tribal organization prior to redisclosing education records to the CWA or tribal organization? .....	10
<b>Individuals with Disabilities Education Act (IDEA) and the Uninterrupted Scholars Act.....</b>	<b>11</b>
Part B of the IDEA .....	11
Q.19. Does the USA permit SEAs and LEAs as participating agencies to disclose without prior written consent PII from the education records of students with disabilities under IDEA Part B to CWAs or to tribal organizations? .....	11
Q.20. What are the confidentiality related responsibilities of SEAs and LEAs, as participating agencies under IDEA Part B, and the CWA or tribal organization once disclosure of PII is made under the USA exception to IDEA Part B’s prior written consent requirement? .....	11
Part C of the IDEA .....	12
Q.21. Does the USA permit the State lead agency and other participating agencies to disclose without prior written consent PII from the early intervention records of children with disabilities under IDEA Part C to CWAs or tribal organizations?.....	12
Q.22. What are the confidentiality related responsibilities of the Part C agency and the CWA or tribal organization once disclosure of PII is made under the USA exception to Part C’s prior written consent requirement? .....	12
Q.23. How does the USA affect the lead agency’s responsibilities to appoint a surrogate parent? .....	13
<b>Uninterrupted Scholars Act: Scenarios .....</b>	<b>14</b>

## General Requirements Related to the Uninterrupted Scholars Act

### Q.1. What is the Family Educational Rights and Privacy Act (FERPA) and to which entities does it apply?

FERPA is a Federal law that protects the privacy of student education records and gives parents certain rights with respect to their children's education records, including the right to inspect and review their children's education records. Under FERPA, a parent generally must provide a signed and dated written consent before a school discloses personally identifiable information (PII) from the student's education records. *See* 34 C.F.R. Part 99, specifically § 99.30. The rights accorded to, and the consent required of, parents under FERPA transfer from the parents to the student when the student becomes an eligible student. *See* § 99.5(a)(1). An "eligible student" is a student who has reached the age of 18 or is attending a postsecondary institution at any age. *See* § 99.3 "Eligible student." FERPA applies to all educational agencies and institutions that receive funds under any program administered by the Secretary of Education ("Department"). In general, when we refer to "local educational agencies (LEAs)" or "schools," we mean "educational agencies and institutions" that are subject to FERPA. Private schools at the elementary and secondary levels generally do not receive funds from the Department; unless they receive such funds, they are not subject to FERPA. While the information in this guidance is generally applicable to all schools (elementary/secondary schools and postsecondary institutions), the discussion is focused on questions faced by elementary and secondary schools.

### Q.2. How did the Uninterrupted Scholars Act (USA) amend FERPA?

The Uninterrupted Scholars Act (USA) specifically amended subsections 444(b)(1)(L) and (b)(2)(B) of the General Education Provisions Act (GEPA) (20 U.S.C. § 1232g(b)(1)(L) and (b)(2)(B)). Section 444 of GEPA is known as FERPA. Generally, FERPA requires that a parent or eligible student provide written consent prior to disclosing PII from the student's education records, unless one of the exceptions to the general requirement of prior written consent applies. The exceptions to consent in FERPA *permit*, but do not require, LEAs and schools to disclose PII from education records under certain conditions without the written consent of the parent or eligible student. The USA added an additional exception to the general requirement of consent in FERPA that permits LEAs and schools to disclose education records of students, without consent of the parent or eligible student, to an agency caseworker or other representative of a State or local child welfare agency (CWA) or tribal organization authorized to access a student's case plan when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student. While most of the exceptions to the general consent requirement are set forth in § 99.31, the

FERPA regulations have not yet been amended to address the amendments recently made by the USA. However, LEAs and schools are still required to follow the current provisions in FERPA as amended by the USA.

The USA also amended the exception to the general requirement of consent in FERPA that permits an LEA's or school's disclosure of PII from students' education records, without consent, if the disclosure is necessary to comply with a lawfully issued subpoena or judicial order. FERPA generally requires LEAs and schools to make a reasonable effort to notify the parent or eligible student of the subpoena or judicial order before complying with it in order to allow the parent or eligible student to seek to quash the subpoena or order or to seek protective action, unless an exception to the notification requirements applies. The USA amended this notification requirement, adding an additional exception so that a school or LEA does not have to notify a parent if the court has already given the parent notice as a party in specified types of court proceedings. Specifically, the amendment modifies FERPA's statutory provision that generally requires that parents and students be notified of judicial orders or subpoenas in advance of compliance by the educational agency or institution by adding the following exception to the notification requirement–

except when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required. [See 20 U.S.C. § 1232g (b)(2)(B).]

