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## FOREWORD

If someone were to ask you to define, “special needs,” what would your answer be? Would you simply say a generic list of disabilities, “Autism, ADHD, Deaf, Blindness, etc.?” Would you give a long-drawn-out answer, or would it be something brief? Within the pages of this guide, you will find an answer to that question, along with information on Federal and State laws, and more topics as we delve into the world of Special Needs. This book was revised by the CDE School Transportation Unit, with the assistance of the CSPTA Special Needs Committee. Additional information and assistance were provided by NAPT, NHTSA, FMCSA, and the National Congress on School Transportation.

Some of the information found in this manual has been taken from the earlier version (2019) as no updates on those sections were required.

## ACKNOWLEDGEMENTS

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These guidelines were developed by the CDE School Transportation Unit with the assistance of an exceptional group of educators including school nurses, transportation supervisors, schedulers, and trainers.

\*\*Please note, that in all instances where “public school” or “district” is stated, this includes all Charter schools.\*\*



## OVERVIEW

Two federal statutes, Section 504 of the Rehabilitation Act of 1973, and the Individuals with Disabilities Education Act (IDEA), apply to the provision of school transportation for eligible students with disabilities. Section 504 requires school districts to provide transportation when necessary to meet the needs of a person with a disability as adequately as the needs of a non-disabled person are met. The IDEA requires transportation as necessary to assist a child with disabilities in benefiting from special education. Specialized transportation may be required when necessary for the child to access a Free Appropriate Public Education (FAPE).

## FEDERAL LEGISLATION

### US Constitution - 14<sup>th</sup> Amendment

The Fourteenth Amendment provides that no state may deny any person(s) within its jurisdiction equal protection under the law. All people must be treated in an equivalent manner.

#### *Amendment XIV*

#### *Section 1.*

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. ("U.S. Constitution - Fourteenth Amendment - Congress")*

### Americans with Disabilities Act (Public Law 101-136)

The ADA is a comprehensive civil rights law that enforces the non-discrimination of persons with disabilities and applies to public agencies. Transportation is specifically addressed in this law. The ADA does not change or diminish existing provisions of federal law protecting individuals with disabilities under Section 504 and IDEA.

The ADA regulations specifically exempt school buses from some of these requirements, but they echo the mandates of Section 504 with respect to access to transportation services. The ADA creates a higher standard of non-discrimination than Section 504 does in that it applies regardless of whether federal funding is received.

#### *ADA - Amendment Act 2008*

"The Amendments Act was signed into law in September 2008 and became effective on January 1, 2009." ("Questions and Answers on the ADA Amendments Act of 2008 for ... - ed") Congress passed the Amendments Act in part to supersede Supreme Court decisions that had too narrowly interpreted the ADA's definition of a disability.

The Amendments Act not only amends the ADA but also includes a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. All persons covered by Section 504 or Title II are protected from discrimination under the general nondiscrimination regulatory provisions implementing these statutes, which cover program and physical accessibility requirements, as well as protection against retaliation and harassment. "The Amendments Act does not alter the school district's substantive obligations under Section 504 or Title II." ("Questions and Answers on the ADA Amendments Act of 2008 for ... - ed") Rather, it amends the ADA and Section 504 to broaden the potential class of persons with disabilities protected by the statutes.

The Amendments Act amends only the ADA and, through a conforming amendment, Section 504. The Amendments Act does not amend the IDEA, and therefore does not affect that law's requirements. ("Questions and Answers on the ADA Amendments Act of 2008 for ... - ed")

The Amendments Act does not alter the definition of a disability provided by the ADA or Section 504, but it significantly changes how the term "disability" is to be interpreted.

The Amendments Act specifies that:

- "An impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting." ("Questions and Answers on the ADA Amendments Act of 2008 for ... - ed")
- In the phrase "a physical or mental impairment that substantially limits a major life activity," the term "substantially limits" shall be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses.
  - Mitigating measures are things like medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications that an individual may use to eliminate or reduce the effects of an impairment. These measures cannot be considered when determining whether a person has a substantially limiting impairment. ("Questions and Answers on the ADA Amendments Act of 2008 for ... - ed")
  - Impairments that may not have previously been considered to be disabilities because of the ameliorative effects of mitigating measures might now meet the Section 504 and ADA definition of disability.
- An impairment that is episodic or in remission is a disability if, when in an active phase, it substantially limits a major life activity.
- An individual will not be "regarded as" a person with a disability if the impairment is both transitory (meaning that it has an actual or expected duration of six months or less) and minor.

Per the US Department of Education, Office of Civil Rights:

*"While Section 504 does not require a school to take specific action if a student has a physical or mental impairment that is transitory and minor, Section 504 also does not prohibit schools from going beyond what the law requires to assist a student. The school district could, for example, allow the student to take a bus to school, when the student with the broken leg*

*typically walks to school, or provide a pass to allow the student to use the faculty elevator-which is typically off-limits for students-while the student uses crutches."*

The Amendments Act contains two non-exhaustible lists of major life activities. The first list expands the examples set forth in the ADA regulation, and the second list provides examples of "major bodily functions" that are now considered major life activities under the law. The list of major life activities in the ADA now includes, but is not limited to: ("Questions and Answers on the ADA Amendments Act of 2008 for ... - ed")

Caring for oneself	Bending	Standing
Performing manual tasks	Speaking	Lifting
Seeing	Breathing	Communicating
Hearing	Learning	Working
Eating	Reading	
Sleeping	Concentrating	
Walking	Thinking	

The list of major bodily functions that are now considered major life activities includes but is not limited to: functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. ("Questions and Answers on the ADA Amendments Act of 2008 for ... - ed")

### **The Education for all Handicapped Children Act of 1975 (Public Law 94-142)**

This law guaranteed that a FAPE, including special education and related services, be provided to all children with disabilities. The law detailed the required steps that must be taken in identifying and evaluating handicapped children, and provided that handicapped children are to be educated with other non-handicapped children to the maximum extent appropriate in the Least Restrictive Environment (LRE).

### **Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112)**

Section 504 is a part of the Rehabilitation Act of 1973, which combined the Civil Rights Act of 1964 and The Education Amendments of 1972 (Title VI, Title VII and Title IX). This applies to any organization that receives federal financial assistance, including public/charter schools. The law in part states that, no otherwise qualified individual with a disability shall, solely by reason of her/his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

The Office of Civil Rights (OCR) within the U.S. Department of Education is responsible for enforcing Section 504.

Section 504 and the ADA define disability as

- (1) a physical or mental impairment that substantially limits a major life activity.

- (2) a record of such an impairment; or
- (3) being regarded as having such an impairment.

Section 504 regulations require a school district/charter to provide a “free appropriate public education” (FAPE) to each qualified student with a disability who is in the school district’s/charter’s jurisdictions, regardless of the nature or severity of the disability. Under 504, a disabled student’s right to transportation is based solely on the need to travel to and from school to access special education and related services. Section 504’s definition of disability is broader than IDEA’s definition.

Because Section 504 preceded the enactment of the ADA by nearly 20 years, Section 504 has generally been the basis for disabilities protections in the nation’s public schools and consequently is often the foundation for transportation complaints. Service disputes have included, but not been limited to, access to school transportation services, length of ride, transportation costs to parents, loss of instructional time, and suspension of transportation. The law requires a case-by-case analysis but assumes that students with disabilities will be provided integrated transportation with their non-disabled peers. This is referred to as Least Restrictive Environment” (LRE).

### Individuals with Disabilities Education Act (IDEA)

The IDEA Act requires transportation as necessary to assist a child with disabilities in benefiting from special education. This is also required when it is necessary for the child to be able to access FAPE. Transportation services are provided in conformity with an Individualized Education Plan (IEP) for each eligible student.

Transportation services include:

- Travel to and from school
- Travel in and around school buildings,
- Specialized equipment to make transportation viable (Lift bus or vehicle with a ramp).

FAPE includes specially designed instruction and related services that must be made available to all children with disabilities between the ages of 3 and 21. In the State of Colorado, “Schools must ensure equal access to that rewarding experience for students with disabilities. Extracurricular athletics which include club, intramural, or interscholastic (e.g., freshman, junior varsity, varsity) athletics at all education levels are a vital component of an overall education program.” (“UNITED STATES DEPARTMENT OF EDUCATION”)

The IDEA governs how states and public agencies provide early intervention, special education, and related services to more than 6.5 million eligible infants, toddlers, children, and youth with disabilities. Congress reauthorized the IDEA in 2004 and most recently amended the IDEA through Public Law 114-95, Every Student Succeeds Act (ESSA), in December 2015.

In the law, Congress states:

“Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving

educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”

Under IDEA, decisions for service delivery are based on the child’s needs and must be made on a case-by-case basis. To be eligible under IDEA, a child needs to possess one of 13 disabilities that we will discuss later.

IDEA is composed of four parts, the main three for school transportation being Part A, Part B, and Part C. Part A covers the general provisions of the law; Part B covers assistance for education of all school aged children with disabilities; Part C covers infants and toddlers with disabilities, including children from birth to age three; and Part D consists of the nation support programs administered at the federal level.

### *IDEA Part B*

The purpose of IDEA Part B is to assist the states in providing special education and related services to children with disabilities, insuring that children with disabilities have access to a free appropriate public education (FAPE).

Part B defines a “child with a disability” as,

(1) ***Child with a disability*** means a child evaluated in accordance with §§ [300.304](#) through [300.311](#) as having an intellectual disability, 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, other health impairment, 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 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.

### *IDEA Part C*

Part C addresses the need for early intervention for infants and toddlers. States were offered financial incentives to establish an extensive, statewide service among numerous agencies



that would be provided to children from birth through two years of age and their families. The age of eligibility for special education and related services for all children with disabilities was lowered to age three, and this requires that all eligible children receive early intervention services.

Services shall be specified in the Individualized Family Service Plan (IFSP). The responsibilities of transportation services are defined as the cost of travel (i.e., tolls and parking expenses) that is necessary to enable an eligible child and the child's family to receive early intervention services.

Due to Part C, transportation officials are faced with a variety of new challenges such as the need for age-appropriate child safety restraint systems, adequate supervision during transport, and increased training for personnel serving this vulnerable population.

Transportation includes the cost of travel and related costs that are necessary to enable an eligible child and the child's family to receive early intervention services (i.e., mileage, travel by taxi, common carrier, or other means).

### Free Appropriate Public Education (FAPE)

The cornerstone of the IDEA is the entitlement of each eligible child with a disability to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet the child's unique needs and that prepare the child for further education, employment, and independent living.

"Under the IDEA, the primary vehicle for providing FAPE is through an appropriately developed Individualized Education Program (IEP) that is based on the individual needs of the child." ("UNITED STATES DEPARTMENT OF EDUCATION") An IEP must take into account a child's present levels of academic achievement and functional performance, and the impact of that child's disability on his or her involvement and progress in the general education curriculum.

### General Education Provisions Act (GEPA) - Section 444

Section 444 of GEPA establishes the Family Educational Rights and Privacy Act (FERPA). The act guarantees parental access to student education records, while limiting the disclosure of those records to third parties. ("General Education Provisions Act (GEPA): Overview and Issues") Specifically, educational agencies and institutions that receive federal funds must provide parents with access to the educational records of their children.

### Family Education Rights and Privacy Act (FERPA)

FERPA is a federal law that protects the privacy of student education records and provides directions as to how student information can be shared. FERPA permits, at the discretion of a school, for school officials to receive relevant student information. This includes school transportation officials, bus drivers and contractors, if each of the requirements of the law is met.



## Individualized Education Plan (IEP)

The IEP for each eligible child with disabilities is a written statement with legal force and commitment.

It must include:

- A statement of the child's present levels of academic achievement and functional performance as more fully described in the regulations.
- A statement of measurable annual goals, as more fully described in the regulations.
- A description of how and when the child's progress towards stated goals will be measured.
- A statement of the specific special education and related services, supplementary aids and services, and program modifications or supports for school personnel to be provided, as more fully described in the regulations.
- An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities. ("Extent of Nonparticipation (Component of the IEP) | Center for Parent ...")
- A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments, as more fully described in the regulations.
- The projected dates for initiation of services and modifications and the anticipated frequency, location, and duration of those services and modifications. ("Extended School Year or Extended Year Services for Early Childhood ...")
- Transition Services, including appropriate measurable post-secondary goals and the services (including transportation) needed to assist the child in reaching those goals, to be provided at age 16 or younger, if deemed appropriate by the IEP team

## Individualized Education Plan Team (IEP Team)

This team may be composed of:

- The child, whenever appropriate
- The parent/guardians
- At least one regular education teacher (if appropriate)
- At least one special education teacher or provider
- A representative of the local educational agency who meets the qualifications set forth in the IEP regulations.

- An individual who can interpret evaluation results (i.e., Physical Therapist, Psychologist)

At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child which includes related services personnel as appropriate. (“eCFR: 34 CFR 300.321 -- IEP Team.”)

### Individualized Family Services Plan (IFSP)

The family has a significant role in the provision of intervention services that are addressed through the Individualized Family Service Plan (IFSP). To promote family centered early intervention services, the IFSP is the process that addresses the early intervention service, which may include transportation.

Requirements of the IFSP include:

- A statement about the child's status, i.e., present level of physical development
- A statement regarding family information
- A statement of early intervention services, including the frequency, intensity, and the method of delivering services, including payment, if any
- A statement of the projected dates for initiation of services and the anticipated duration of the services.

*Transporting Children with Disabilities*, by Linda F. Bluth, Ed.D., presented by the NAPT Foundation, Inc. 2006, states (quoted with permission):

*“The decision to provide the early intervention service, transportation, is made on a case-by-case basis and is directly related to the child and family need for this service. It is essential that when infants and toddlers are transported on a school bus, consideration be given to the use of appropriate child safety restraint systems and age-appropriate supervision. Whenever transportation is required, a representative from transportation should be invited to serve as a member of the IFSP team to address the unique needs of a child who requires specialized services. The involvement of transportation personnel should occur as soon as it is known a child has specialized transportation needs. When a child transitions from the Part C program to a Part B program, a smooth and effective transition plan is required. At this time, the need for the related service transportation should be discussed.”*

### Least Restrictive Environment (LRE)

Integrated transportation is the presumption for students with disabilities. The rights of children with disabilities to ride with their non-disabled peers should be applied to the maximum extent possible and consistent with the practice of safe transportation. When it is necessary to transport a child with disabilities on a school bus separate from their non-disabled peers, the IEP team should first consider supplementary aids and services, such as

providing an attendant on the school bus with non-disabled peers. Decision about riding on a school bus that serves exclusively children with disabilities should only be made on a case-by-case basis, based upon review of a child's individual special needs. Transportation in a separate school bus designated for children with disabilities may be appropriate when necessary to accommodate the child's special needs to assure a safe ride.

The Individuals with Disabilities Education Act (IDEA) regulations state:

- To the maximum extent appropriate, disabled children, including children in public or private institutions or other care facilities, are educated with children who are non-disabled. ("Section 1412 (a) (5) - Individuals with Disabilities Education Act")
- That special classes, separate schooling, or other removal of disabled children from the regular education environment, INCLUDING TRANSPORTATION, occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR 300.114-117).

The following information is a summary of some of the key provisions that impact transportation service in the LRE:

- To the maximum extent appropriate, disabled children are educated with children who are non-disabled. ("118 F.3d. 996 (4th Cir. 1997), cert. denied, 118 S. Ct. 688 (1998)")
- Each disabled child's educational placement is as close as possible to the child's home, and unless a disabled child's IEP requires some other arrangement, the child is educated in the school that he/she would attend if he/she were not disabled.
- In providing or arranging for the provision of non-academic and extra-curricular services and activities, disabled children shall participate with non-disabled children in those services and activities to the maximum extent appropriate to the needs of the individual child.

The implementation of transportation services and fulfilling the requirement of service delivery in the LRE are challenging. The following recommendations support the spirit and intent of IDEA:

- Transportation for each student with a disability should be examined on an individual basis.
- A Free Appropriate Public Education (FAPE) should be provided per Federal regulations in the least restrictive environment pursuant to a student's IEP.
- Recognizing the importance of transportation services for children with disabilities is the joint responsibility of all persons involved in administrative decisions regarding service delivery.

- A successful transportation program is contingent upon the cooperative involvement of students, parents, administrators, and advocates to realistically implement the LRE mandate.

### Every Student Succeeds Act (ESSA)

ESSA is the reauthorization of the Elementary and Secondary Education Act (ESEA) and the replacement of the No Child Left Behind (NCLB) Act. This law now requires states to ensure certain protections for students in foster care-addressing the role of state and local education agencies to support school stability and collaborate with child welfare agencies. Thus, ensuring that all children have a fair, equal, and significant opportunity to obtain a high-quality education.

Collaboration with the state and local child welfare agencies develops and implements clear written procedures governing how transportation maintains children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of time in foster care.

Transportation procedures must:

- Ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with the child welfare agency's authority to use child welfare funding for school of origin transportation.
- Ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the LEA (Local Education Agency) will provide transportation to the school of origin if: ("20 U.S. Code § 6312 - Local educational agency plans")
  - The local child welfare agency agrees to reimburse the LEA for the cost of such transportation.
  - "The LEA agrees to pay for the cost of such transportation; or" ("ESSA: LEA Plan Requirements - Colorado Department of Education")
  - The LEA and the local child welfare agency agree to share the cost of such transportation.

Note that *Title IA's* new transportation procedures apply to all children in foster care for the duration of their time in foster care. The McKinney-Vento Act's transportation requirements apply to all homeless children and youth for the duration of their homelessness and until the end of the academic year in which they move into permanent housing.

### McKinney-Vento Act

The McKinney-Vento Homeless Assistance Act of 1987 is a United States federal law that provides federal money for homeless shelter programs. It was the first significant federal legislative response to homelessness, and was passed by the United States Congress and

signed into law by President Ronald Reagan on July 22, 1987. The act has been reauthorized several times over the years.

The Act uses the following definition for homeless children: "individuals who lack a fixed, regular, and adequate nighttime residence." The Act then goes on to give examples of children who would fall under this definition:

- Children sharing housing due to economic hardship or loss of housing.
- Children living in "motels, hotels, trailer parks, or campgrounds due to lack of alternative accommodations."
- Children living in "emergency or transitional shelters."
- Children whose primary nighttime residence is not ordinarily used as a regular sleeping accommodation (e.g., park benches, etc.)
- Children living in "cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations..."

The McKinney-Vento Act also ensures homeless children transportation to and from school free of charge, allowing children to attend their school of origin (last school enrolled or the school they attended when they first became homeless) regardless of what district the family resides in. It further requires schools to register homeless children even if they lack normally required documents, such as immunization records or proof of residence.

To implement the McKinney-Vento Act, States must designate a statewide homeless coordinator to review policies and create procedures, including dispute resolution procedures, to ensure that homeless children are able to attend school. Local school districts must appoint Local Education Liaisons/Agencies to ensure that school staff are aware of these rights, to provide public notice to homeless families (at shelters and at school) and to facilitate access to school and transportation services.

## Head Start Act

The Head Start Act serves infants and toddlers, preschool children with disabilities, and migrant children. It provides a comprehensive program that includes health, nutritional, educational, social, and other services. The regulation requires that a minimum of 10 percent of enrollment be available to children with disabilities. Eligible children with disabilities may be enrolled in Special Education and Head Start. Under this dual enrollment, both programs must decide who will be responsible for transportation.

### HEAD START 'FINAL RULE'

#### 45 CFR 1310, JANUARY 18, 2001

- **Applicability.** The final rule applies to all Head Start and Early Head Start Grantees whenever transportation services are provided. This final rule implements the statutory provision for establishing requirements for the safety features and safe operation of vehicles used by Head Start agencies to transport children participating in Head Start programs. It applies

whether the program owns and operates its own fleet of vehicles or contracts with a private or public transportation provider. It has been noted that the single most important safety feature in the Head Start transportation regulations is the requirement that children be transported on school buses or in Allowable Alternative Vehicles (AAV)

- **Timelines**
  - **January 18, 2002**
    - All Head Start vehicles must be equipped with reverse beepers, fire extinguishers, first aid kits, seat belt cutters (with signs indicating the location of each), and a communication system such as a two-way radio or cell phone.
    - The Final Rule requires Head Start vehicles to be inspected by the appropriate state agency at least once a year, and Head Start drivers are required to perform a daily pre-trip inspection. Programs must establish a systemic preventive maintenance program for their vehicles. (§45 CFR 1310.14)
    - All Head Start drivers must have a Commercial Driver's License (CDL) in states where such licenses are granted regardless of the size of the vehicle they drive. (§45 CFR 1310.16 a1)
    - All Head Start drivers must receive training as required by (§45 CFR 1310.17 A-D and 45 CFR 1304.52K).
    - All Head Start monitors must receive training as required by (§45 CFR 1310.17 f2).
  - **January 20, 2004 (Extended to June 21, 2004, with further extensions to January 20, 2006, in some cases when approved)**
    - All Head Start vehicles must be equipped with height and weight appropriate child restraint systems. As of this date all Head Start children weighing 50 pounds or less must be seated in appropriate child restraint systems. (§45 CFR 1310.15)
    - Every Head Start vehicle must have at least one monitor on board at all times. (§45 CFR 1310.15 c)
  - **January 18, 2006**
    - All vehicles must be school buses or AAV's (Allowable Alternative Vehicles). (§45 CFR 1310.12 a)

- To mainstream children with disabilities whenever possible, children with disabilities must be transported in the same vehicle used to transport other Head Start children. (§45 CFR 1310.222 a)

## Exceptional Children's Education Act

This act provides a means for educating children who are exceptional. To accomplish this, it establishes a series of services that recognize the capabilities of all state agencies. This would include special classes in public schools, and the establishment of special schools, programs for children with disabilities who are confined to their homes or hospitals, and instruction in institutions of the state for exception children. The final determination of placement in a special education program of any eligible exceptional child must be made by the child's IEP team. It is in the intent of the general assembly that children with disabilities shall be educated in the Least Restrictive Environment (LRE).

This includes providing services directly to the children and consultative service to regular classroom teachers. This law is intended to ensure that there is a coordination of all services available to children with disabilities and that there is encouragement of development of agreements or contracts among agencies for the provision of appropriate services for children with disabilities.

## 10-day Rule: Suspension/Expulsion

School safety is important to school personnel and parents. The IDEA and its regulations incorporate prior court decisions and Department policy. The following information is adapted from Legal Rules, written by Peggy Burns, and published by Roseann Schwaderer, September 2006:

*"Disabled students can receive the same consequences for behavior infractions as their non-disabled peers until the district gets to the point of removal from school for more than ten consecutive days. It is necessary to count bus suspensions toward these ten days if transportation is a related service for the student in question, and if the student does not otherwise get to school. When the district exceeds ten days of suspension, a manifestation determination review must occur."*

Under IDEA 2004, nothing has changed regarding the first ten days of suspension. Thereafter, however, absent a direct connection between the conduct violation and the student's disability, the student can be removed so long as educational services are provided. Also, the longer exclusion is now possible if the student inflicts serious bodily injury upon another person.

It has been widely accepted that, where a special needs child is transported only on the same basis as a non-disabled child - because he/she lives beyond the district's/charter's walk distance to his/her school and is transported in the same manner and with the same equipment as is a non-disabled child - then, transportation is NOT a related service.

- If the IEP team has determined that the child’s disability does not create special circumstances that would result in needs beyond those of a similar non-disabled child, transportation should not be on the IEP. In that case, a bus suspension does not count towards the ten-day rule.
- But, if the IEP team has indicated that transportation **IS** a related service, and the student faces suspension from the bus, the district/charter has, essentially, three choices:
  - Count the day towards the ten-day rule.
  - Get the student to school at public expense some other way (i.e., a parent-provided transportation, with reimbursement).
  - Address the bus behavior through some consequence or intervention other than suspension. If other members of the school (teachers, principals, assistants) are all witnessing similar behaviors, a Functional Behavioral Analysis (FBA) may be required.

Additionally, amendments to the IDEA have:

- Expanded the authority of school personnel to remove a child who brings a gun to school. This would also apply to all dangerous weapons and to the knowing possession of illegal drugs or the sale or solicitation of the sale of controlled substances.
- Added a new ability of schools to request a hearing officer to remove a child for up to 45 days if keeping the child in his or her current placement is substantially likely to result in injury to the child or to others.

Services do not need to be provided during the first ten school days in a school year when a child is removed. During any subsequent removal that is for ten school days or less, schools will provide services to the extent determined necessary to enable the child to progress in the general curriculum and achieve the goals of his or her IEP.

During any long-term removal for behavior that is not a manifestation of a child’s disability, schools provide services to the extent determined necessary to enable the child to progress in the general curriculum and advance toward achieving the goals of his or her IEP. In situations involving removals for behavior that is not a manifestation of the child’s disability, the child’s IEP team makes the service determination.

Students who are disabled under Section 504 may be expelled for behavior that is unrelated to their disability and not continue to receive services. The basic rules when considering an expulsion under any law are the following:

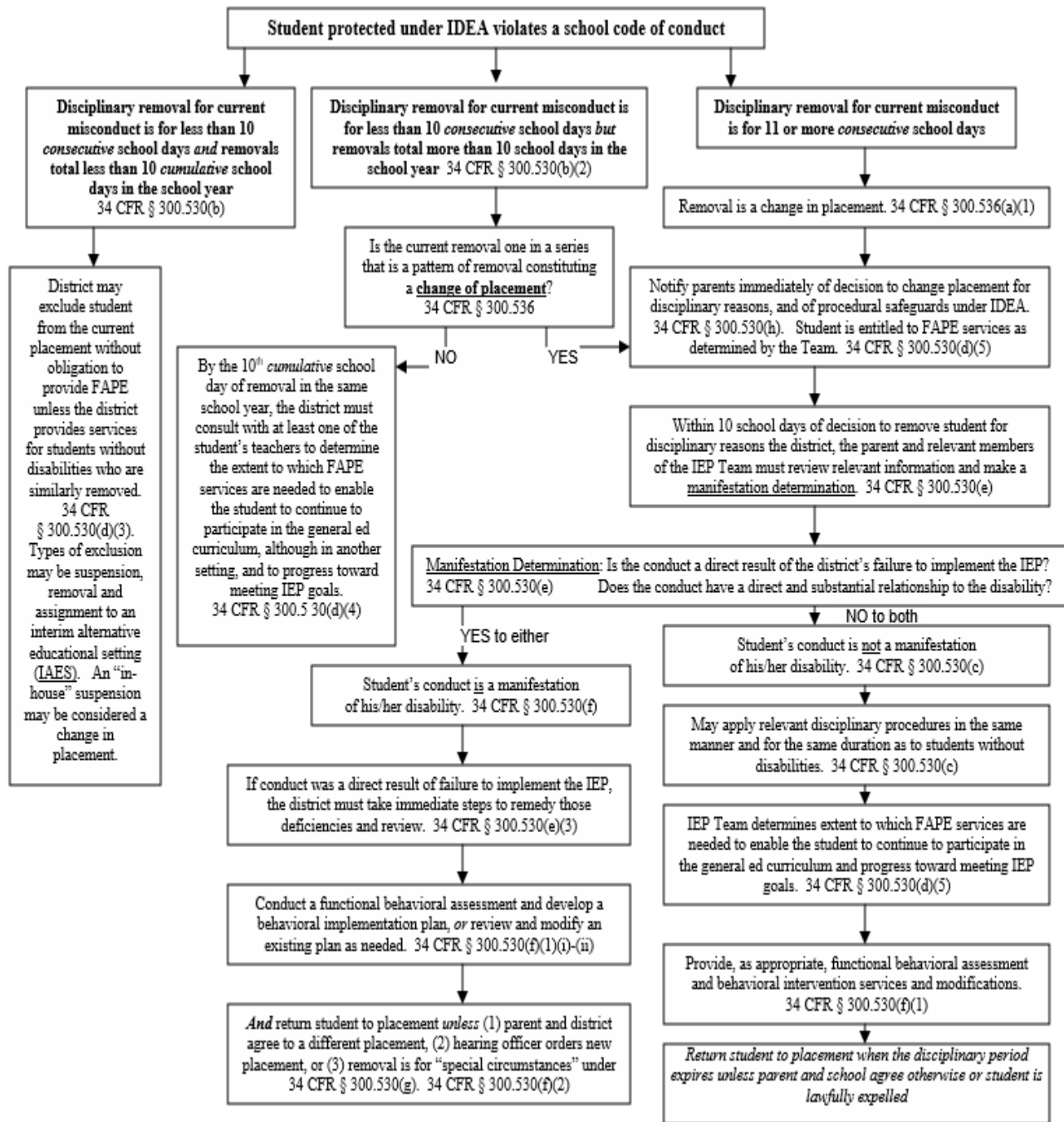
- The United States Supreme Court has ruled that suspension or expulsion of any student requires due process, including parental notification of charges, presentation of evidence, and the opportunity to respond.



- In cases where transportation is a related service, a student with a disability may be suspended, in accordance with the school's discipline policies, from transportation service for up to ten consecutive days in a school year. Suspension, for more than ten cumulative days, may or may not constitute a change of placement depending on the circumstances of a particular case.
- If the student is dangerous and parent refuse alternative transportation arrangements within ten days (and transportation is a related service on the IEP), the school can request a hearing officer to change placement for up to 45 days, including the provision of alternative transportation. A special education student who brings a weapon to school or possesses, uses, sells, or solicits the sale of drugs at school or during a school function can be removed for up to 45 days without parental agreement.

The last situation described requires the school district to have extensive documentation regarding the incident, as well as the steps taken to modify the inappropriate student behavior. An alternative transportation plan should be in place for the interim. For example, when transportation is a related service, reimbursement provided to a willing parent is an acceptable alternative to riding the school bus.

10-Day Rule Flow Chart



## Extended School Year

An extended school year is a program that targets goals and objectives in the areas where the student would likely regress in a substantial way without services. It is different from “summer school.” It is provided to prevent any interruption in the student’s ability to maintain skills he/she has learned. Courts have held that if a student regresses so severely that he/she cannot regain skills lost over a summer vacation in a reasonable period, then an extended school year may be required.

If a student needs an extended school year program to implement an IEP, and transportation is listed as related service on the IEP, then free transportation service will need to be continued through the duration of the extended school year. These decisions are not limited to specific disabling conditions but are a function of the unique needs of the child to access his/hers extended school year program. Transportation to the extended school year program may be necessary (depending on the location of that program) even if the child does not otherwise receive transportation during the school year. That is an IEP team decision.

## Infants and Toddlers

Availability and support to provide early intervention services for infants and toddlers with disabilities are found in the IDEA, Part B and Part C. Service delivery options are based on the age of the child. It is essential that knowledgeable, qualified personnel make decisions regarding each infant, toddler, and preschool child’s transportation services. In no instance should safety be compromised. Eligible children under the age of three, with medical, intellectual, behavioral, neurological, orthopedic, and respiratory needs require specialized interdisciplinary planning regarding transportation services. The local transportation department should determine how young a child may be who can be transported in the school transportation vehicles available within the district. A variety of service delivery options may be explored to transport young children. Safety should be the first consideration.

Service delivery options include:

- Public system of transportation
- Reimbursement for commercial or private system use
- Parent reimbursement of mileage
- Medical assistance for allowable services
- Local school district transportation services
- Voucher system
- Services arranged by the Health Department
- Taxi service

The option selected should always be based on the individual needs of the child and family, in accordance with state and federal laws and regulations. The option recommended should

always be discussed with the family at the time of the IFSP (Individualized Family Service Plan) development and agreed upon prior to beginning transportation services.

Following are vital considerations in decision making:

- Age of child and special needs
- Parental concerns
- Safety considerations
- Frequency of services
- Length of ride
- Site location of early intervention service

To eliminate any interruption in service, transportation issues should be addressed in advance for children transitioning from Part C to Part B services. A representative from the transportation department should be participating in the IEP development.

### Sexual Harassment

The definition of sexual harassment provided by the Office for Civil Rights (OCR) of the United States Department of Education includes verbal or physical conduct of a sexual nature, imposed because of sex, by an employee or student, which is unwelcome, hostile, or intimidating. The existence of a sexually hostile environment is determined from the viewpoint of a reasonable person in the victim's situation.

In determining whether sexual harassment exposes a student because of their sex to a hostile environment, relevant circumstances include:

- The age of the victim
- The frequency, duration, repetition, location, severity, and scope of the act(s) of harassment
- The nature and context of the incidents(s)
- Whether the conduct was verbal or physical
- Whether others joined in perpetuating the alleged harassment
- Whether the alleged incidents created an offensive, hostile, or abusive atmosphere at the district or at specific schools or in other district settings, such as on school transportation vehicles.

To ensure that the rights of students are not violated by sexual harassment, school districts should have a written policy. Implementation of the policy should include:

- On an annual basis, dissemination in writing to all district employees, parents, and students, the district's policy prohibiting sexual harassment and violence.

- Training about sexual harassment to all staff on an annual basis and to new employees as part of their orientation.
- Education of students about sexual harassment through curriculum and by other means.
- Written guidelines to the staff and administrators on determining sexual harassment occurrences.
- Investigation and documentation of all allegations of harassment and making an informal resolution of minor allegations or making an initial determination as to whether harassment has occurred. Complaints of sexual harassment and the responsive action should be maintained in a centralized file and comply with school district policy.
- Written guidelines, consistent with the sexual harassment policy, to assist administrators with determining the appropriate corrective action.
- Consistency with Section 504 standards. Students with disabilities and other special needs passengers who have been found to be responsible for action of sexual harassment need to be disciplined or otherwise treated in a manner reasonably calculated to eliminate the harassment.
- Notification of all parents/guardians of incidents of sexual harassment. Minor occurrences could lead to major allegations. It is recommended that counseling should be provided when appropriate.

## COLORADO LEGISLATION

### Article 10 of Children's Code

According to Article 10 of the Children's Code, any school official or employee who has reasonable cause to know or suspect, or who witnesses a child being subjected to circumstances that would result in abuse or neglect, or suspects abuse or neglect, is to report it. In addition to whatever is required by local school board policy, a report is to be made and submitted by the individual to the Department of Human Services in the jurisdiction that the child resides in. Any person who willfully violates these provisions can be prosecuted. School officials or employees reporting in good faith are immune from liability, both civil and criminal, according to Section §19-10-110, C.R.S., of the Children's Code.

Child abuse is defined as non-accidental physical or mental injury caused by the acts or omissions of the child's parents or caretakers. Child abuse and neglect includes cases in which a child is in need of services because the child's parent, legal guardian, or custodian fails to take the same actions to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take.

## Traffic Code 42-4-1903

The intent of this legislation is to allow school districts a choice as to whether a student stop, requiring the operation of a lift device, can be done safely without the use of alternately flashing warning signal lamps and therefore eliminate the long interval of time controlling traffic. (Section §42-4-1903, (2) (b) (II), C.R.S.)

Section §42-4-808, C.R.S., states that drivers and pedestrians have an obligation to yield to disabled persons and take precautions necessary to avoid an accident or injury to said persons.

## Title 22: Education - Section 22-1-102 - Residence of a Child

- (1) "Every public school shall be open for the admission of all children, between the ages of five and twenty-one years, residing in that district without the payment of tuition." ("Student Attendance FAQ | CDE") The board of education shall have power to admit adults and children not residing in the district if it sees fit to do so and to fix the terms of such admission.
- (2) "A child shall be deemed to reside in a school district if:" ("EDUCATION - PUBLIC SCHOOLS")
  - (a) Both his or her parents, or the survivor of them, or the one of them with whom such child resides a majority of the time pursuant to an order of any court of competent jurisdiction resides in the school district.
  - (b) The legally appointed guardian of his person resides in the school district.
  - (c) After emancipation by his parents, or the survivor thereof, from their or his control, and he has no guardian, he lives within the school district.
  - (d) In the judgment of the board of education of the school district wherein the child lives, the child has been abandoned by his parents.
  - (e) The child has become permanently dependent for his maintenance and support on someone other than his nonresident parents, or upon any charitable organization, if the dependent child is actually to make his home and receive his support within the school district where he desires to attend.
  - (f) If one of the child's parents or the guardian of his person is a public officer or employee living temporarily for the performance of his duties in a school district other than that of his residence. Unless the parents of a child are permanently separated, the residence of the husband shall be deemed to be the residence of the child, but, if the parents have permanently separated, the residence of the child shall be that of the parent with whom the child actually lives.
  - (g) Regardless of the residence of the parents, if any, the child adopts a dwelling place within the district with the intent to remain there indefinitely and with the intent not to return to the dwelling place from which he came, and regularly eats or sleeps there, or both, during the entire school year as defined in section 22-1-112; but the child shall be deemed not to have the requisite intent if he regularly

returns to another dwelling place during summer vacations or weekends; (“Section 22-1-102 - Residence of child, Colo. Rev. Stat. - Casetext”)

- (h) The child is found to be homeless pursuant to the provisions of section 22-1-102.5 and the child presently seeks shelter or is located in the school district; except that a homeless child shall be deemed to reside in another school district if the child attended school in such school district at the time the child became homeless, the child remains homeless, the affected school districts find that attendance in such other school district is in the best interests of the child pursuant to section 22-33-103.5, and the child chooses to continue attendance in such other school district;
  - (i) The child is found to have become homeless pursuant to the provisions of section 22-1-102.5 during a period that school is not in session, the child remains homeless, and the child presently seeks shelter or is located in the school district; except that the child shall be deemed to reside in another school district if the child attended school in such school district immediately prior to the time the child became homeless, the child remains homeless, the affected school districts find that attendance in such other school district is in the best interests of the child pursuant to section 22-33- 103.5, and the child chooses to continue attendance in such other school district.
- (3) School districts shall follow the procedures specified in section 22-33-103.5 in determining where a homeless child shall attend school and the educational services provided to homeless children.