Accordingly, if a school receives a judicial order or lawfully issued subpoena, FERPA permits the school to disclose the PII from education records necessary to comply with the order or subpoena, , without consent. However, as explained, the school generally must make a reasonable effort to notify the parent or eligible student prior to disclosing the education records – unless an exception to the notification requirement applies, such as when the court has already provided notice to the parent in the foregoing specified types of court proceedings.

**Q.3. When did the Uninterrupted Scholars Act become effective?**

The USA was enacted on January 14, 2013, and became effective immediately.

**Q.4. Does the USA permit the disclosure of PII from education records, without consent, only for those children in foster care placement?**

Yes. The USA permits, but does not require, educational agencies and institutions to disclose PII from the education records of students in foster care placement without

getting prior consent of the parent or eligible student. The educational agency or institution may disclose PII to an agency caseworker or other representative who has the right to access a student's case plan if the State or local CWA or tribal organization is legally responsible for the care and protection of the student.

To summarize, a "case plan" is defined at 42 U.S.C. 675(1) as a written document that must include a number of specified items that, among other things, must address both the proper care of children in foster care placement. The plan also addresses the services that are provided to children in foster care placement, their parents, and their foster parents. The plan also includes, but is not limited to, ensuring the educational stability of children in foster care.

The USA only applies to those children for whom the CWA or tribal organization is legally responsible, in accordance with State or tribal law, for the care and protection of a child in foster care placement. Thus, the USA would not permit schools and LEAs to disclose PII from education records to the CWA or tribal organization for children who are not in foster care placement. PII may not be released for students who are not in foster care but are receiving other services through the CWA or tribal organization (e.g., vocational and skill assessments, training, tutoring, educational services, family services, and community enrichment activities).

**Q.5. Does the USA permit educational agencies and institutions to disclose PII from education records to CWAs or tribal organizations, without consent, when the student reaches 18 years of age or attends a postsecondary institution but remains in foster care placement?**

Yes. Once a student reaches 18 years old or attends a postsecondary institution at any age, the student becomes an eligible student under FERPA and, as explained in the answer to Q.1, the rights under FERPA transfer to that student. The USA governs the disclosure of PII from the education records of an eligible student in the same fashion as it governs the disclosure of PII from the education records of a student under the age of 18. As a practical matter, most States consider an individual who has reached the age of 18 to be an adult therefore generally would not remain in foster care placement. However, if under State or tribal law an individual is who is 18 or older or is attending a postsecondary institution and who remains in a foster care placement, then the educational agency or institution may choose to disclose education records to the CWA that is legally responsible for the care and protection of the eligible student without the consent of the eligible student.

**Q.6. Does the USA require educational agencies and institutions to disclose PII from education records to CWAs or tribal organizations whenever requested?**



No. The USA created a new exception under 20 U.S.C. § 1232g(b)(1)(L) that permits, but does not require, LEAs and schools to disclose PII from the education records of a student who is in foster care placement to CWAs or tribal organizations. Further, under FERPA, an LEA or school may choose to disclose all or part of the education records it maintains on a student who is in foster care placement. We encourage LEAs and schools to disclose the information from education records that a child's welfare caseworker would need to effectively implement a child's case plan and to ensure the child's education needs are met.

**Q.7. Must educational agencies and institutions record any disclosure of PII from education records to the CWA or tribal organization?**

Yes. FERPA requires recordkeeping on requests for access to and disclosures of education records. *See* § 99.32. The FERPA regulations state that an educational agency or institution: (1) shall maintain a record of each request for access to and each disclosure of PII from the education records of each student; and (2) shall maintain the record with the education records of the student as long as the records are maintained. Thus, if a school discloses education records to the CWA or tribal organization under this exception, the school must be compliant with the recordation requirements under FERPA and also must include: (1) the parties who have requested or received PII from the education records, and (2) the legitimate interests the parties had in requesting or obtaining the information. If an educational agency or institution discloses PII from education records with the understanding that further disclosures will be made, the educational agency's or institution's record of disclosure must include the names and legitimate interests of the additional parties.