## Title 22: Education - Section 22-1-102.5 - Definition of a Homeless Child

- (1) The general assembly hereby finds and declares that, because of the growing number of children and families who are homeless in Colorado, there is a need to ensure that all homeless children receive a proper education. It is the intent of the general assembly that no child shall be denied the benefits of a free education in the public schools because the child is homeless.
- (2) (a) As used in this article, unless the context otherwise requires, "homeless child" means:
  - (I) A school-aged child who lacks a fixed, regular, and adequate nighttime residence, including but not limited to:
    - (A) A child who is living in a motel, hotel, or camping ground due to a lack of alternative adequate accommodations.
    - (B) A child who is living in an emergency or transitional shelter.
    - (C) A child who is abandoned in a hospital; and
    - (D) A child awaiting foster care placement; or
  - (II) A school-aged child who has a primary nighttime residence that is:
    - (A) A supervised, publicly, or privately operated shelter designed to provide

temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for persons with mental illness.

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, nor ordinarily used as, a regular sleeping accommodation for human beings, including but not limited to an automobile, a park, an abandoned building, a bus or train station, or a similar setting.

(b) "Homeless child" shall not include any individual imprisoned or otherwise detained pursuant to an act of congress or a state law.

(c) "Homeless child" shall include a migrant school-aged child who meets the requirements of this subsection (2).

(d) "Homeless child" shall include a school-aged child who meets the requirements of this subsection (2) who is not in the physical custody of a parent or legal guardian.

## Title 22: Education - Section 22-1-123 - Protection of Student Data

(1) As used in this section, "education records" and "directory information" shall have the same meanings as those terms are defined in the federal "Family Educational Rights and Privacy Act of 1974", as amended, 20 U.S.C. sec. 1232g and "education records" shall include an individualized education program.

(2) A school district shall comply with the provisions of 20 U.S.C. sec. 1232g (a) and 34 CFR 99 if a parent or legal guardian of a student either requests the education records of the student or requests an amendment or other change to the education records after reviewing them.

(3) A school district shall not release the education records of a student to any person, agency, or organization without the prior written consent of the parent or legal guardian of the student except as otherwise permitted in 20 U.S.C. sec. 1232g (b).

(4) A school district shall not release directory information to any person, agency, or organization without first complying with the provisions of 20 U.S.C. sec. 1232g (a)(5)(B) related to allowing a parent or legal guardian to prohibit such release without prior consent.

(5) (a) A school district shall comply with 20 U.S.C. sec. 1232h. A school or school district employee who requires participation in a survey, assessment, analysis, or evaluation in a public school's curriculum or other official school activity shall obtain the written consent of a student's parent or legal guardian before giving the student any survey, assessment, analysis, or evaluation intended to reveal information, whether the information is personally identifiable or not, concerning the student or the student's parent's or legal guardian's:

(I) Political affiliations.

(II) Mental and psychological conditions potentially embarrassing to the student or



the student's family.

- (III) Sexual behavior and attitudes.
  - (IV) Illegal, anti-social, self-incriminating, or demeaning behavior.
  - (V) Critical appraisals of individuals with whom a student has close family relationships.
  - (VI) Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and members of the clergy.
  - (VII) Income, except as required by law.
  - (VIII) Social security number; or
  - (IX) Religious practices, affiliations, or beliefs.
- (b) The requirement of written consent pursuant to this subsection (5) applies throughout a public school's curriculum and other school activities; except that the requirement of written consent does not apply to a student's participation in an assessment administered pursuant to part 10 of article 7 of this title. In implementing this subsection (5), the school or school district and employees shall ensure that their first responsibility is to students and their parents and shall allow only minimal use of students' academic time by institutions, agencies, or organizations outside the school or school district to gather information from students.
- (c) Written consent pursuant to this subsection (5) is valid only if the school district has given a parent or legal guardian written notice of the survey, assessment, analysis, or evaluation, has made a copy of the document available for viewing at convenient locations and times, and has given the parent or legal guardian at least two weeks, after receipt of the written notice, to obtain written information concerning:
- (I) Records or information that may be examined and requested in the survey, analysis, or evaluation.
  - (II) The means by which the records or information shall be examined, reviewed, or disseminated.
  - (III) The means by which the information is to be obtained.
  - (IV) The purposes for which the records or information is needed.
  - (V) The entities or persons, regardless of affiliation, who will have access to the information; and
  - (VI) A method by which a parent or legal guardian of a student can grant or deny permission to access or examine the records or information.
- (d) Nothing in this subsection (5) shall be construed to prevent a public-school employee from reporting known or suspected child abuse or neglect pursuant to section 19-3-304,

C.R.S.

- (e) Nothing in this subsection (5) shall be construed to prevent a student who is working under the supervision of a journalism teacher or sponsor from preparing or participating in a survey, analysis, or evaluation without obtaining the written consent of such student's parent or legal guardian as long as such participation without parental consent is not otherwise prohibited by federal law.
- (f) Nothing in this subsection (5) shall be construed to limit the ability of a health professional who is acting as an agent of the school district from evaluating an individual child.
- (g) Nothing in this subsection (5) limits the ability of a school district to administer a suicide assessment or threat assessment.
- (6) If a school district sends a form to a parent or legal guardian requesting written consent for the school district to release personally identifiable information concerning that parent's or legal guardian's child in education records other than directory information, such consent shall be valid under this section only if the form contains notice to the parent or legal guardian regarding:
  - (a) The specific records to be released.
  - (b) The specific reasons for such a release.
  - (c) The specific identity of any person, agency, or organization requesting such information and the intended uses of the information.
  - (d) The method or manner by which the records will be released; and
  - (e) The right to review or to receive a copy of the relevant records to be released.
- (7)
  - (a) Consent for release of information pursuant to this section shall be valid only for the specific instance for which it was given.
  - (b) A general consent for a student to participate in any course or part of a course, in a school activity, in any special education program, or in any other school program does not constitute written consent pursuant to this section.
  - (c) Consent forms obtained pursuant to this section shall be retained by the school district.
- (8) Any right accorded to a parent or legal guardian pursuant to this section shall transfer to the relevant student when that student attains the age of eighteen years.
- (9) A school district shall, at the beginning of each academic year, provide a parent or legal guardian of each student in the school district with written notice of the rights contained in this section.
- (10) The provisions of this section shall apply to any public school in the state, regardless of whether the public school receives any federal funds.

- (11) The state board of education shall adopt such rules as may be necessary to implement this section.
- (12) If an individual licensed, certified, endorsed, or authorized by the state board is found by the state board to have knowingly and intentionally violated the provisions of this section, the department of education may suspend or revoke such individual's license, master certificate, endorsement, or authorization for a period not less than ninety days.
- (13) Nothing in this section shall be construed to prevent a school or a school district from releasing education records to the extent authorized by 20 U.S.C. sec. 1232g (b) and any other applicable federal law.

### **Title 22: Education - Section 22-32-109.1(z) - Board of Education - Specific Duties - Mandatory Reporting**

- (z) To provide for a periodic in-service program for all district teachers and staff which shall provide information about the "Child Protection Act of 1987", part 3 of article 3 of title 19 C.R.S., instruction designed to assist teachers in recognizing child abuse or neglect, and instruction designed to provide teachers and staff with information on how to report suspected incidents of child abuse or neglect and how to assist the child-victim and his/her family.

### **Title 22: Education - Section 22-32-109.3 - Board of Education - Specific Duties - Student Records**

- (1) Except as otherwise provided in subsections (2) and (3) of this section, each school district, as required under section 24-72-204(3) C.R.S., shall maintain the confidentiality of the addresses and telephone numbers of students enrolled in public elementary and secondary schools within the school district and any medical, psychological, sociological, and scholastic achievement data collected concerning individual students.
- (2) Notwithstanding the provisions of subsection (1) of this section, the address and telephone number and any medical, psychological, sociological, and scholastic achievement data concerning any student are released only under the following conditions:
- a. As provided in section 24-72-204(3) C.R.S.
  - b. To district or municipal court personnel, the division of youth services, county departments of human or social services, the youthful offender system, and any other juvenile justice agency within fifteen days after receipt by the school district of a court order authorizing release of such information.

Notwithstanding the provisions of subsection (1) of this section, either the principal of a school, or such principal's designee, or, if the student is enrolled in a public school, the superintendent of a school district in which the student is enrolled, or such superintendent's designee, shall provide attendance and disciplinary records to a criminal justice agency pursuant to the provisions of section 19-1-303(2) C.R.S.

## Title 22: Education - Section 22-32-147 - Use of Restraints on Students - Certain Restraints Prohibited - Reports and Review Process - Rules - Definitions

- (1) As used in this section, unless the context otherwise requires:
  - (a) "Chemical Restraint" has the same meaning as set forth in section 26-20-102(2)
  - (b) "Mechanical Restraint" has the same meaning as set forth in section 26-20-102(4)
  - (c) "Physical Restraint" has the same meaning as set forth in section 26-20-102(5)
  - (d) "Prone position" means a face-down position.
  - (e) "Prone Restraint" means a restraint in which the individual being restrained is secured in a prone position.
  - (f) "Restraint" has the same meaning as set forth in section 26-20-102(6)
- (2) Pursuant to section 26-20-111, the use of a chemical, mechanical or prone restraint upon a student in a school or charter school of a school district or board of cooperative services is prohibited.
- (3)
  - (a) On and after August 9, 2017, each school district shall require any school employee or volunteer who uses any type of restraint on a student- of the school district to submit a written report of the incident to the administration of the school not later than one school day after the incident occurred.
  - (b) On and after August 9, 2017, each school district shall establish a review process, conduct the review process at least annually, and document the results of each review process in writing. "Each annual review process must include a review of each incident in which restraint was used on a student during the preceding year." ("Restrict Restraints On Public School Students - Colorado") The purpose of each annual review process is to ensure that the school district is properly administering restraint, identifying additional training needs, minimizing, and preventing the use of restraint by increasing the use of positive behavior interventions and reducing the incidence of injury to students and staff. Each annual review process must include but is not limited to:
    - (I) Analysis of incident reports, including consideration of procedures used during the restraint, preventative or alternative techniques attempted, documentation and follow-up.
    - (II) Training needs of staff
    - (III) Staff-to-student ratios; and
    - (IV) Environmental considerations, including physical space, student seating arrangements and noise levels.
  - (b.5) If a physical restraint is more than one minute but less than five minutes, the notification requirement is a written notice to the parent on the day of the restraint.

The written notice must include the date, the name of the student, and the number of restraints that day that lasted between one and five minutes.

(c) If a physical restraint is five minutes or more, the school administration shall mail, fax, or e-mail a written report of the incident to the parent or legal guardian of the student not more than five calendar days after the use of the restraint on the student. The written report must be placed in the student's confidential file and include:

(I) The antecedent of the student's behavior, if known.

(II) A description of the incident

(I) Any efforts made to de-escalate the situation.

(II) Any alternatives to the use of restraints that were attempted.

(III) The type and duration of the restraint used.

(IV) Any injuries that occurred; and

(V) The staff members who were present and staff members who were involved in administering the restraint.

(d) No later than June 30, 2023, and every June 30 thereafter, each school district shall submit the data from the annual review conducted pursuant to subsection (3)(b) of this section to the department of education pursuant to section 22-1-138.

(4) On or before November 1, 2017, the state board shall promulgate rules establishing a process by which a student or a parent or legal guardian of a student may formally complain about the use of restraint or seclusion by any employee or volunteer of any school or charter school of a school district or board of cooperative services. To the extent practicable, the process must reflect the compliant proves for filing a state complaint under the federal "Individuals with Disabilities Education Act," 20 U.S.C. sec. 1400 et seq., as amended.

(5) The department of education shall make training available on the "Protection Individuals from Restraint and Seclusion Act," section 26-20-101 to 26-20-111, and on the department of education's corresponding rules for administration of such act to individuals certified in the use of restraint.

(6) The department of education has enforcement authority over the restraint investigation decisions. This enforcement authority must follow the same procedures outline for state complaints under the federal "Individuals with Disabilities Education Act," 20 U.S.C. sec. 1400 et seq. as amended and the department's state-level complaint procedures.

### Nurse Practice Act

This was enacted to protect people from the unauthorized, unqualified, and improper application of services by individuals in the practice of nursing. To obtain a full copy of the

Nurse Practice Act, write to: Colorado Board of Nursing, 1560 Broadway, Suite 670, Denver, CO 80202.

## COMMONLY USED ACRONYMS

A	AAMVA	American Association of Motor Vehicle Administrators
	AAV	Allowable Alternative Vehicle
	ADA	Americans with Disabilities Act
	ADD	Attention Deficit Disorder
	ADHD	Attention Deficit Hyperactivity Disorder
	AED	Automated External Defibrillator
	ASD	Autism Spectrum Disorder
	ASL	American Sign Language
B	BD	Behavioral Disorder
	BIP	Behavioral Intervention Plan
C	CAPTA	Child Abuse Prevention and Treatment Act
	CFR	Code of Federal Regulations
	CP	Cerebral Palsy
	CSRS	Child Safety Restraint System
	CSS	Child Safety Seat
	CWA	Child Welfare Agency
D	DB	Deaf-Blind
	DD	Developmental Delay/Disability
E	EC	Early Childhood
	ECSE	Early Childhood Special Education
	ED	Emotional Disturbance
	EI	Early Intervention
	ESA	Educational Service Agency
	ESEA	Elementary and Secondary Education Act
	ESL	English as a Second Language

	ESSA	Every Student Succeeds Act
	ESY	Extended School Year
F	FAPE	Free Appropriate Public Education
	FBA	Functional Behavior Analysis
	FERPA	Family Educational Rights and Privacy Act
	FMCSR	Federal Motor Carrier Safety Regulations
	FMVSS	Federal Motor Vehicle Safety Standards
G	GE	General Education
	GEPA	General Education Provisions Act
H	HoH	Hard of Hearing
	HHS	Health and Human Services
	HS	Head Start
I	ID	Intellectual Disability
	IDEA	Individuals with Disabilities Education Act
	IEE	Independent Education Evaluation
	IEP	Individualized Education Plan
	IFSP	Individualized Family Service Plan
	ISP	Individualized Service Plan
	ITP	Individualized Transportation Plan
J	JJ	Juvenile Justice
K	KEA	Kindergarten Entry Assessment
L	LD	Learning Disability
	LEA	Local Education Agency
	LEP	Limited English Proficiency
	LRE	Least Restrictive Environment
M	MTSS	Multi-Tiered System of Support



N	NCLB	No Child Left Behind
	NE	Natural Environment
O	OCR	Office for Civil Rights
	OEL	Office of Early Learning
	OESE	Office of Elementary and Secondary Education
	OHI	Other Health Impairment
	OPE	Office of Post-Secondary Education
	OSEP	Office of Special Education Programs
	OSERS	Office of Special Education and Rehabilitative Services
	OT	Occupational Therapy
P	Part B	IDEA Part B Program for children aged three through 21
	Part C	IDEA Part C Early Intervention Program for children birth through age 2
	PBIS	Positive Behavioral Interventions and Supports
	PPT	Planning and Placement Team
	PT	Physical Therapy
	PWN	Prior Written Notice
S	SEA	State Education Agency
	SEL	Social Emotional Learning
	SLD	Specific Learning Disability
	SLP	Speech Language Pathologist
	SPED	Special Education
T	TBI	Traumatic Brain Injury
U	USC	United States Code
V	VI	Visual Impairment
	VR	Vocational Rehabilitation
Numerical	504	<a href="#">Rehabilitation Act of 1973</a> . Enforced by Office for Civil Rights.



## WHY IS IT IMPORTANT TO KNOW THE DIFFERENCE?

Development, communication, and implementation of school transportation policies can reduce risk and ensure safety for district/charter employees as well as passengers.

Transportation policies and procedures should anticipate and eliminate possible liability issues for the school district/charter, enabling the district/charter to provide the safest transportation service possible. It is important for all school bus drivers to understand the differences between policy and procedure; but it is most important that they develop a positive attitude in accepting and obeying all laws, rules/regulations, policies, and recommendations as a mandatory part of their support as part of the pupil transportation team.

### Best Practice

A best practice is a standard or set of guidelines that is known to produce good outcomes if followed; the best-known method, technique or proven processes used to achieve an end goal. A best practice is a method or technique that has been generally accepted as superior to any alternatives because it produces results that are superior to those achieved by other means, or because it has become a standard way of doing things, e.g., a standard way of complying with legal or ethical requirements. Best practices are used to maintain quality as an alternative to mandatory legislated standards and can be based on self-assessment or benchmarking.

### Law

A law is a requirement that has been passed by a legislative body and signed by the Chief Executive. At the Federal level, the legislative body is the Congress. At the State level it is the state legislature. Laws/statutes are requirements that must be obeyed. The Colorado Revised Statutes are an example of state statute, the Individuals with Disabilities Education Act (IDEA) is an example of a federal law.

### Policy

School district/charter policy must comply with federal and state laws and regulations. District/Charter employees are required to follow these directives that are adopted by the local board of education and written into the district's/charter's policy manual. Policies are established through the board and are necessary to ensure direction and uniformity in decision making for all school district/charter employees. Board policy can be stricter than federal or state law and regulation but cannot be less restrictive. Policies are principles that need to be reviewed regularly to consider any necessary modifications or trends. District/Charter studies can be developed to evaluate the success of certain policies and recommend any required revisions.

### Procedure

A school district/charter procedure addresses particular areas within a policy and provides detailed directions to put a policy into practice. Established procedures provide information and methods to guide school district/charter employees as to the course of action

recommended or required for a particular situation. Procedures may apply directly to all school district/charter employees or to an isolated area, department, or group of employees in a school district/charter. Once a need is identified, the district/charter determines whether development of procedures will occur at the board or superintendent level or in the individual department(s) of a school district/charter to which they would apply. It is necessary that all relevant employees be appropriately trained as to pertinent policies and procedures.

## Recommendation

Recommendation is a statement giving advice or counsel. Any organization or individual might recommend some type of action. Recommendations are especially important, because if you fail to follow a manufacturer's recommendation, you may void warranties, and cause unnecessary injury. An example of an important manufacture recommendation is the use, placement, and maintenance of Child Safety Restraint Systems (CSRS). The manufacturer recommends that students are not seated in the seat directly behind a student that is in a CSRS, unless they are also restrained. If you do not follow a recommendation, you may increase your risk of liability.

## Rules and Regulations

Rules and Regulations are synonymous terms to describe a requirement adopted by an executive department with the authority to establish rules for carrying out the program. A definite procedure must be followed when adopting administrative rules. When adopted, the rules have the same effect as though they were laws. They are requirements that must be obeyed. The Colorado Department of Education Annual Inspection/Operation Rules for the School Transportation and the Colorado Minimum Standards Governing School Transportation Vehicles are examples of Rules.

## Training

All staff members are responsible for understanding, implementing, and enforcing those policies and procedures that impact their job duties in any way. Transportation department officials must reinforce this responsibility through a variety of communication methods. These methods should include distribution of relevant policy and procedure materials and regular in-services about the application of those policies and procedures to school transportation. For more information, please see Section 5.

## Conclusion

To develop a procedure without a strong board policy in place can create future problems. Coordination between policies and procedures helps to avoid conflict and inconsistency.

Litigation could render the procedure ineffective if the school district/charter or department, for which it was designed, ever had to defend the procedure. It is recommended that all department procedures receive the endorsement of the district's/charter's school administration and identify relevant policy(ies) and/or job description(s). A documented school board policy, along with school administration endorsement, will support transportation procedures necessary to operate smoothly.

The previous section (Legislation) lists brief summaries of federal and state legislation that impact transportation of students with disabilities. Whether writing policy or procedure, school districts/charters must have a clear understanding of these laws.



## EQUIPMENT

### Vehicle Equipment

Every ride to school for a special needs student begins with the vehicle itself. How the vehicle is equipped is determined by the specific needs of the student (i.e., integrated seats, lifts, air-conditioned vehicles, etc.), general operational needs, and procedures/policies of the school district/charter.

Determinations as to equipment choices should be made in coordination with the special education department, and it may sometimes be necessary for consideration by the IEP team. All vehicle and passenger equipment should be inspected and evaluated prior to being placed in service. This includes but is not limited to:

- child safety restraint systems
- mobility device tie down systems.
- all lap/shoulder belts (this includes in seats and at mobility aid stations)
- lift operation
- other assistive devices that ensure the safe transportation of the student

Some manufacturers have produced videos about the construction and operation of their equipment and may supply a copy upon request.

### Passenger Equipment

Passenger equipment is driven primarily by the student's needs. IEP team consultation and determination is essential when acquisition of safety vests or other equipment will create a short delay in transportation arrangements. The following is a sampling of what you may have to transport.

- *Augmentative and Assistive Devices* - Equipment needs to be stowed and secured, and it may not block the aisle or an emergency exit.
- *Battery-Powered Equipment* - Batteries should be sealed acid or gel type.
- *Child Safety Restraint Systems (CSRS)* - A CSRS is any device that keeps children secure on the bus seat or in a small capacity vehicle. The CSRS includes forward and rear-facing car seats, booster seats, and safety vests. The proper CSRS should be decided by the age, weight, or height of the child and meet Federal Motor Vehicle Safety Standard (FMVSS) 213.
- *Lap Trays* - It is advisable that lap trays be removed and secured separately during transportation. If the tray is used for upper trunk positioning support, work with members of the IEP team (Occupational/Physical Therapist, nurse, teacher, parent/caregiver, etc.) about acquiring a foam support tray to be used during transportation.



- **Medical Equipment** - Medical equipment is decided by the student's needs. When transporting medical equipment, the following should be considered:
  - Provide proper training for the driver and/or paraprofessional.
  - Develop and maintain evacuation procedures.
- **Medications** - Medications being transported for a student should be stored in a safe location. Always refer to district policy. C.R.S 22-1-119.5, Concerning Colorado School Children's Asthma and Anaphylaxis Health Management Act (2005), states in part: Student may possess self-administered medication, and the school district must approve a treatment plan if all of the following conditions are met:
  - Health care practitioners have prescribed medication during school hours, including school sponsored events and in transit to and from school and events.
  - Health care practitioners have instructed the student on correct and responsible use of the medication.
- **Safety Vests** - The proper safety vest should be decided by the age, weight, height, and need of the child and meet Federal Motor Vehicle Safety Standard (FMVSS) 213 (49 CFR §571.213) requirements. Many safety vests are installed with a seat mount. This is a belt that wraps around the seat back. When a child is using this equipment, the seat behind must be unoccupied or occupied only by a child who is restrained as well.
- **Service Animal**- Animals(s) that are trained to be service animals are allowed to be transported on school vehicles. Make certain other students on the bus are free from fear of the animal and there is no concern of allergies. Verify that the animal is up to date on all required vaccinations (More information in Section 11).
- **Wheelchairs** - Wheelchairs are one of the mobility devices used by students with certain disabilities. The primary function of a wheelchair is just that: to address the mobility the student needs in order to allow him or her to access various activities throughout the day. Until recently, there were no wheelchairs that were built with any crashworthiness standards. Now wheelchair manufacturers and national transportation specialists have developed a more crashworthy wheelchair that meets a voluntary standard, commonly referred to as WC-19. Note WC-19 wheelchairs (voluntary standard by wheelchair manufacturers), particularly those with an integrated seat belt, must have WC-18 compliant tie downs. These tie downs are rated for the added strain (increases load by 60%) the integrated lap belt puts on the wheelchair. These standards are post FMVSS, i.e., SAE-J2249 (Society of Automotive Engineers for wheelchair standards) and ANSI/RESNA (American National Standards Institute, Rehabilitation Engineering and Assistive Technology Society of North America) ANSI/RESNA produced WC-19, and SAE with WC-18. Wheelchairs that follow the new standard will offer improved



transportation safety to their users, but, under federal law, compliance with the new standard cannot and should not be used to limit or prevent motor vehicle transportation of wheelchairs.



Image of a WC-18 Wheelchair decal



Image of a Wheelchair Securement point with symbol.

**WC - 18 regulations** - <https://www.qstraint.com/qnews/wc18-19-benefits-of-wheelchair-securement-standards/>.

Certain mobile seating devices may not be safe to transport while occupied (three-wheeled scooters, stroller-type aids, or homemade wheelchairs). In this case, transferring the student to the bus seat from his wheelchair may be a possibility. The IEP Team decides whether a transfer is necessary. If the student is to remain in the wheelchair during transportation, the following items should be considered:

- The wheelchair frame should not be bent or damaged.
- Wheelchair seat belts should be fastened to the frame of the chair.
- Brakes should be functional.
- Batteries should be sealed acid or gel type and be secured snugly to the chair.
- Wheels should not be bent or damaged so that they wobble.
- Footrests should be properly attached to the chair and adjusted for the student.
- The seat covering should be clean and in good repair.

Transporters should also know that any mobile seating devices used to transport students on district vehicles are the responsibility of the school district. This means that the district must decide whether they can be transported and secured safely before transporting the student in an occupied mobile seating device.

### Special Positioning

Some children need supportive or positioning devices (vests or seats) in the bus. Most car seat manufacturers' products have weight limits up to 65 pounds. **Always check the manufacturer's label.** Some special positioning seats are made for children over 65 pounds who are in need of extra support on the bus. Virtually all of these larger special positioning seats require a "tether" strap that keeps the top of the seat from toppling over. A "tether" is an added anchor strap attached near the top and back of the special positioning seat. It is designed to keep the seat upright in a crash. Tethers must be used, if provided, in order for the seat to supply crash protection. Refer to seat manufacturers' instructions for installation. One copy of the manufacturer's instructions for the seat should be kept with it, and another

should be on file in the district for reference. Ensure proper training of any district personnel responsible for installation.

Special child seats with tethers may not transfer easily to a school bus seat. Adequate floor space behind the bus seat would be needed to secure the tether anchor plate and adjust the tether at the proper angle. Securement of the tether to the belt from the seat behind would be the best choice. If a child seat does not rest securely on the bus seat, do not try to hold it in place by making a tether to secure it. Use a tether only if supplied by the restraint manufacturer and install it according to manufacturer's instructions. Remember that not all special positioning devices are designed to provide crash protection. The manufacturer must be able to provide dynamic test results showing that the device can withstand impact forces. The product would then be labeled as meeting the requirements of FMVSS 213. It can be challenging to select seats or vests that fit well on the bus seat for children who exceed specified weight limits. You may want to contact a Child Passenger Safety Technician in your area for further guidance. See <http://www.carseatscolorado.com/#>.

### Child Safety Restraint Systems (CSRS) for Children with Behavioral Issues

A child that will not or cannot stay seated on the bus seat is highly likely to be injured, perhaps seriously, if the bus is involved in an emergency maneuver or an accident. Although not all vests are designed to provide crash protection and lap belts alone do not afford the safest protection, the use of either of these restraint systems is far better than having the child out of her/his seat. These devices could be used until the proper restraint system is obtained. The IEP Team must meet and agree that a child safety restraint system is the best option for the child before any CSRS is used.

### Child Safety Restraint System (CSRS) Selection

There are many "special" conditions and a number of different options for restraint systems. The choice should be made by the transportation team, which could include the parents, school transportation staff, physical or occupational therapists, and/or the school nurse. Districts should not have parents supply restraint systems for their children. If the restraint system is used for transportation, it must be provided at no cost to the parent. Most small children with disabilities can be comfortably and securely restrained in conventional car seats. These seats are easily obtained and relatively inexpensive. Passenger considerations when selecting child safety seats (CSRS):

- Height and weight
- Degree of support needed for trunk and/or head.
- Control of extremities if needed.
- Medical needs to lie flat or in a semi-reclined position.
- Need for supervision.
- Behavioral characteristics
- The child's ability to get out of usual restraint systems.

- Vehicle constraints

Securing the CSRS in a school bus:

- CSRS must meet FMVSS 213, if intended for children under 50 pounds (many safety seats meet this standard for children up to 65 pounds; some special positioning seats do, also).
- CSRS must fit within the confines of the school bus seat when oriented forward or rearward depending on the weight of the child. (80% of CSS must fit on the school bus seat.)
- CSRS must be able to be reclined if the child's condition requires it.
- If required by the safety seat, the school transportation vehicle must be able to accommodate an added tether.

### Using Child Safety Restraint Systems Correctly

The correct use of any restraint system must be understood by parents, bus drivers and other members of the transportation and school staff who may need to help secure the child properly. A copy of the manufacturer's instructions should be kept on file in the district for reference. Although misuse of conventional child safety seats is common among parents, some types of misuse can have major consequences. Children can be thrown partially or completely out of their restraint system and be seriously injured. Drivers must have an understanding of the problems associated with misuse and be able to assure that their passengers are not only buckled up but also correctly restrained. Training is essential.

To avoid misuse of safety seats and vests consider the following:

- Is the infant under 20 pounds facing the rear of the bus?
- Is the angle of recline appropriate for the child's size, orientation, and condition?
- Is the safety belt in the correct place and pulled tight?
- Are additional anchors, as required by the manufacturer, secured?
- Is the vest placed over the shoulders and snug?
- Are shoulder straps in the correct restraint system slots at the shoulders?
- Is the vest doubled back through the adjuster slide, if this mechanism is used?
- Is the safety seat or vest under recall?
- Is the safety seat or vest checked regularly for wear and tear or other problems that interfere with effectiveness?
- Is the child in a heavy winter jacket/coat that must be removed for proper securement fit?

To avoid misuse of a wheelchair, consider the following:

- Is the wheelchair suitable for securement in a motor vehicle?
- If the child is to be transported in the wheelchair, has it been secured facing forward, with four tie-downs attached to the frame and adjusted to be tight?
- If the wheelchair is WC19 compliant with integrated lap belt, are the four tie-downs WC18 compliant?
- Has the child in the wheelchair been restrained with a separate lap and shoulder belt system that fits correctly?
- Can the child be moved to a vehicle seat and be secured with a restraint system or use compartmentalization?
  - What is compartmentalization?
    - Large school buses use a passive restraint system known as "compartmentalization," which combines a high padded seat back and narrow seat spacing, creating a compartment within which each occupant is confined in severe vehicle crashes. It protects the passenger by reducing the crash forces on the occupants. This passive restraint system also uses the reinforced steel construction of the school bus body and the large size that raises the height of the vehicle. The National Traffic Safety Board (NTSB) and the National Academy of Sciences (NAS) have confirmed the effectiveness of "compartmentalization" through independent studies conducted.

## Positioning Children in the Child Safety Restraint Systems

The following material is informational only. It is intended to make transporters aware of the complex issues when installing CSRS and transporting infants and toddlers and students with special needs. Always consult with an Occupational Therapist/Physical Therapist (OT/PT), parent, school nurse and/or child passenger safety technician for the answers to the wide-ranging questions that arise with this special population. Transportation's role in installing any equipment and securing students should be clearly spelled out. Training is of the utmost importance.

### *Infants Facing Rearward*

Infants under 20 pounds and one year of age must ride facing the rear of the vehicle. It is important for the infant to ride reclined at about a 45-degree angle. This position provides maximum support and protection for the infant's relatively heavy head and weak neck. Keeping the infant facing rearward as long as possible is especially important. An infant may outgrow the infant-only seat before reaching 20 pounds and one year of age. When the infant's head reaches the top of the CSRS, it is time to move him into a convertible CSRS, facing the rear. If the CSRS does not fit this way, try another position on the bus with more

space between the seats. It is important not to turn an infant to face the front of the bus, as a neck injury could occur during a crash. Maintain the rear-facing position for as long as possible. Note: in most buses the convertible CSRS will only fit in the passenger side front seat because the bolster in front of it is vertical (not slanted like the seats) and therefore promotes the 45-degree angle.

### *Padding for Torso Support*

Children with disabilities that affect their muscles may need more padding in a safety seat to help keep their bodies (torso) comfortable and relaxed. This padding is usually prepared by a physical or occupational therapist. In general, padding that is appropriate for transportation should be put alongside the child or between the knees, but not behind the child. If padding were placed under or behind the child, this would move the child forward in the restraint and require the straps to be longer. On impact, the padding would be compressed, loosening the straps causing the straps to possibly not hold the child in the device.

### *Providing Head Support*

While it is important for the infant to ride reclined at about a 45-degree angle, the child over 20 pounds (in a forward-facing safety seat) should ride upright. If necessary, the seat can be reclined just enough to accommodate a special condition. For the child with poor head control, reclining the safety seat slightly may be enough to allow the child's body and head to rest comfortably against the back of the device. Some convertible CSRS's that are used fully reclined facing the rear for an infant or upright and forward-facing for a toddler have three recline positions, two of which are appropriate for use facing forward. A convertible seat should not be used in its fully reclined position when facing forward unless the manufacturer's instructions allow this. (Always check the manufacturer's instructions.)

In the confines of the school bus seat, there may be insufficient space for a reclined restraint with a child in it. It might be appropriate for some seats on the bus to be spaced more widely apart to provide the necessary space. FMVSS 222 specifies no more than 24 inches from the "seating reference point" to the back of the seat in front. The child's head should not be taped or strapped to the safety seat or restraint. This could cause injury to the neck in a crash. In most cases a foam neck support is recommended.

### *Safety Harness/Vest Use*

The safety vest system, which may include a padded shield as well as straps, must be used correctly in order to hold the child in place. Make sure:

- The straps are placed on the shoulders and remain there.
- The straps are snugly fitted; they will have to be adjusted from child to child if a number of children use the safety vest system.
- The vest adjuster keeps the safety vest snug; if a single metal slide is used, the end of the strap must be doubled back through the slide to prevent slippage.

- The vest retainer clip (a plastic piece that holds the two shoulder straps in place) is at armpit level. Some safety vests/seats do not use this clip; check the instructions.

## Personal Safety Issues

Some bus drivers, assistants, and/or parents may have concerns regarding the type of physical contact that could occur when the harness or vest of a restraint device is buckled and adjusted around a child. Shoulder and crotch straps are located in sensitive areas. Many child restraints have buckles located on crotch straps; others have the buckle on a stiff post under a shield that fastens to the shield between the legs. Many have shoulder straps that are adjusted in front of the child's chest.

You can make the crotch strap easy to reach by laying out the straps prior to having the child sit, so they are ready to be put on before the child is placed in the safety seat. Parents may want to choose a restraint with a harness that does not buckle directly in the crotch area and that has a harness adjustment mechanism that is not at the chest. (Some standard safety seats have such designs.) However, there is no child restraint designed to completely avoid physical contact in either buckling or removing the harness. Moreover, if a child requires a very specialized type of equipment, parents may not have a choice in the safety harness types. Training in the first instance is key.

If you, as a transportation professional, feel uncomfortable with a particular situation, you could invite the parent onto the bus to fasten the harness or to observe the process, prior to transporting the student. Another option is to make sure that another adult, such as another driver, student assistant, or teacher, is with you during this part of the operation. It is important to "diffuse" any situation in which you feel uncomfortable by discussing it with your supervisor or the child's teacher.

## When to Transfer a Student to the Bus Seat

Who is to decide when it is "reasonable" to transfer a child from a mobility device to the bus seat? The IEP Team.

For the busy bus driver, one consideration is the extra time a transfer may take. Other considerations are:

- Will the child's condition and weight permit the transfer?
- Has the physician and parental approval been obtained to assure that a child can be moved safely?
- Who is to actually accomplish the transfer?
- Can the transfer be done by one person?
- Has that person or persons been trained in transfer techniques?
- Would the child's dignity be compromised during a transfer?

## Using Lap Safety Belts

When speaking of seat belts to parents, school staff, or other interested parties, it is critical that transporters use the proper terms. They are “lap belts” and “lap/shoulder belts.” Lap belts, if they must be used, must be placed across the hip bones, below the belly. Teach children to push the belt down to touch their thighs after buckling it. It should be adjusted as snugly as possible. Children should never share a lap belt or lap/shoulder belt. This practice may contribute toward an injury. A separate lap belt or lap/shoulder belt should be available for each child who must be buckled up. Warning: The use of lap belts alone has been known to cause serious injuries in younger students when they are placed up on the abdomen, because the abdomen contains many organs (stomach, liver, intestines). Younger children do not have strong bones to protect these organs from crash forces. Older, larger students experience head and neck injuries when using the “lap belt only” system. Therefore, in most cases, it is best practice not to use a lap belt only system.