**Q.8. May a CWA or tribal organization redisclose PII from education records to other individuals or entities?**

Yes, in some cases. The USA does permit a CWA or tribal organization to redisclose PII from education records for a limited purpose. The USA provides that redisclosures may only be made to an individual or entity "engaged in addressing the student's education needs" and authorized by such agency or organization to receive such disclosure and such disclosure must be consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records. 20 U.S.C. § 1232g(b)(1)(L).

**Q.9. Must the CWA or tribal organization record any redisclosure of PII from education records made by the welfare agency or tribal organization to an individual or entity?**

No. FERPA does not require the CWA or tribal organization to record any redisclosure of PII from education records that it may make to an individual or entity, such as a contractor providing services to address a student's education needs. However, if the

CWA or tribal organization does redisclose PII from an education record on a student in foster care placement to anyone other than an agency- or organization-employed caseworker or other representative who has the right to access a student's case plan, the Department recommends, as a good data management practice, that the CWA or tribal organization record the redisclosure and inform the school of the redisclosure for record keeping purposes. *See* Q.7.

**Q.10. May a CWA or tribal organization that receives PII from education records under the USA exception use the PII for purposes other than addressing the education needs of the child?**

No. The USA is clear that the PII from education records disclosed to the CWA or tribal organization under the USA exception must only be used to address the educational needs of children in foster care placement, including, as discussed later in the answer to Q.21, IDEA-related needs of the child in foster care placement.

**Q.11. When an SEA or LEA discloses PII from education records to a CWA or tribal organization under the USA exception, may the SEA or LEA and the CWA or tribal organization collaborate to conduct an audit or evaluation of an education program or child welfare program using the education records disclosed under the USA exception?**

No. As stated in the answer to Q.10, the PII from education records disclosed to the CWA or tribal organization under the USA exception must only be used for the purpose of addressing the education needs of children in foster care placement. Thus, the PII from education records disclosed under the USA exception may not be used for any other purpose, including to audit or evaluate a Federal- or State-supported education program.

**Q.12. How long must the CWA or tribal organization maintain the education records of a child, and what must the CWA or tribal organization do with the education records when no longer needed?**

Some of the FERPA exceptions to consent require the recipient of education records to destroy PII from education records when it is no longer needed; however, the USA amendment to FERPA did not include any requirement related to the maintenance or destruction of PII from education records disclosed to a CWA or tribal organization. We recommend that the school or LEA and the CWA or tribal organization work together to determine how long the CWA or tribal organization should maintain the education records disclosed under this exception. For example, the CWA or tribal organization could use its standard records retention and destruction guidelines or return the records to the disclosing school or LEA. Further, CWA and tribal organizations should be aware of the potential consequences of improperly redisclosing PII from the education records that

are received from the school or LEA under the USA exception and as discussed in Q.15 below.

**Q.13. Did the Fostering Connections Act passed by Congress in 2008 give CWAs access to education records?**

No. Section 204 of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (“Fostering Connections Act”), Pub L. 110-351, gave CWAs the responsibility to work with LEAs to implement educational stability requirements for children while in foster care placement. However, at that time Congress did not amend FERPA to permit LEAs or schools to disclose PII from students’ education records to child welfare agencies without consent to allow them to address the education needs of the child. The Fostering Connections Act addresses coordination, but does not specifically override any privacy requirements of FERPA. The Fostering Connections Act, among other things, requires that CWAs include in case plans actions to increase educational stability for foster children, and requires that CWAs work to keep foster children in the schools in which they were enrolled at the time of their placement, unless remaining in such schools is not in their best interests, thereby keeping them connected with teachers and friends and helping them continue to progress in their school work.

With the recent amendment to FERPA enacted by Congress through the USA, it is now clear that FERPA permits, but does not require, disclosure without consent of PII from the education records of students in foster care placement to those representatives of CWAs or tribal organizations who are authorized to access the student’s case plan.

**Q.14. Are schools or LEAs required to have written agreements with the CWA or tribal organization prior to disclosing PII from education records to the welfare agency or tribal organization?**

No. The written agreement requirements in the FERPA regulations do not apply to a disclosure of PII from education records made under the USA exception by a school or LEA because Congress amended FERPA to include under this new exception to FERPA’s existing general consent rule. However, schools and LEAs may want to consider a written agreement, data sharing agreement, or memorandum of understanding (MOU) with a CWA or tribal organization to ensure that the CWA or tribal organization is aware of its responsibility under FERPA to protect PII from education records from unauthorized disclosure.

**Q.15. Would a CWA or tribal organization be subject to FERPA’s “five-year rule” if it improperly redisclosed PII from education records?**

Yes. FERPA requires that entities to which educational agencies and institutions disclose PII from education records protect that information from further disclosure. *See* § 99.33.

Additionally, § 99.67(e) of the FERPA regulations provides that if the FPCO determines that a third party outside the school or LEA improperly rediscloses PII from education records in violation of § 99.33 of the FERPA regulations, then the educational agency or institution may not provide that third party access to education records for a minimum period of five years. Thus, if FPCO determines that a CWA or tribal organization improperly redisclosed PII from the education records that it had received from the school or LEA, the school or LEA then would be banned from providing the CWA or tribal organization with access to education records for a minimum of five years.

## **State Educational Agency and the Uninterrupted Scholars Act**

### **Q.16. May an SEA redisclose, on behalf of its LEAs, the education records of students in foster care placement to the students' CWAs or tribal organizations that are legally responsible for their care and protection?**

Yes. An SEA may redisclose PII from the education records of students in foster care placement to a CWA or tribal organization that is legally responsible for the care and protection of the student. The disclosure must be made on behalf of the LEA, as permitted under § 99.33(b)(1) of the FERPA regulations.

### **Q.17. Must the SEA record the redisclosure of education records to the CWA or tribal organization?**

Yes. Section 99.32(b)(2)(i) of the FERPA regulations generally requires that an SEA that makes further disclosures of PII from education records must record the names of the additional parties (e.g., the CWA) to which it discloses PII from education records on behalf of the LEA and their legitimate interests in the information under FERPA. However, the SEA would not have to make a record of the redisclosure if the LEA had made a record of the disclosure to the SEA and included in that record the name of the CWA or tribal organization and its legitimate interest (i.e., to permit the CWA or tribal organization to address the education needs of the child) to which the additional disclosure of the education records would be made.

### **Q.18. Are SEAs required to have written agreements with the CWA or tribal organization prior to redisclosing education records to the CWA or tribal organization?**

No. The written agreement requirement of FERPA does not apply to disclosures of education records made under the USA exception to FERPA's general consent requirement including the redisclosure of education records by an SEA. The written agreement requirement applies only in the context of other exceptions to FERPA's

general consent requirement (e.g., the studies exception and the audit/evaluation exception). *See* §§ 99.31(a)(6) and 99.35(a)(3).

## **Individuals with Disabilities Education Act and the Uninterrupted Scholars Act**

### **Part B of the IDEA**

#### **Q.19. Does the USA permit SEAs and LEAs as participating agencies to disclose without prior written consent PII from the education records of students with disabilities under IDEA Part B to CWAs or to tribal organizations?**

Yes, in very specific circumstances explained in Q.2 of this guidance. The IDEA Part B regulations in 34 C.F.R. §§ 300.610 through 300.626 contain confidentiality of information provisions that incorporate many of the protections of, and are consistent with, the FERPA statute and regulations and apply to participating agencies. *See also*, 20 U.S.C. 1417(c). A participating agency may not disclose PII from the education records of students with disabilities without obtaining the prior written consent of the parent or the student who has reached the age of majority under State law, consistent with § 300.520, unless the disclosure is permissible without prior consent under the FERPA regulations. *See* § 300.622(a).

The USA amended FERPA to add an exception that permits, but does not require, a participating agency to disclose PII from education records to a CWA or tribal organization in very specific circumstances. Although this exception has not yet been incorporated into the FERPA regulations, the Department interprets the confidentiality of information provisions in IDEA Part B to also incorporate the USA's permissible exception to the prior written consent requirement in § 300.622(a). The answer to Q.2 of this guidance explains how the USA amended FERPA.