Before securing a child in a restraint system, it is recommended that heavy coats be removed, so that the belt(s) contact the body through minimal layers of clothing. The shoulder belt must go across the collarbone of the shoulder. It should also be snug. It may rest against the neck but should not go across the front of the neck. Proper fit of a lap/shoulder system may require the use of a booster seat for younger children. Warning: **Never** put a shoulder belt under the child's arm so it goes across the rib cage. This has been known to cause severe injury to internal organs. This is because the ribs are not strong enough to restrain the body.

## Wheelchair Positioning

Wheelchairs must be forward-facing. All four-point securement systems are designed to be used with the wheelchair facing forward and are crash tested that way. All new school buses manufactured with wheelchair securement systems since January 1994 have forward-facing systems. Wheelchair securement positions are inherently safer, and wheelchairs and the human body are better capable of surviving a frontal crash when facing forward.

Sled/Crash tests show that side-facing wheelchairs are unstable and often collapse. Lap and shoulder belt restraint systems are designed to be most effective in the frontal impact position, and wheelchairs are believed to be stronger in frontal loading conditions as opposed to side loading positions. (“In-Service Safety Series - Transporting Students with Special Needs”) The placement of wheelchairs at the back of the vehicle raises concerns about the rougher ride for students and the distance from the driver to those students. The possibility that the driver might not be able to monitor them adequately must be considered before adopting this seating arrangement.

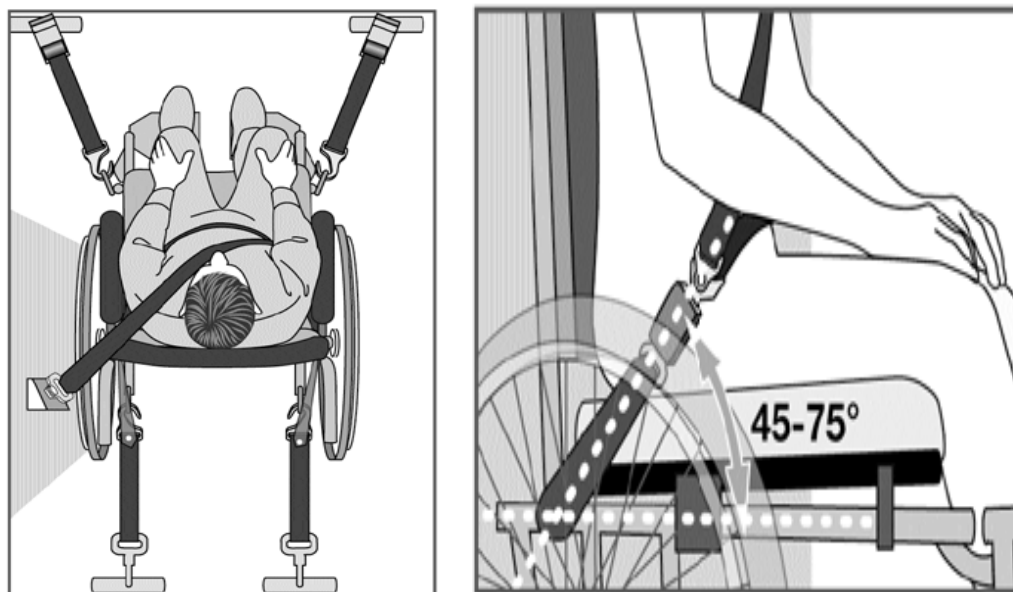
## Securing the Wheelchair

To protect the rider during a crash or sudden braking, and to minimize the likelihood of injury caused by contact with the vehicle, a seatbelt system with both pelvic and upper torso belts must be used when securing a wheelchair in a school bus. Make sure:

- Always position the wheelchair and rider facing forward in the vehicle. Most sudden stops are in a forward direction and most crashes are frontal. In emergency stopping situations, the student is thrust in the direction that the school bus is

traveling. The forward-facing student will bend forward, rather than sideward, reducing the risk of significant injury.

- The shoulder belt **must** be attached to the vehicle. The lap belt can be attached to the wheelchair 4-point system or to the vehicle.
- When securing a WC19 wheelchair, attach the four tie-down straps to the securement points provided on the wheelchair. Tighten the straps and remove all slack.
- If you do not have a WC19 wheelchair, it is best to attach the tie down straps to welded junctions of the wheelchair frame or to other structural areas where the frame is fastened together with hardened steel bolts indicated by six raised lines or bumps on the bolt head.
- **Do not attach tie downs to adjustable, moving, or removable parts of the wheelchair such as armrests, footrests, and wheels.**
- When securing non-WC19 wheelchairs, choose structural securement points as close to the seat surface as possible to provide greater wheelchair stability during travel. It is best if the rear securement points are high enough to result in angles of the rear tie down straps between 30 and 45 degrees to the horizontal.
- If you have a non-WC19 wheelchair with a tilt seat, make sure to attach both the front and rear straps to either the seat frame or to the base frame. Mixing wheelchair securement points between the seat and base can result in the tie down straps becoming slack if the angle of the seat changes during a crash.
- It is best if floor anchor points for rear tie down straps are located directly behind the rear securement points on the wheelchair. If possible, the front tie down straps should anchor to the floor at points that are spaced wider than the wheelchair to increase lateral stability during travel.

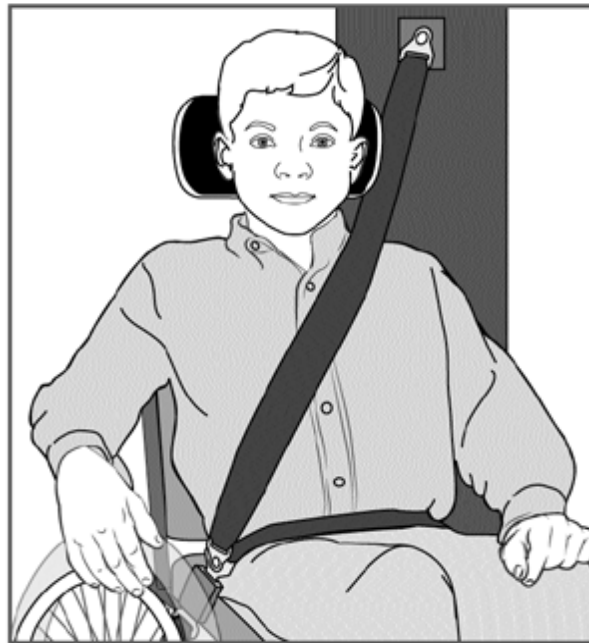




## Securing the Student in the Wheelchair

In addition to securing the wheelchair, it is particularly important to provide effective restraint for the wheelchair user with a crash-tested lap and shoulder belt or with a child restraint harness/vest.

- The lap belt should be placed low across the front of the pelvis near the upper thighs, not high over the abdomen. When possible, the lap belt should be angled between 45 and 75 degrees to the horizontal when viewed from the side.
- A diagonal shoulder belt should cross the middle of the shoulder and the center of the chest and should connect to the lap belt near the hip of the wheelchair rider. The upper shoulder-belt anchor point, or D-ring guide should be anchored above and behind the top of the occupant's shoulder, so that the belt is in good contact with the shoulder and chest while traveling.
- Newer WC19 wheelchairs offer the option of a crash-tested lap belt that is anchored to the wheelchair frame. If the wheelchair has an onboard crash-tested lap belt, complete the belt system by attaching the lower end of a shoulder belt to the lap belt.



## Other Notes

- Read and follow all manufacturers' instructions.
- It is best to ride with the wheelchair backrest positioned at an angle of 30 degrees or less to the vertical. If a greater recline angle is needed, the shoulder belt anchor point should be moved rearward along the vehicle sidewall, so the belt maintains contact with the rider's shoulder and chest.
- Maximize the clear space around the rider to reduce the possibility of contact with

- vehicle components and other passengers in a crash. Cover vehicle components that are close to the rider with dense padding.
- Check WTORS (Wheelchair Tie down and Occupant Restraint System) equipment regularly and replace torn or broken components. Keep anchorage track free of dirt and debris.

## Oxygen Information

Oxygen-enriched atmospheres may exist in the immediate vicinity of any oxygen containers. A hazardous condition exists if containers are located so that they may become overheated or tip over. Oxygen containers should not be left on a closed bus because of heat and the expansion and possible release of oxygen. Liquid oxygen can cause frostbite on contact with skin. Prevent tipping by securing it to the wall or floor of the bus. Do not secure near a heater source.

Colorado Operation Rule 1 CCR 301-26, Rule 16.2 states:

“All baggage, articles, equipment, or medical supplies (except those held by individual passengers) shall be secured in a manner which assures unrestricted access to all exits by occupants, does not restrict the driver's ability to operate the bus and protects all occupants against injury resulting from falling or displacement of any baggage, article, or equipment. Oxygen cylinders meet this standard if they are both medically necessary and secured to a wheelchair, shall be considered to be in compliance with this subsection, provided they do not impede access to any exit. School districts, charter schools, and service providers shall use reasonable care in determining the number of cylinders that may be safely transported at one time.”



## ROUTING AND SCHEDULING

Routing and scheduling for a student with special needs can be complex. Due to constant changes in special needs transportation, flexibility is essential to effectively route our special needs students.

Unlike regular scheduling, a special needs student may not be attending the school closest to his home, so the bus ride could possibly be longer than that of other children in their area. The Individuals with Disabilities Education Act (IDEA 2004) does not specify a time limitation for a student's bus ride. However, every effort should be made to make the ride as short as possible, and travel time should be comparable with that of non-disabled students. Transportation needs, written into the student's IEP, must be met and should reflect any likely impact on achievement of academic and non-academic IEP goals. A shortened school day for the purpose of accommodating transportation schedules is not permissible.

This section outlines the process of scheduling a student with special needs for transportation. It is recommended that transportation departments develop guidelines in conjunction with their district's special education department or BOCES personnel. Open communication between transportation, the special education department, and parents will enable your district to provide safe, appropriate, cost-effective transportation for the special needs student.

### Request for Transportation

A request for transportation is the trigger for the communication needed to provide appropriate transportation for the special needs student. Whether the request is oral or written, the person making the request must provide accurate and complete information. All information must be handled confidentially in accordance with the Family Educational Rights to Privacy Act (FERPA). Since scheduling one student with special needs can be much more complex than scheduling an entire bus load of non-disabled students, each district should establish a realistic timeline in which to arrange transportation for a new student. The IDEA 2006 Regulations do say that the IEP must be implemented as soon as possible. §300.323(c)(2). The Official Commentary to the IDEA 2006 Regulations offers the following examples of "situations" that might warrant "a short delay":

- "When the IEP meetings occur at the end of the school year or during the summer, and the IEP team determines that the child does not need special education and related services until the next school year begins."
- "When there are circumstances that require a short delay in the provision of services (e.g., finding a qualified service provider **or making transportation arrangements for the child**)" (Emphasis added) ("Safety Devices on School Buses: Harnessing Legal Issues")

An oral request for transportation is a "quick" way of receiving information. An authorized person, usually a special education staff person, calls the transportation department requesting transportation services for a new student or one for whom transportation has become necessary. Each district's transportation department should find out who is

authorized by the special education department in their district to request special transportation services for students.

A written request form may be developed by the transportation department in conjunction with the special education department. The written form of communication provides documentation with the signature of the person authorized to request special transportation for a student. This means of communication eliminates many of the problems in the complex procedure of routing and scheduling a special needs student. Prior to development and implementation of that schedule, the transportation department should develop a checklist of questions to have answered during the conversation with the person making the request. This checklist will become a record of the initial request for transportation.

Example Checklist Questions:

- Name and title of the person making the request.
- Name and title of the person receiving the request.
- Date of request
- Name, address, phone number, age, and sex of student
- Name, address, phone number of parents/guardians
- Name, address, phone number of alternate stop, if required
- Work phone numbers
- Emergency contact persons and phone numbers
- School of attendance
- Date transportation should begin.
- Consideration of the need to coordinate discussion of the relationship between the disabling condition and the student's transportation needs.
- Special transportation needs/equipment

Transportation in turn sets up a schedule and begins transporting in accordance with the request.

### Steps in Scheduling

Scheduling a student must be done on an individual basis. What works for one child may not work for another. The scheduler must assess all available information about the student and find the best transportation plan for that child. The most efficient and economical route that effectively meets the needs of the student should be selected.

## Identifying the Student's Needs

### *What Specialized Equipment is Used?*

Identifying specialized equipment used by a student will help determine the vehicle assigned. If the student has a wheelchair, is it battery powered or a standard chair? If battery powered, does it have a sealed acid or gel cell battery? Is it a WC19 chair, or WC18 compliant? Is it a three-wheeler? Does the student use a lap tray? Will the student be transported in the wheelchair or be transferred to a bus seat? Other specialized equipment and assistive devices that the scheduler should be aware of are walkers, crutches, computers, oxygen, medical devices, or any other equipment that requires special securement while being transported.

### *Is There a Need for a Bus Assistant?*

In some cases, the student's IEP will request that a student assistant or a registered nurse (RN), assist the child. Often it is the responsibility of the transportation department to determine if an adult other than the driver is needed. Each district should develop guidelines for determining the assignment of a student assistant to a route.

It is important to evaluate the following:

- Physical, health, or emotional needs of the student(s)
- The student's ability or lack of ability to communicate safety-related concerns.
- Any related IEP goals.
- Behavior
- Combinations of disabilities and equipment on the bus
- Length of ride
- Number of students on the bus
- Efficiency of emergency evacuation

### *What is an Acceptable Length of Ride?*

As stated, IDEA 2004 does not specify the length of the ride. If the length of the ride is specified on the IEP, the requirement must be met, and there must be an extremely specific reason that this is specified. For example, does the child have a physician's letter that states a medical condition requiring a modified length?

Consideration should be given to what is acceptable on an individual basis.

### *Where can the Student Meet the Bus?*

Establishing the pickup or drop-off location is also important. Can the student meet the bus at an existing bus stop, or is a home address stop necessary? When establishing pickup and drop-off locations, care must be given to follow all state and local regulations regarding the safe loading and unloading of school children.

## Recommended Questions to ask at the First IEP Meeting

1. What qualifies the students for specialized transportation?
2. What is the student's disability? (If you do not know)
3. How can our transportation team best support the student(s) and help them meet their goals?
4. What are the student's abilities?
5. Is there a health care plan already in place?
  - a. If not, can we please get a copy when it is done?
6. If the student has seizures, is there a seizure action plan?
  - a. Can we please go over it so there is a clear understanding of it?
7. When writing the behavior plan, can we discuss behavior strategies for the bus so they can be included in that plan?
  - a. When they are writing the behavior plan, make sure transportation is included. Many times, the plan is classroom specific and the strategies they use cannot be used on a school bus.
8. What are the student(s) likes and dislikes?
  - a. These can sometimes be a trigger for a behavior from a brand-new student simply because we did not know what the common triggers, likes, and dislikes were.
9. If the team or someone on the team is requesting a CSRS, why are they requesting it?
  - a. There should be a discussion about why they are in it and is there a goal for them to come out of it, so we are meeting the requirements of LRE?
10. If they are in a mobility device (wheelchair), when can someone from the transportation team do an inspection?
11. Can your student be dropped off if no one is home to receive them?
12. Is your student able to be picked up at a different location other than curb to curb? the corner? down the block?
  - a. This is a question that goes with travel training.

Some issues that can be resolved in the first IEP meeting that relate to routing and scheduling may be:

- Can the student be safely transported without undue risk to the child or others?
- Will the length of the trip and/or other aspects of transportation put the child at unreasonable risk?
- Where is the child to be picked up and dropped off?



- Does transporting the child involve disability-related concerns that will impact timing?
- Can the child's adaptive equipment be accommodated?
- What is an appropriate restraint system, and how long will it take to put the child in the restraint system correctly?
- Can the child be transferred to a bus seat from the mobility device?
- Are there specialized care or intervention concerns?
- What level of supervision might be required (i.e., bus assistant, nurse)?
- How will any auxiliary equipment be transported?

### Assigning the Student to a Route

Using the information gathered in identifying the student's needs, the scheduler will assign the student to a route. Three viable options are the following:

- Existing route
- New route
- Alternate transportation

Consider all the school transportation vehicles traveling in the area. Evaluate particular needs of the student in relation to the route traveled by each possible vehicle, the type of special equipment each vehicle accommodates, the status of the other students riding on each vehicle, and the possible length of the ride.

If all of the special needs of the new student can be met on one of the existing routes, make the assignment to that route.

If there is no existing route that meets the unique needs of the student, consider re-routing existing routes to meet the need, or develop a new route that will satisfy all the criteria. Assign the appropriate bus/vehicle, driver, bus attendant, if required, and the student to the new route.

There are situations in which school bus transportation is impractical because of distance, road conditions, placement of the student, or medical condition of the student. In these cases, it is advisable to consider alternative means of transporting the student. Options must be discussed with parents and ideally be agreed upon by all parties concerned. However, an IEP team can make a determination over parent objections. Some alternative transportation options are to:

- Reimburse a parent/ guardian for transportation, upon receipt of proper documentation. (The district/charter should obtain proof that whoever transports the child is properly licensed and carries adequate insurance based on requirements of the Colorado Division of Motor Vehicles and the Local Education Agency (LEA).)



- Use the local transit authority. (The school district is responsible for the fee.)
- Use a taxi. (The school district is responsible for the fee.)
  - Contracted Special Needs Transportation Specialists (contract established through district lawyers, Administration, SPED/Transportation Departments, and contracting company. The fee is paid by the district and is expensive).

The transportation department must communicate the scheduled bus pickup and drop-off times to parents, bus driver, and school personnel. Fostering a sense of teamwork and communication will provide more efficient service for the students. Establishing written procedures will provide consistency and efficiency in the routing and scheduling of special needs students. The following topics should be considered:

### *Stop Location*

- Can the student access an established stop?
- Does the student need an address stop? In most cases, you will be able to provide curb to-curb rather than door-to-door service.
- Does the student have an alternate address or a fluctuating schedule? Typically, you will not be required to accommodate a fluctuating schedule unless this is necessary because of the needs stemming from the child's disability.
- If an alternate address is requested, these things should be considered:
  - Does it fall within an existing route, or will it result in re-routing or adding a route?
  - Does it meet the same criteria for busing as the home address?