#### **Q.20. What are the confidentiality-related responsibilities of SEAs and LEAs, as participating agencies under IDEA Part B, and the CWA or tribal organization once disclosure of PII is made under the USA exception to IDEA Part B's prior written consent requirement?**

The participating agency must comply with both the IDEA Part B and the FERPA recordkeeping requirements regarding requests for access to, and disclosures of, PII contained in education records. The IDEA Part B record of access provision in § 300.614 requires educational agencies to keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except by parents and authorized agency employees), including the name of the party, the date access was

given, and the purpose for which the party is authorized to use the records. The FERPA regulations also contain specific recordkeeping requirements in § 99.32. These FERPA recordkeeping requirements are explained in the answers to Q.7 and Q.17 of this guidance.

The USA does not otherwise make the CWA or tribal organization a participating agency under IDEA Part B in § 300.611(c). Accordingly, once a disclosure is made under the USA exception to the CWA or tribal organization, the CWA or tribal organization is subject to the applicable FERPA requirements regarding the redisclosure of such PII by the CWA or tribal organization to which the redisclosure was made, as explained in the answer to Q.8 of this guidance.

## **Part C of the IDEA**

### **Q.21. Does the USA permit the State lead agency and other participating agencies to disclose without prior written consent PII from the early intervention records of children with disabilities under IDEA Part C to CWAs or tribal organizations?**

Yes, in very specific circumstances explained in Q.2 of this guidance. The 2011 IDEA Part C regulations in §§ 303.401 through 303.417 contain specific confidentiality provisions that incorporate many of the protections of, and are consistent with, the FERPA statute and regulations and apply to participating agencies. *See* 20 U.S.C. 1417(c). A participating agency may not disclose PII contained in early intervention records without obtaining the prior written consent of the parent unless disclosure is permissible without prior consent under one of the specific exceptions in IDEA Part C or in FERPA. *See* § 303.414.

The USA amends FERPA to add an exception that permits, but does not require, a State lead agency or a participating agency to disclose PII from the early intervention records to a CWA in very specific circumstances. Although this exception has not yet been incorporated into the FERPA regulations, the Department interprets the confidentiality of information provisions in IDEA Part C to also incorporate the USA's permissible exception to the prior written consent requirement in § 303.414(b). How the USA amended FERPA is explained in the answer to Q.2 of this guidance.

### **Q.22. What are the confidentiality-related responsibilities of the Part C agency and the CWA or tribal organization once disclosure of PII is made under the USA exception to Part C's prior written consent requirement?**

The State lead agency and other participating agencies under IDEA Part C must comply with both the IDEA Part C and the FERPA recordkeeping requirements regarding

requests for access to, and disclosures of, PII contained in early intervention records. The Part C record of access provision in § 303.406 requires State lead agencies and other participating agencies to keep a record of parties obtaining access to education records collected, maintained, or used under Part C of IDEA (except by parents and authorized agency employees), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. The FERPA regulations also contain specific recordkeeping requirements in § 99.32. These FERPA recordkeeping requirements are explained in the answers to Q.7 and Q.17 of this guidance.

The USA does not otherwise make the CWA or tribal organization a participating agency under IDEA Part C in § 303.403(c). However, as noted above, once disclosure is made under the USA exception to the CWA or tribal organization, the CWA or tribal organization is subject to the applicable FERPA requirements regarding the redisclosure of such PII by the CWA or tribal organization to which the redisclosure was made, as stated in the answer to Q.8 of this guidance.

**Q.23. How does the USA affect the lead agency’s responsibilities to appoint a surrogate parent?**

The USA does not alter in any way the IDEA Part C definition of parent or the responsibilities of the parent under IDEA Part C. The USA also does not alter the State lead agency’s responsibilities under IDEA Part C to appoint a surrogate parent under § 303.422 when a parent, as defined in § 303.27, cannot be identified. However, when appointing a surrogate parent, the USA broadens the scope of the PII that can be disclosed by the Part C lead agency or participating agency to the CWA or tribal organization responsible for the care and protection of the foster child.

In appointing a surrogate parent for a foster child under the IDEA Part C regulations, the State lead agency must consult with the CWA or tribal organization responsible for the care and protection of the foster child. The USA permits the Part C State lead agency or participating agency, during this consultation with the CWA or tribal organization, to disclose PII regarding the child without parental consent, provided that the terms and purposes of the USA are met (see the answer to Q.2 of this guidance). Under the IDEA Part C regulations, an employee of any public agency (including the CWA or tribal organization) that provides any services to the child or family member of the child may not serve as the surrogate parent for IDEA Part C purposes.