If a request, preferably in writing, is made for multiple stop locations on a daily or weekly basis, careful consideration should be given to the impact on transportation. Although this can be beneficial to parents, it can lead to longer rides, the possible addition of routes, or confusion in routing (i.e., a child being dropped off at the wrong stop on the wrong day).

### *Pick-Up*

Establish the length of time the bus will wait at the pickup location. For example, each student should be ready to board the bus five minutes before the designated stop time. The driver should wait no longer than two minutes past the stop time. Establish a procedure as to whether the bus will return to pick up students who miss the bus (both at home and at school). If this is done, clear instruction must be provided to students and parents. Additionally, this may be a matter for policy development.

### *Drop-Off*

Does the child have to be met by a parent/guardian or another responsible person? (Again, this is an area for developing policy.) If so, develop a procedure that details what will

happen when a parent/guardian fails to have a responsible person meet the student at the bus stop. Some options are to:

- Wait for a designated length of time at the stop.
- Consider an alternate drop-off location, if available
- Finish route and return to the stop.
- Return to school.
- Return to transportation facility.
- Notify local law enforcement agency or social services.

**Student Information**

Although some details regarding a student may not be necessary, there is some information that is pertinent to safe transportation. Certain disabling and/or health conditions should be noted with specific information about the impact of the condition on transportation. The “label” or “diagnosis” alone is not enough. Some examples are:

- Autism
- Asthma
- Allergies (i.e., bee stings, certain foods)
- Behavior disorders
- Medically fragile
- Seizures
- Any other medical condition that affects transportation

**Emergency Information**

Districts should have a plan for conveying accurate information to the bus driver and student assistant. Transportation should decide what information will be carried on the bus. Any information provided should be appropriate for medical staff in the event of an emergency.

The Colorado Rules for Operation, 1 CCR 301-26 also states the following:

*4.5 School districts, charter schools, and service providers shall have written emergency procedures and/or contingency plans to be followed in the event of a traffic accident, vehicle breakdown, unexpected school closing, unforeseen route change, or relocation of a student stop in an emergency.*

*4.6 School districts, charter schools, and service providers shall ensure that documentation outlining transportation related services and requirements, including required use of Child Safety Restraint Systems and medical and behavioral information as it relates to student transportation, is available*

*to applicable school transportation vehicle operators and paraprofessionals prior to providing transportation services.*

Information should cover such basics as:

- Student name, address, and phone
- Parent/guardian name, address, and phone
- Medical condition(s)
- Physician name/phone number
- Emergency contacts (names and phone numbers)

All information regarding students is confidential, and transportation personnel should be trained in the proper handling of such information. Check with your district to see what policy and procedure is in place.

### Route and Schedule Changes

Since special needs transportation must be flexible, districts may want to develop procedures to cover the following:

- Temporary or permanent change of address
  - How much advance notice is needed to implement the changes?
  - Is a written request necessary, or will a phone call suffice?
  - Does the new address meet all the busing criteria?
- Change in program or school placement.
  - Does it involve a new or different route or time changes?
  - Will a student be absent for the morning run, afternoon run, or for the entire day? (Make sure parents know whom to call and by what time.)

### Field Trips and Activity Trips

Special needs students cannot be excluded from participating in field trips/activity trips. Careful planning and coordinating with the class sponsor will ensure a safe and happy trip.

Some issues to consider are:

- Training for school building personnel on trip requests and provision of necessary information when ordering field trip buses.
- Assigning a properly trained driver and equipped bus
- Having the same emergency information available that is on the daily route bus.
- Including non-disabled students on the regularly scheduled bus if possible

## Transfer Points: Vehicle-to-Vehicle

Due to scheduling or time constraints, a district may need to establish transfer points for some special needs routes. With careful planning this can be accomplished smoothly and safely.

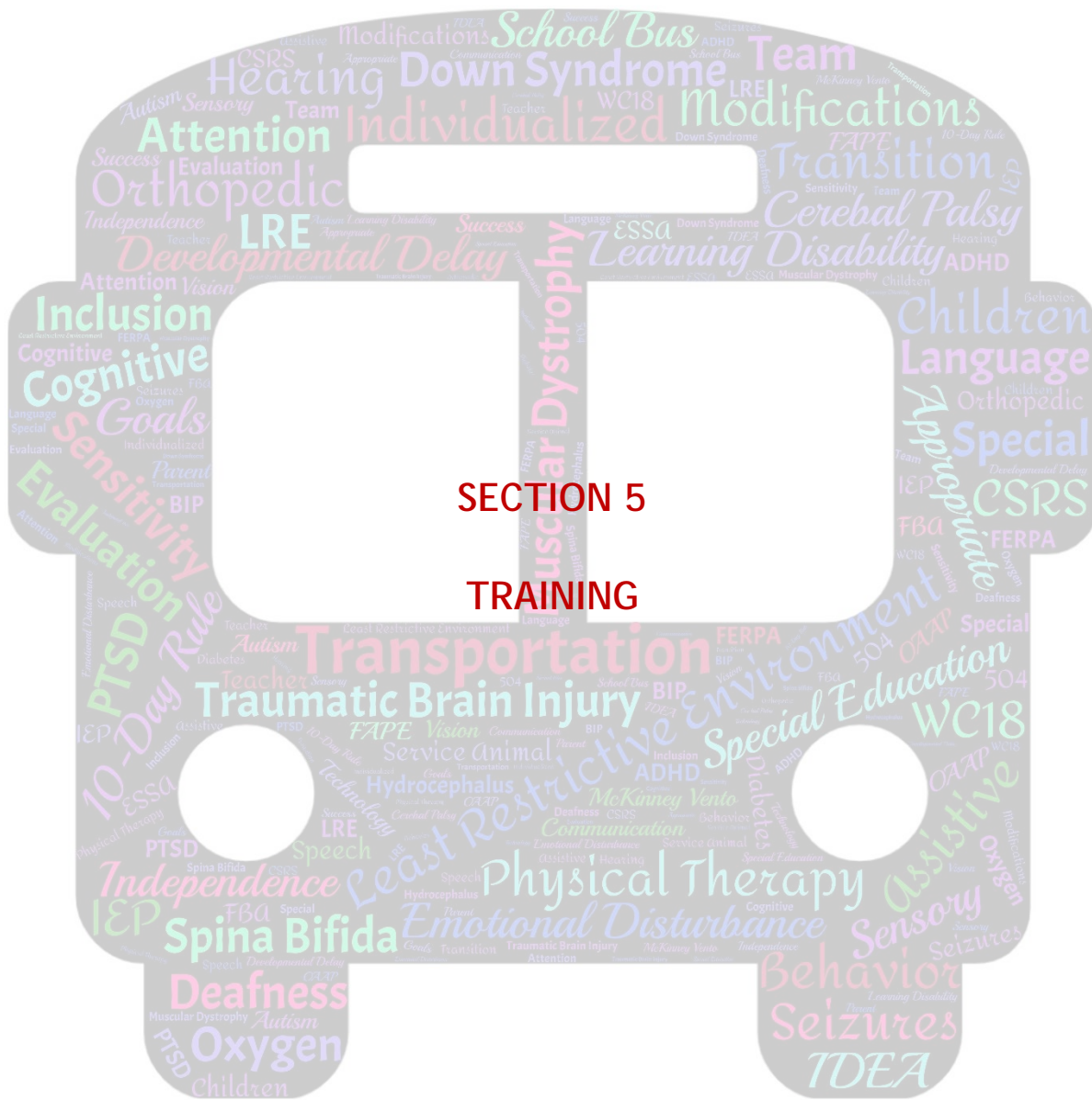
Points to consider include:

- Choosing an appropriate location
- Allowing sufficient time to complete the transfer.
- Ensuring radio contact between vehicles
- Personnel necessary to accomplish the transfer.

## Travel Training

Teaching independent travel skills to people with developmental disabilities is very individualized and are largely taught in classrooms or by teaching staff. Though the basic skills that need to be learned are the same, the method of teaching should be flexible to adapt to the learning needs of the individual. Basic skills include orientation to the immediate environment, identifying landmarks, learning a route, street-crossing skills, and safety while moving in close proximity to traffic. When use of public transportation is an option, additional skills are needed such as understanding the concept of fixed-route schedules, identifying the public transit vehicles, locating transit stops, paying fares, recognizing when to disembark, and learning the route from the transit stop to the points of origin and destination. Finally, interactive, and problem-solving skills are also needed, such as how to interact with the vehicle operator and other passengers, and what to do when unexpected changes occur such as delays, detours, or inclement weather. How much instruction is needed in each of these areas will vary from individual to individual, and practitioners report that skills can be effectively taught in days or weeks based on the individual's ability and experience and the complexity of the route. People with developmental disabilities can also learn to make use of available resources around public transportation such as telephone and web-based trip planning assistance, printed maps and schedules and customer information booths in transit centers.

Many districts/charters are using this throughout the US to help their students become more independent and eventually go to a general education bus rather than a special education route.



## TRAINING

According to Federal Guidelines, anyone providing services to a student with special needs must be trained. Training programs must be designed to ensure a comprehensive understanding of services provided and prepare personnel to meet the individual needs of each student. Drivers and student assistants are required to be trained and qualified in the operation of equipment related to their assignment. Training shall also include securement of assistive devices and competent delivery of routine health care services. **All areas of training should be documented.**

### Training Topics

- Behavior management
- Characteristics of students with disabilities
- Confidentiality
- Emergency evacuation plans and drills
- First aid training, Cardiopulmonary Resuscitation (CPR), Universal Precautions - CDL Drivers
- Home, transportation, and school communication
- Individualized Education Plan
- Loading and unloading procedures
- Mandatory Reporting
- Medically complex students
- Operational procedures.
- Proper handling of adaptive/assistive devices.
- Proper Child Safety Restraint Systems (CSRS's) and Manufacturer's Specifications
- Proper Use of Restraint
- Regulations and Guidelines
- Universal Precautions

### Other Recommended Training Topics

- Crisis intervention - Refer to District Policy.
- Do Not Resuscitate
- Occupational therapy/physical therapy
- Proper use of vehicle safety equipment - See Manufacturer's Specifications.

- Seizures
- Sensitivity training.
- Service animals
- Sign language
- Student specific medical conditions
- Suspension of students - Ten-Day Rule - Refer to District Policy.
- Transporting medications - Refer to District Policy.
- Two-way radio operation / cell phones - Refer to District Policy.

### Job Responsibilities - Driver and Paraprofessional (Passenger Comfort)

The driver needs to be aware of road hazards or other problems that might affect the smooth, comfortable, and safe ride necessary for special needs passengers. For example:

- Avoid potholes or other rough road surfaces and take the path of least resistance.
- Make turns slowly so that students are not subjected to extreme side motion.
- Accelerate and decelerate smoothly.
- Look for an appropriate place to pull over and park when a behavioral or medical emergency occurs on the bus.
- Position vehicle properly for appropriate loading and unloading.
- Place a medically fragile student toward the front of the bus.
- Address other student needs, such as sensitivity to heat, sun or cold, accordingly.

### Operational Procedures

#### *Personal Pre-Trip*

A personal, mental, and physical inspection is also important for the driver and student assistant to evaluate. Possible questions to ask oneself:

- Are you mentally prepared to drive today?
- Are your personal problems or conflicts with others set aside so you are able to focus 100 percent on your job?
- Are you physically impaired due to illness or injury?

#### *Vehicle Pre-Trip Inspection*

In addition to the regularly checked items in a school transportation vehicle's pre-trip inspection, the driver or paraprofessional is required to check for:

- Lift and ramp operation (including manual application)
- Additional emergency equipment such as a belt cutter and an evacuation blanket
- Emergency evacuation plans
- Mobility aid and passenger equipment securement devices
- Child safety seats and/ or booster seats
- Safety belts, tether straps, and/or harnesses

This may help to detect operational problems at the terminal rather than out on the route.

### *Vehicle Post-Trip Inspection*

At the end of the route, transportation personnel are required to post-trip the vehicle for the following:

- Equipment cleanliness and condition
- Personal belongings, such as medication, backpacks, assistive devices, etc.
- All items inspected on pre-trip should also be inspected on a post trip excluding the engine compartment and brake test or according to your district policy.

\*\*\*Please note you are responsible for the safe operation of your bus. It is legally required to perform pre-trip and post-trip inspections per state and federal regulations, following your district/charter procedures.\*\*\*

### *Loading and Unloading*

School districts may want to document their appropriate loading and unloading procedures for non-ambulatory students and ambulatory special needs students. Principal issues to address when evaluating necessary assistance for a non-ambulatory passenger are the following:

- How a wheelchair and/or any specialized equipment is used for boarding purposes when a student is unable to enter through the service door.
- Where is the proper positioning of the vehicle for appropriate loading and unloading?
- Who is authorized to operate the lift?
- Positioning the wheelchair so the heaviest part of the chair is at the rear of the lift, with the student facing away from the vehicle.
- Applying the wheel locks (brakes) of the chair when the lift is in operation.
- Does the uniqueness of the equipment require additional training?
- Is an additional person necessary for increased safety during loading/unloading and/or lifting?



- Turning off the power on battery powered wheelchairs.
- Making sure the lift platform barrier guard or roll plates are operational.
- Making sure that the driver/para is standing next to the platform at the front corner of the lift. Keeping one hand on the wheelchair as it is raised and lowered, and then operating the controls with the other hand.
- Security check for sleeping children.

Some ambulatory students also require special assistance or guidance when boarding or exiting the bus. Issues that a district may need to address include:

- Parents who want to carry their child onto the bus.
- Providing assistance to students who physically cannot negotiate the service door steps by themselves.
- Providing assistance to students who may have to cross the street due to routing difficulties.
- Providing assistance to visually impaired students.
- Providing assistance to students who are unable to walk unassisted to their seats.
- The bus assistant should greet the student at the top of the bus steps to determine if the student needs assistance.

Care should be taken to keep the stairwell and aisle clear of obstacles, including backpacks, securement straps, or assistive devices.



## COMMUNICATION

To have a transportation system that meets the needs of students with disabilities, communication is a key ingredient. Ongoing communication with administrators in school districts and/or BOCES, teaching and support staff, transporters, parents, and the students involved must occur as a team effort.

If transportation is deemed a related service in order for a child to access FAPE, it must be documented in the student's IEP. A form of written communication must be generated to the transportation provider indicating the areas essential for the safe transportation of the student. The form should be preliminary to actual transportation to ensure that specialized equipment or training of the bus driver and student assistant can be a reality by the time transportation begins.

The following areas of responsibility are intended to be a guide for special needs transportation trainers and supervisors when training school bus drivers and student assistants and everyone else involved in the transportation process.

### Administration

School district and/or student assistant and administrators are responsible for implementing local board of education policies. The director of special needs education, or designee, needs to be in communication with the director of transportation, or designee.

Emergency personnel (i.e., fire, police, and ambulance) in the area need to be advised of emergency information forms, and where they are located on the bus, which may be necessary to effectively treat the students in the bus environment. Name, address, phone number, emergency contact, disabling conditions, current medications, and past medical history are some of the required information that emergency personnel may request.

Two-way radio/cell phone communication devices on each school transportation vehicle are imperative to ensure safe transportation of students with special needs. Local transportation directors should be responsible for obtaining these invaluable instruments.

### School Staff

There should be communication between school staff and transportation staff about what type of day the student had. Be sure to include the positive side of the student's day as well as any negative aspects that the teacher or transporter would need to know, such as hitting people, being physically or verbally out of control, seizure episodes, asthma attack, etc.

Drivers and student assistants are encouraged to visit student classrooms to learn how to work with students on their routes. Teachers can be particularly helpful with the school bus rides and they should inform the students about bus behavior and help the drivers and student assistants with key words, phrases, songs, and reading material for the students while riding.

Teachers can provide instruction for therapeutic implementation, such as walking on and off of the bus and waiting until students are secured properly in and type of equipment needed. Working together with the teachers to find what activities and tools that will help keep the student occupied, with rewards and consequences for appropriate and inappropriate behavior.

Behavior modification of students needs to be supported by transportation staff. Drivers and student assistants should have ongoing communication with school staff and understand the suggested techniques that are effective with specific students.

## Parents and Guardians

Parents need to encourage students to obey the bus safety rules and demonstrate proper bus behavior. A parent handbook given to parents at the beginning of the school year or whenever a student begins to ride the bus should reference this and other helpful information.

When a student is not going to ride the bus, the parents should be required to contact the transportation office as well as the school.

A student emergency information form should be required to be completed by the parent with names and phone numbers of the emergency contacts, prior to transport. Health care plan/seizure action plan and medication(s) presently administered are essential and must be provided by the school nurse for the bus driver. This information is confidential and will be shared only with school officials, transportation providers, and emergency personnel on a need-to-know basis. If medications are changed or discontinued, written and verbal communication from the school nurse to the transportation office personnel or designee should take place immediately, and revision of the emergency form should be completed as soon as possible. Always consult your district policy.

## Drivers and Paraprofessionals (Mentor/Aide)

Daily communication between the driver/paraprofessional, school staff, and parents is essential. Such communication can be helpful to everyone, especially the special needs student. Drivers and assistants need to take the initiative to learn as much as they can about the students they are transporting.

Drivers and paraprofessionals need to learn to communicate with students in the most effective manner depending upon the student's ability. Gentleness, patience, firmness, persistence, and praise will result in more consistent behavior and more enjoyable rides for the students and transportation staff. School staff can be a great asset with keywords and other suggestions.

Drivers and paraprofessionals need to report to the proper school authorities and/or the parents any unusual behavior, episodes, or attitudes immediately and in detail, since they may have medical implications. Documentation in a journal or notebook of behavioral problems, seizure duration, etc., is an excellent resource to refer to at a later date.

Drivers shall maintain the route schedule for pickup and drop-off times of students as closely as possible. Inform parents of changes in schedule and adhere to the written schedule as much as possible but know the schedule can be modified when students are not riding, according to your district policy.

The paraprofessional and/or driver shall explain the bus rules to the students and be consistent in carrying them out. The bus rules should be posted on the bus.

Drivers and paraprofessionals need to be proficient in the use of the two-way radio.

It is essential that bus drivers and student assistants have effective communication with one another. An understanding of each other's responsibilities is necessary for the safe transportation of special needs students.



## STUDENT HEALTH CONCERNS

A considerable number of students have health conditions that require special management during the school day. In Colorado, the school district Registered Nurse (RN) is mandated to train, delegate, and supervise non-nursing personnel who perform nursing tasks (e.g., gastrostomy feedings, tracheal suctioning, catheterizations, administration of medications, etc.). The RN determines if non-nursing personnel may safely perform the care. If so, she/he may “delegate” authority under their license (train others) to perform the care. If not, the care will not be delegated. The school nurse is also responsible for obtaining information and coordinating health management for the students.