## Uninterrupted Scholars Act: Scenarios

- 1. A high school receives a request from the local CWA for all of the education records relating to certain students who are in foster care placement. Does the high school have to turn over all of the information, or just the information that the high school thinks the CWA needs to see?**

FERPA doesn't *require* the high school to disclose any education records to the CWA. However, the USA amended FERPA to permit the high school to turn over all or part of the education records for the students who are in foster care placement. The CWA may use these records to address the students' education needs. The Department strongly encourages schools and LEAs to work cooperatively with CWAs and tribal organizations to ensure that the education needs of students in foster care placement are adequately addressed.

- 2. The county CWA contracts with independent social workers in the county to function as caseworkers for children in foster care placement rather than using employees. May the CWA redisclose education records to those contractors without consent or informing the school that shared the records with the CWA? And if so, does the CWA have to record the redisclosure?**

FERPA authorizes the CWA to redisclose the education records, without consent, to the caseworker or an individual or entity who has the right to access a student's case plan, is engaged in addressing the student's education needs and authorized by the CWA to receive such disclosure and such disclosure is consistent with State laws applicable to protecting the confidentiality of a student's education records. While FERPA doesn't require the CWA to record the redisclosure of records to its own contractors, the Department recommends recording disclosures as a good data management process.

- 3. An LEA is willing to turn over education records to a CWA but wants to require the CWA to destroy the records once the children in question are no longer in the foster care system. Does the USA exception require the CWA to destroy or return the education records to the LEA when no longer needed?**

No. Some of the FERPA exceptions do require the recipient of education records to destroy PII from education records when it is no longer needed, but that isn't true of the USA exception. The LEA and the CWA should determine how long the CWA should keep the education records and what should happen to the records when the CWA no longer needs them for the purpose disclosed. As a best practice, the CWA could use its



standard records retention and destruction guidelines, or the CWA and the LEA may agree to a specific time period for returning the records to the LEA or destroying them.

- 4. The LEA shares education records on students in foster care placement with the CWA, and the CWA subsequently rediscloses PII from these education records to the media. Is the CWA potentially subject to FERPA’s “five-year rule” so that the CWA can’t get records from this LEA for five years?**

Yes. The Department’s Family Policy Compliance Office has the authority to impose the five-year rule. In addition, an LEA may decide not to continue sharing records on foster children with a CWA that inappropriately rediscloses those records.

- 5. A CWA approaches a State department of education requesting PII from education records maintained as part of the State’s Student Longitudinal Data System (SLDS) on all children whom the CWA has placed in foster care. Under the USA exception, may the State disclose the requested data from its SLDS to the CWA to provide services to children in foster care placement?**

It’s up to the SEA and LEAs in the State to determine what is the most efficient way to share PII from education records with the child welfare agencies in the State under the USA exception. It would be permissible under this exception for the State to share PII from education records from its SLDS to the CWA for those children in foster care placement. However, the disclosure must be made on behalf of the LEA, as permitted under § 99.33(b)(1), and the SEA generally must record the name of the CWA to which the SEA discloses information on behalf of the LEA and the CWA’s legitimate interests in the information under FERPA. Note, however, that the SEA would not have to make a record of the redisclosure if the LEA made a record of both the disclosure to the SEA and the redisclosure to the CWA. The CWA should be aware that the PII from education records that it receives from the State’s SLDS may only be disclosed to the agency caseworker or other representative of a State or local CWA, who has the right to access a student’s case plan and may only be used to address the education needs of the individual children currently in foster care placement.

- 6. The CWA asks the local school to provide the welfare agency with the education records on children who are not in foster care placement. Does the USA allow the school to share education records with the CWA for this purpose?**

No. The USA would permit the school to disclose education records of students, without consent of the parent or eligible student, only to agency caseworkers or other representatives of the CWA who have the right to access the case plan for children in out-of-home placement (i.e., foster care placement). The USA exception would not apply to those children who are not in foster care placement. Thus, FERPA would not permit the school to disclose education records to the CWA on students who remain at home and

who are not in foster care placement unless there is written consent of the parent or eligible student.

Thus, FERPA would not permit the school to disclose education records to the CWA pertaining to those students receiving such in-home services and who are not in foster care placement without written consent of the parent or eligible student.