Every Colorado school district has a school nurse for at least Special Education services. All school transportation departments should know who their nurse is and ask for help in acquiring information about the student to ensure her/his safe transportation. Working together, the nurse and the transportation department can implement a medical plan that ensures the safety of the student.

An Individual Health Care Plan (IHCP) is developed to identify a student’s health needs. The plan is written by the school nurse with input from the parent, child (if appropriate), school administrator, and the health care provider. These plans assist students with self-care and are written so non-medical personnel who are in contact with students during the day may utilize them in a practical manner while using LRE, the least restrictive environment.

Components of an IHCP include identifying information, sources of medical care, a list and brief description of health problems, treatment plan, emergency plan, transportation health care plan, and a plan for IHCP re-evaluation. In addition, it may contain signatures from parents and health care providers and the names of persons trained to execute the IHCP.

### Emergency Information

Each student’s current medical emergency information should be provided to drivers and student assistants. Emergency information should be made available to substitute personnel (on a need-to-know basis), and accessible on buses for emergency response personnel. If this information is not available in your district, be sure to request it. There are a variety of forms being used in Colorado, customized to each district’s needs, but in general they include:

- The student’s medical condition or disability
- What to do in a medical emergency
- The student’s and parent’s name, address, and phone numbers
- Names and numbers of emergency contacts
- The physician’s name and phone number

It is imperative that district personnel treat this information with confidentiality.



## Health Conditions

In addition to Characteristics of Students with Disabilities described under IDEA, the Exceptional Children's Educational Act (ECEA) of Colorado provides the following definitions:

A sustained illness means a prolonged, abnormal physical condition requiring continued monitoring characterized by limited strength, vitality, or alertness due to chronic or acute.

health problems, and a disabling condition means a severe physical impairment. Conditions such as, but not limited to, traumatic brain injury, autism, ADHD, and cerebral palsy may qualify as a physical disability if they prevent a child from receiving reasonable educational benefits from regular education.

Criteria for a physical disability that prevents the child from receiving reasonable education benefits from regular education depend on the diagnosis and degree of involvement in the regular school setting as characterized by any of the following:

- The child's chronic health problem or sustained illness requires continual monitoring, intervention, and/or specialized programming in order to accommodate the effects of the illness, so the child may reasonably benefit from the education program.
- The child's disabling condition interferes with ambulation, attention, hand movements, coordination, communication, self-help skills and other activities of daily living to such a degree it requires special services, equipment, and/or transportation.

Special procedures such as suctioning tracheostomies, catheterizations, gastrostomy tube, and more are being performed in schools on a routine basis, and there should be extra consideration and education for transportation staff when required to transport. Staff who are transporting students that may require oxygen, respirators, or ventilators should be properly trained in transporting and securing this equipment.

It is required that the transportation departments be informed about medically fragile students prior to beginning service. Transportation decisions need to be made by qualified personnel, who should also be included in developing and implementing the student's IEP and Transportation Plan while practicing LRE.

The term "**Chronic Health or Medical Problems**" describes temporary or permanent health conditions that make it impractical for the student to receive adequate education in the regular school program. Conditions may include but are not limited to seizure disorder, cardiac conditions, asthma, malnutrition, diabetes, pregnancy, or some physical disabilities such as muscular dystrophy, cerebral palsy, or spina bifida.

Students with serious medical conditions need a Transportation Health Care Plan, prepared with help from the district's nurse. The following are descriptions of several student health concerns that drivers and student assistants need to be aware of. They should know how to transport students with these concerns in a safe manner as long as they are made aware.



### *Anaphylactic shock*

Anaphylaxis is a serious allergic reaction that is rapid in onset and may cause death. It typically causes more than one of the following: an itchy rash, throat or tongue swelling, shortness of breath, vomiting, lightheadedness, and low blood pressure. These symptoms can come on in minutes or over hours.

### *Asthma*

Asthma is a chronic lung disease that inflames and narrows the airways. Asthma causes recurring periods of wheezing, chest tightness, shortness of breath and coughing. Coughing is normally worse in the morning or evening.

### *Attention Deficit Hyperactivity Disorder (ADHD or ADD)*

When many people think of attention deficit disorder, they picture an out-of-control kid in constant motion, bouncing off the walls and disrupting everyone around. But this is not the only possible picture. Some children with ADHD are hyperactive, while others sit quietly—with their attention miles away. Some put too much focus on a task and have trouble shifting it to something else. Others are only mildly inattentive, but overly impulsive.

### *Cerebral Palsy (CP)*

Cerebral palsy occurs as a result of a brain injury sustained during fetal development or birth. However, because the symptoms of CP affect a child's coordination and independent movement, the injury is not always diagnosed right away, especially when the symptoms are mild.

### *Colostomy*

A colostomy is an opening in the abdominal wall that is made during surgery. The end of the colon is brought through this opening to form a stoma. Colostomies can be large or small, and location can vary.

### *Cystic fibrosis (C.F.)*

Cystic fibrosis is a genetic disorder that affects mostly the lungs, pancreas, liver, kidneys, and intestine. Long-term issues normally include difficulty breathing and frequent lung infections.

### *Diabetes*

Diabetes is a disease in which your blood glucose, or blood sugar, levels are too high. With Type 1 Diabetes, your body does not make insulin. With Type 2 Diabetes, which is more common, your body does not make or use insulin well, leaving it in the blood stream where it cannot be accessed as energy.

### *Down Syndrome*

Down syndrome is a condition in which a person has an extra chromosome. This extra copy changes how the baby's body and brain develop, which can cause both mental and physical challenges for the child.

### *Gastrostomy (G-Tube)*

Some kids have medical problems that prevent them from being able to take adequate nutrition by mouth. A gastrostomy tube (also called a G-tube) is a tube inserted through the abdomen that delivers nutrition directly to the stomach.

### *Hearing Disability*

Hearing loss, also known as hearing impairment, is a partial or total inability to hear. In children, hearing problems can affect the ability to learn spoken language and in adults it can create difficulties with social interactions and at work.

### *Heart Disease*

Heart disease, or cardiovascular disease, generally refers to conditions that involve narrowed or blocked blood vessels that can lead to a heart attack, chest pain, or stroke. Other heart conditions, such as those that affect your heart's muscle, valves, or rhythm, also are considered forms of heart disease.

### *Hemophilia*

Hemophilia is a rare disorder in which your blood does not clot normally because it lacks enough blood-clotting proteins (clotting factors). If you have hemophilia, you may bleed for a longer time after an injury than you would if your blood clotted normally.

### *Hydrocephalus*

This is a condition in which the primary characteristic is excessive accumulation of fluid in the brain. Although hydrocephalus was once known as "water on the brain," the "water" is cerebrospinal fluid (CSF) — a clear fluid that surrounds the brain and spinal cord. This widening creates potentially harmful pressure on the tissues of the brain.

### *Kidney Disease*

This happens when your kidneys are damaged and waste products and fluid can build up in your body. That can cause swelling in your ankles, nausea, weakness, poor sleep, and shortness of breath. Without treatment, the damage can become worse, and your kidneys may eventually stop working.

### *Leukemia*

Leukemia is a type of cancer that affects blood and bone marrow cells. After beginning in a cell in the bone marrow the disease rapidly begins to duplicate creating increased leukemia cells and then suppresses the normal, healthy cell development.

### *Mononucleosis (Mono)*

Mononucleosis is an infectious illness that is more commonly called mono or the "kissing disease." This is usually caused by the Epstein-Barr Virus, and it is transferred via saliva. According to the Centers for Disease Control and Prevention (CDC), EBV is a member of the herpes virus family and is one of the most common viruses to infect humans around the world.

### *Muscular Dystrophy (MD)*

Muscular dystrophy is a group of diseases that cause progressive weakness and loss of muscle mass. In this disease, abnormal genes (mutations) interfere with the production of proteins needed to form healthy muscle. There are many distinct kinds of muscular dystrophy.

### *Neurofibromatosis (NF)*

Can affect many parts of the body, including the brain, spinal cord, nerves, skin, and other body systems. NF can cause growth of non-cancerous (benign) tumors involving the nerves and brain.

### *Oxygen*

Oxygen may be transported on buses when medically necessary and must be properly secured. It is recommended that only one tank per student be transported due to safety concerns. Maximum tank size should be no more than 38 cubic feet. Tank should be no more than 10 pounds or no more than 5 inches in diameter.

### *Seizure Disorders (epilepsy)*

A neurological disorder marked by sudden recurrent episodes of sensory disturbance, loss of consciousness, or convulsions, associated with abnormal electrical activity in the brain.

### *Spina Bifida (myelomeningocele) and Spinal Cord Injuries*

Spina bifida is a birth defect that occurs when the spine and spinal cord do not form properly. It falls under the broader category of neural tube defects. The neural tube is the embryonic structure that eventually develops into the baby's brain and spinal cord and the tissues that enclose them.

Spinal Cord injuries usually begin with a blow that fractures or dislocates your vertebrae, the bone disks that make up your spine. Most injuries cause damage when pieces of vertebrae either tear into cord tissues or press down on the nerve parts that carry signals.

### *Tourette's Syndrome (TS)*

Tourette's Syndrome is classified as a neurological disorder characterized by repetitive, stereotyped, involuntary movements and vocalizations called tics.

### *Tracheostomy*

This surgical procedure uses a curved tube that is placed in a tracheostomy stoma, or incision in the trachea, to allow for direct breathing.

### *Traumatic Brain Injury (TBI)*

A brain dysfunction that is usually caused by an outside force (i.e., car accident) resulting in a violent blow to the head.

### *Universal Precautions*

Please also see District policies on this.

Universal precautions refer to the practice, in medicine, of avoiding contact with patients' bodily fluids, by means of the wearing of nonporous articles such as medical gloves, goggles, and face shields.

### *Vision Disability*

A decreased ability to see to a degree that causes problems not fixable by usual means, such as glasses/contacts. Some also include those who have a decreased ability to see because they do not have access to glasses or contact lenses.

### *V-P Shunt*

This is a cerebral shunt that is usually put into place to help the draining of the cerebrospinal fluid that is putting pressure on the brain (hydrocephalus).

## IDEA's 13 Disability Categories

Not every child with learning and attention issues is eligible for special education under IDEA. To qualify, your child's issues must fall under one of the 13 disability categories that IDEA covers. They are:

### *Autism*

#### The Student

These students exhibit a wide range of intellectual and behavioral differences. Some students do not communicate, communicate in a meaningless manner, or have emotional outbursts, abnormal reaction to sound, hyperactivity, lethargy, abnormal responses to objects, abnormal fears, and difficulty communicating with others.

#### The Driver/Attendant

- Bus attendants are essential to assure transportation safety for this population.
- Ignore behaviors that do not hamper bus safety.
- When behaviors affect bus safety, intervene.
- Plan intervention carefully. For example:
  - Give only one- or two-word directions to correct inappropriate behavior.
  - Do not provide choices.
  - Be sure that all requests are given in a quiet, gentle, firm voice.
  - Stop the bus if there is a severe disruption.
- Maintain a daily routine that minimizes inappropriate behaviors.

### *Deaf-blindness*

#### The Student

Students with hearing and visual impairments require very specialized planning. Consistency in seating, communication, and daily management are required to minimize transportation problems. Students who are deaf-blind react positively to a daily routine and are easily distracted and upset by sudden change.

#### The Driver/Attendant

- Bus attendants should be considered essential to accommodate these students.
- Transporters of this population require extensive training, skill, and knowledge about mobility and alternative communication techniques.

### *Deafness*

#### The Student

Not all deaf students communicate in the same manner. Some deaf students only use sign language, other deaf students only lip-read, and other students use a total communication system that includes both sign language and lip-reading.

### The Driver /Attendant

- Deaf students who are able to maintain communication with the driver or assistant will present fewer behavioral problems.
- Be familiar with the student's mode of communication.
- If the primary mode of communication is sign language, learn enough basic signs and finger spelling to provide safe transportation.
- Keep paper and pencil available for transportation purposes.

### *Development Delay*

### The Student

Students who are developmentally delayed demonstrate a broad range of abilities and functional levels. These students may be ambulatory or non-ambulatory and may attend their local home school or a special education center.

### The Driver/Attendant

- The degree to which transportation services must be modified depends on such factors as independent functional level, ability to follow directions, ability to memorize and retain safety rules, and day-to-day age-appropriate self-help and adaptive behavior skills.
  - More mentally disabled students are being transported on regular vehicles and integrated with their non-disabled peers.
  - Severely and profoundly mentally disabled students require a greater level of assistance because of their limited level of comprehension or severe memory limitations.
  - Work closely with the school educational staff regarding best practices.
- It is difficult for students to conform to what is expected if they cannot comprehend the expectation. Expectations should be related to the student's functional ability.
- Follow a daily routine.
- Speak softly and firmly.
- Be friendly.
- Give one-part directions.
- Students who have toileting problems should be toileted before leaving home in the morning and before leaving school in the afternoon. Appropriate garments should be worn by the student to protect the school bus seats.

## *Emotional Disturbance*

### The Student

These students can be the most challenging to provide with daily transportation services. The day-to-day transportation problems may range from mild to severe behavior disruptions. Inappropriate behaviors may include failure to stay seated, name calling, hitting, spitting, screaming, stealing, fighting, exiting the bus, and destruction of property.

### The Driver/Attendant

- Get behavior management training.
- A structured daily routine that is coordinated with the student's instructional program will enhance appropriate behavior.
- Video cameras have been recognized for their effectiveness in modifying bus behavior.
- In addition, there has been success in not transporting all seriously emotionally disturbed students on the same bus. In urban areas where mass transit is available, many students have successfully used this means of transportation.

## *Hearing Impairment*

### The Student

Students with hearing impairments may or may not use sign language. These students may have fluctuating hearing and therefore do not respond consistently to verbal communication.

### The Driver/Attendant

- Establishing effective communication practices increases acceptable behavior.
- Be sensitive to each student's communication needs.
- Accommodate hard-of-hearing students by patiently repeating missed information, speaking clearly, and avoiding excessive background noise, which further reduces hearing.
- Students should be able to see the lips of the person speaking.

## *Multiple Disabilities*

### The Student

Students with multiple disabilities require extensive planning.

### The Driver/Attendant

- Recommendations for other disability students may be implemented for these students. In addition, many of these students may also have medical problems that require special knowledge and skills.
- In-service training must include extensive information and skill development about alternative communication systems, special equipment management, student

- positioning, and behavior management techniques.
- Because of the range of severity of disabilities under this definition, emphasize safety.
  - Visually monitor the status of each child during the ride. It is recommended that there be a trained bus attendant who can work closely with the driver.

### *Orthopedic Impairment*

#### The Student

Students with orthopedic impairments may require specialized services.

#### The Driver/Attendant

- Many of these students require specialized seating, physical handling, or specialized equipment with adaptations.
- If significant modifications are required, they should be discussed at the IEP meeting where the parents, and appropriate educational and related services personnel, can address the required modifications.
- If special personnel are required to assist these students, both the driver and attendant should be knowledgeable about each student's needs.
- Safety in student handling and equipment management are essential skills for drivers and attendants.

### *Other Health Impairments*

#### The Student

This definition encompasses a broad range of students. This category includes children who have limited strength but may appear no different from their non-disabled peers.

#### The Driver/Attendant

- Know about each student's disability and how it may be manifested while on the school bus. Special education personnel, occupational and physical therapists, and nurses can provide valuable assistance that increases safety and reduces the risk of liability in emergencies.
  - For example, the safety of a student with hemophilia requires priority seating to prevent any dangerous bleeding.
  - For the epileptic student, seat assignment and climate control may be vital to reduce seizure activity.
  - For the student with diabetes, glucose tablets should be available on each school bus and the driver or attendant should be familiar with administration.
  - Students with lead poisoning may demonstrate mild to severe attention deficits, as well as an inability to control impulsive behavior.



- All drivers should be provided adequate in-service training about children with disabilities since children with health impairments may frequently be transported with their non-disabled peers.

### *Specific Learning Disability*

#### The Student

This student population rarely requires special transportation intervention. The majority of these students ride the school bus with their non-disabled peers.

#### The Driver/Attendant

- Because these students frequently do not look or act differently from others, their special needs are not obvious.
- A learning-disabled student may have a problem using or understanding language.
- Students who have severe learning disabilities may require patience and understanding with written and oral communication.

### *Speech or Language Impairment*

#### The Student

This student population rarely requires special education transportation services except for the reason of age. Because of the emphasis on early intervention, this population is more frequently being served at an early age.

#### The Driver/Attendant

- Have transportation equipment that is appropriate for a child's age to ensure safety for young children.

### *Traumatic Brain Injury*

#### The Student

This student population often requires very specialized transportation planning because of limited physical, behavioral, or intellectual abilities. Students who have suffered traumatic brain injury were not born disabled and may demonstrate extreme frustration trying to accept changes in their physical, behavioral, or intellectual status.

#### The Driver/Attendant

- Identify personnel to provide assistance with interventions recommended on the student's IEP. Rehabilitation personnel are often the most knowledgeable about the needs of this population and can provide valuable assistance.
- Patience, compassion, and effective communication are essential elements for appropriate services.

### *Vision Impairment*

#### The Student

This student population may or may not require special services. The degree of intervention required depends on the student's ability to function independently.

### The Driver/Attendant

- Carefully assess each student to provide the appropriate level of assistance.
- Some students require extensive assistance to be seated, while others need little or none.
- To ensure safety, maintain a consistent daily routine that includes the same seat assignment.
- Use verbal communication to provide compensation for what cannot be seen.
- Directions should be precise.
- Communication should be friendly and direct.

However, having one of the 13 disabilities does not automatically qualify a child under IDEA. To be eligible, a student must:

- Have a disability *and, as a result of that disability...*
- Need special education in order to make progress in school.

### Do Not Resuscitate Orders (DNR)

Except in rare circumstances as indicated below, in emergency situations involving accident or illness, school district employees are expected to render first-aid and life-sustaining care to the extent of their knowledge and training, utilize emergency medical resources available in the community and seek assistance of school medical personnel or other staff members.

When a student with special health needs is enrolled in a district school, an Individualized Health Plan ("IHP") shall be prepared and reviewed at least annually (and whenever there is a change in personnel or a change in the student's medical status) by the school nurse, the parent/guardian and the student's physician. The IHP shall set forth the special health needs of the student and the plan for dealing with those needs in the school setting. In planning for the student's special health needs, the school nurse shall consult with and access applicable community resources when appropriate. If the student has an IEP or 504 plan, the IEP team or 504 team will determine whether the IHP, and any emergency protocol, should be attached to the student's IEP or 504 plan.



## BEHAVIOR MANAGEMENT

### Managing Your Passengers

All passengers on the school bus must follow rules established by the school district. Behavior that puts the safety and health of the student, other students, the driver/paraprofessional, or the community at risk should not be permitted.

Bus rules apply to all students, including those with disabilities. General rules include:

- Remain seated when the vehicle is moving.
- Keep hands, feet, and objects to oneself.
- No swearing, rude gestures, or teasing
- Speak at a classroom level.
- Follow the driver's and/or paraprofessional's directions.
- Stay out of the danger zone surrounding the vehicle, when loading or unloading

More specific requirements may be mandated by the school district and must be communicated to the student and family. These may include:

- Keep all parts of the body inside the windows.
- Do not throw objects out of the windows or onto the floor.
- Do not touch emergency exits or tamper with any part of the bus.
- Do not use pencils or other sharp and unsafe implements.
- No eating or drinking allowed on-board a school transportation vehicle (IEP may dictate otherwise)
- No use of alcohol, cigarettes, or illegal drugs

### Behavior of Children with Special Needs

It is important to find out if the child understands that his/her actions are inappropriate or unsafe. It may be that the behavior is related to the particular disability and is not willful misbehavior. If the disability is at the root of the child's behavior, discipline may not be an appropriate way to handle the disruption. Behavior problems are usually a form of communication; a student may not be able to communicate with the driver/paraprofessional in any other way to let them know that something is wrong. It is important to understand why students are acting as they are. Corrective steps geared to the student's particular situation should be implemented.

Students with emotional disorders will usually have a behavior modification program in place at home and at school. This program should be extended to the bus environment, and the driver and paraprofessional need to understand how to follow the program.

School personnel and the family must be involved in solving any behavior problems on the school bus. It is important to get involved with the school and the family as soon as behavior problems occur.

### **Praise and Patience: Two Keys to Good Discipline**

Children respond better to praise for good behavior than to punishment for breaking the rules. Praise is usually an appropriate reward, but food should never be used to reward a student. Not only would this encourage eating on the bus, but the student may have food allergies or could choke while eating. Smiles and kind words work best! Additionally, a driver and or paraprofessional may choose to acknowledge appropriate passenger behavior by issuing a reward certificate (tickets, school approved reward system).

Patience may be needed with children with disabilities. Some may have limited memory or attention spans because of conditions that cannot be seen. Therefore, instructions and praise may need to be repeated frequently. Having written rules with pictures may help. For some students, it helps to give directions in short phrases, only one or two instructions at a time.

If the behavior of a student is an ongoing problem, an appropriate behavior program could be written into the child's IEP. By doing so, the teachers, parents, driver(s), and all other service providers agree on the course of action that must be taken.

### **What is Reasonable Restraint??**

CRS 22-32-147

This type of restraint should not be confused with occupant restraint or Child Safety Restraint System (CSRS), which prevent crash-related injuries. When we talk about reasonable restraint in connection with misbehavior it means "immobilization of the individual's movement by staff member's direct contact."

Most districts have extremely specific School Board Policies on Reasonable Restraint. It is critical to the safety of the students and legal protection of the Drivers/Assistants that these policies are in place and adhered to. Restraints and seclusion should never be used for coercion, retaliation, or as a convenience to staff when dealing with problematic behaviors. Restraints are used *only as a last resort*, and only by trained personnel. Schools should never use mechanical restraints to restrict a child's freedom of movement. You must be trained before you can use any restraint on a student.

If a child with disabilities has a behavior plan that requires some specific type of discipline-related restraint, this must be addressed in the IEP and behavior plan. If you, as a transportation professional, are unclear about what is expected of you or how to deal with specific behavior, ask the other members of the group that have prepared the plan.

### ***Fifteen Principles for Restraint***

1. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.

2. Schools should never use mechanical restraints to restrict a child's freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).
3. When imminent danger to self and others has dissipated, physical restraints or seclusion should be discontinued.
4. Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.
5. Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse and should only be used for the protection of the child and/or those around them.
6. Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.
7. Restraint or seclusion should never be used in a manner that restricts a child's breathing or harms the child.
8. The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.
9. Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.
10. Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.
11. Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.
12. Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable Federal, State, or local laws.
13. Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.

14. Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.
15. Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

### Tips for Working with Children with Special Needs

- Make sure that your students are aware of the bus rules the first day and then enforce them.
- You should expect the same standard of behavior from a special needs student as you expect from a regular education student unless there is a legitimate reason to treat the student differently.
- Show the children that you care. Look for the good qualities!
- Never give an instruction that you cannot enforce. Be consistent with your follow-through.
- Let the students sit with their friends (IF POSSIBLE)
- Learn the children's names and greet them each morning and evening.
- Show a sense of humor that is appropriate with the student's understanding.
- Remember that you are working with children not adults.
- Show an interest in the students and their school.
- If you have minor problems with the riders, first try to solve them yourself before going to the school and/or your parents.
- Listen to suggestions from the school staff and parents.
- Set a good example by your conduct, appropriate dress, and follow the appropriate district policies, procedures, and rules of the road.
- The safety and well-being of your passengers is your responsibility. Put your heart into it.
- Be patient. It takes a lot of patience when there is a large group of healthy, lively, children.
- You are the first person to see the child in the morning and the last to see him/her in the afternoon. Always report anything suspicious or unusual to school authorities immediately.

- Remember, you are a valuable member of the team who deals with these students. You can be proud that you have exceptional skills to work with these kids! If you need additional training, please contact the school.

## Inappropriate Behavior

This is any misbehavior that involves the safety and welfare of bus riders or others:

- Failure to remain seated.
- Teasing/harassing others
- Hitting, fighting, or assaulting other students, driver(s), or paraprofessionals
- Refusal to obey the driver/para instructions.
- Throwing objects out of the bus
- Improper bus loading or unloading
- Unauthorized use of emergency exits or equipment.
- Possession of a weapon
- Vandalism or destruction of property
- Profanity/obscene gestures
- Use of tobacco on the bus or on school property
- Use of illegal drugs or alcohol on the bus or school property
- Spitting
- Other dangerous, disruptive, or inappropriate behavior

All students, including students with disabilities, are expected to exercise self-control commensurate with their development and abilities.

## Most Common Types of Restraint Training

### *CPI - Crisis Prevention Institute*

- What is Nonviolent Crisis Intervention® Training?
  - Nonviolent Crisis Intervention® training equips you with skills, confidence, and an effective framework to safely manage and prevent difficult behavior.
    - Reduce restraint use!



- The truth is that CPI training is designed to help you reduce and even eliminate restraint use. Of course, sometimes there are last-resort situations where restraint is needed—only if a student presents an immediate threat of physical harm to self or others. But so often, restraint can be prevented. In fact, 61% of educators report that CPI has helped their schools reduce restraint use by 50-99%. You can even go as far as the schools that eliminated restraint use entirely.

### *NHTSA - Child Passenger Restraint System*

- Available at STN

### *QBS - Quality Behavioral Services*

- Safety-Care™ Behavioral Safety Training program provides the skills and competencies necessary to effectively prevent, minimize, and manage behavioral challenges with dignity, safety, and the possibility of change. Using the newest and most effective technologies from Applied Behavior Analysis (ABA) and Positive Behavior Interventions & Supports (PBIS), this Safety-Care program will provide your staff with strategies for not only preventing and managing behavioral challenges, but also to effectively teaching replacement behaviors. Appropriate for individuals experiencing developmental, neurologic, psychiatric, and other impairments, Safety-Care will result in a more positive reinforcement-based approach, the development of new skills, and fewer restraints.
  - Safety-Care provides the tools you need to be safe when working with behaviorally challenging individuals.
    - We can help you to:
      - Understand how and why crisis events happen, and ways in which we might inadvertently contribute to them.
      - Prevent crises using a variety of supportive interaction strategies.
      - Apply simple, evidence-based de-escalation strategies that are effective for any population.
      - Respond appropriately and safely to dangerous behavior.
      - Prevent the need for restraint.
      - Intervene after a crisis to reduce the chance that it will happen again.

*MANDT - Trademarked Program*

- We maintain and continue to promote a commitment toward **Restraint Reduction** and **Restraint Elimination** by achieving the ultimate goal of the Mandt System® - to build healthy relationships in the workplace between all people.



## EMERGENCY EVACUATION REQUIREMENTS FOR SPECIAL NEEDS STUDENTS

The Colorado Rules for the Operation, Maintenance, and Inspection of School Transportation Vehicles (1CCR 301-26,19.1) require that emergency evacuation drills shall be conducted at least twice during each school year. It is recommended that one drill be through the rear and/or side emergency doors(s). Records shall be maintained showing that the required evacuation drills have been conducted. These regulations do not exempt disabled or special needs students, nor does it provide special instructions for them.

In an actual emergency, there would be no time to explain the evacuation plan. Drivers, paraprofessionals, and students must be aware of what to do ahead of time. These regulations should encourage each transportation department to prepare procedures as to how these drills should be conducted. A bus carrying special needs students, particularly students who are physically disabled, would be evacuated in an emergency only when absolutely necessary in order to preserve life. Some special needs students may not be able to participate fully in an evacuation drill due to the nature of their disabilities. Decisions should still be made as to how these students can be evacuated in an actual emergency and documented.

### Preparing a Plan

Drivers and paraprofessionals should have extensive conversations with each other about the plan they write. They should also consult teachers, parents, therapists, or any other person(s) who could lend insight on how to handle a specific child. Emergency information forms and health care actions plans are excellent sources of information about the students. Transportation personnel should be familiar with each student's medical or disabling condition, especially if the condition might be a factor to consider in an emergency evacuation.

If clarification of the information or additional information is needed, contact the person(s) who can provide or obtain whatever is necessary to prepare the evacuation plan. That person may be the special education scheduler, driver/trainer, dispatcher, school nurse, or a district representative who is designated those responsibilities in the school district and/or transportation department.

### Training for Drivers and Paraprofessionals (Mentors/Aides)

Train drivers and paraprofessionals to:

- Examine adaptive equipment or assistive devices used by each student (lap belts, safety vests, leg braces, wheelchairs, etc.) and get familiar with how they work. Determine what kind of quick-release methods might be used with them. Request in-service training on any equipment or device that is new or unfamiliar.
- Evaluate each student and her/his equipment on an individual basis, in terms of how quickly they can be removed from the bus.

Some determining factors include:

- Size (weight/height of student and her/his equipment).

- Is the combined weight of student and equipment too heavy to lift out the emergency door?
- If the lift is inoperable would the student be carried off the bus or dragged to the exit (s) on a blanket?
- Which students are capable of assisting in an emergency situation? Which students(s) tend to wander, need monitoring or other special attention, etc.?
- Is there a serious medical problem which would prevent the driver/paraprofessional from removing the student from a wheelchair in the event the lift is rendered inoperable due to an accident or fire?
- Understand the extent of each student's disability and /or physical limitations, impairments, or weaknesses.
- Evaluate the seating location of the student. Where the student is seated on the bus, combined with the type of assistive device s/he might require, will impact the emergency evacuation plan.
- Know the length of time a student requiring life support equipment or medical care procedures can survive, if such service is interrupted or delayed during the emergency evacuation process.

Other questions that may need to be answered, or issues that may need to be addressed, include:

- If a ventilator dependent student needs assistance, what are the appropriate procedures, and who is trained to assist, if the IEP required nurse is incapacitated?
- What precautions should be taken with any oxygen tanks on board if there is a fire or threat of fire?
- What are the procedures for any companion animal on board during an emergency?
- What special challenges might a student with a quadriplegic condition present?
- When will an expensive augmentative device be removed from the bus or left behind?
- Consider challenges that might be encountered with a student who is unwilling or unable to respond to verbal instructions. Consult the student's teacher and /or parent for the proper techniques to handle a child who refuses to get on or off the bus. If the techniques are not successful during practice drills, pursue further assistance from the appropriate designee assigned to provide such information in the school district.
- If a driver is not assigned a paraprofessional on the route, s/he might consult other drivers for feedback on her/his emergency evacuation plan and include talking with the drivers who have driven the child before.

- Discuss the plan with each student's parent/guardian to make sure there is support and agreement as to how the student should/could be removed from the bus in an emergency situation.

## Writing a Plan

Once a plan has been verbally discussed and mentally planned between the driver and paraprofessional, a written evacuation plan should be documented for each individual bus run on the route package. A complete plan for both front and rear exits is recommended. A diagram of the floor plan, indicating the seats and the wheelchair tie-down locations for each bus will be helpful. Print the names of each student according to where they sit on the bus.

Beneath the student's name make the notation that is most appropriate for that student (i.e., can assist driver/paraprofessional in emergency, needs assistance to walk, remove student and chair, may remove student from chair, may use blanket drag, etc.)

Another technique for identifying the student's abilities or special needs is using the "Dot System," a colorful eye catcher:

- Green Dot: Indicates that the student may evacuate on their own without supervision and can assist other students.
- Yellow Dot: Indicates the student may have some difficulty but can undo seat belt and may be able to crawl to the emergency exit.
- Red Dot: Indicates the student will need complete supervision and/or assistance.

When discussing an evacuation plan, keep in mind that the goal is to safely evacuate all students, as quickly as possible. Indicate on the evacuation plan the sequence of removal for the students to each emergency exit. Write out a brief description and include any necessary and appropriate information and /or special instructions for each student.

District procedures may require a copy of the written plan to be available to the training department, scheduler, dispatcher, and any substitute driver or paraprofessional who may be scheduled on the route in the regular driver's/paraprofessional's absence.

Once the plan is written and practiced, drivers and paraprofessionals should review the plan frequently, update and adjust any passenger changes, and always remain mentally alert. The reality that an emergency evacuation may be necessary can happen at any given moment. We do not get to choose our emergencies or when they happen.

## Conducting the Evacuation Drill

Any sudden change in a daily routine may be upsetting to some special needs students. To eliminate the element of surprise, discuss the plan with all students before actually conducting an emergency evacuation drill. Allow them to contribute their suggestions and information. Spend several days preparing them verbally for the actual drill.

Once everything has been discussed in detail, put the plan into action and evacuate all ambulatory and semi-ambulatory students from the bus using the exit that has been designated as the emergency exit.

To avoid any chance of injury, evacuate all non-ambulatory students using the lift, even if the plan calls for them to be removed from their wheelchair and carried off the bus.

Always do practice drills in a safe location, preferably on school grounds. Make sure there are plenty of district personnel and/or parents available to assist when necessary. Continue to practice the drill, if appropriate, until the students are comfortable with the routine and their responsibilities, which may be simply to cooperate. Actual practice often contributes toward a better plan, revealing outcomes that may not have been apparent before the actual drill. Offer lots of praise and appreciation to the students and assure them that this drill is because of the driver's/paraprofessional's genuine caring for them.

Review with the students, regularly, throughout the school year about their responsibilities/cooperation if the bus needed to be evacuated in an emergency. Never assume that based on a student's special need that they are incapable of performing some of the basic tasks of evacuation. Work with the student progressively to increase their comfort with and understanding of these basic tasks with the goal of helping them to become as independent as possible during the evacuation.

### Deciding When to Evacuate the Bus

Not all emergencies or accidents would require that the evacuation plan actually be carried out. Keep in mind that buses are well constructed, and there are times when students would be safer inside the bus.

Conditions such as fire, threat of fire, stalled vehicle on a railroad track, or any unsafe road location, present situations which would require an evacuation. This decision depends on the driver and paraprofessionals' training and good judgment.

Much time and effort go into the preparation of an emergency evacuation plan, but it may be placed into action during the required drills and in a life-threatening emergency situation. It would only take one life-threatening emergency to make all the effort to design this evacuation plan worthwhile.

This plan may also be used if the bus breaks down and the students need to be transferred to another bus. Minor modification of the plan would permit a safe, smooth transition to the other bus.

### Training Considerations

The following training and review could have a positive impact on an evacuation drill if an actual emergency ever occurred:

- Hands-on emergency techniques and procedures should be reviewed with drivers and paraprofessionals before each summer school session, and prior to the beginning of each school year.
- Departmental procedures for reporting emergency situations via two-way radio should be reviewed and rehearsed with all drivers at the beginning of each school semester.

- During training sessions, troubleshoot unexpected circumstances that might arise during an emergency situation (i.e., inoperable two-way radio, absence of emergency blanket on board, students going into seizure, driver unconscious) and explore practical alternative actions.
- Consider establishing a “pool” of substitute drivers who excel in special needs transportation. Include them in all special education in-services and refresher sessions.
- To eliminate surprise situations, drivers and paraprofessionals should frequently monitor the condition of all assistive devices and other equipment used by their special needs passengers.
- If different buses in the fleet are equipped with several types of wheelchair and occupant restraint systems, rotate drivers and paraprofessionals for a few days so that all personnel have the opportunity to become familiar and work with the diverse types of equipment systems.
- Explore and practice quick release methods for occupant restraint systems. If a belt cutter is an option, test the cutter on sample straps by cutting on the angle. Trying to cut straight across a strap with a belt cutter has not always proven successful.





SECTION 10

PRESCHOOL AGED CHILDREN

## PRESCHOOL CHILDREN

As more pre-school age children are transported to school programs, often in school buses, the public is increasingly asking the National Highway Traffic Safety Administration (NHTSA) about how to safely transport them. To help answer these questions, NHTSA conducted crash testing of pre-school age size dummies in school bus seats. The test results showed that pre-school age children in school buses are safest when transported in child safety restraint systems (CSRS's) that meets FMVSS 213, Child Restraint Systems, and are correctly attached to the seats.

Based on its research, NHTSA recommends pre-school age children transported in school buses always be transported in properly secured CSRS's.

The school district should be prepared and knowledgeable in the area of training drivers and paraprofessionals for this type of school transportation vehicle passenger.

For clarification, the term "preschooler" will be defined as children three to five years of age. Public school transportation is not automatically required for this age group in Colorado. According to Colorado Revised Statute 22-32-113 (1):

- (1) *The Board of Education of a school district may furnish transportation:*
  - (a) *To and from public schools of the district for any reasonable classification of resident pupils enrolled in the schools of the district.*

Transportation, as a required related service for preschoolers with disabilities, must be stipulated on the preschooler's Individualized Education Program (IEP).

All preschool children require careful planning when a school bus is selected as the mode of transportation to and from a state or local government early intervention program, special education, Head Start or Early Head Start program. These programs may have significantly different requirements governing transportation, and the transportation requirements should be reviewed carefully.

If a child is eligible for special education and the related service transportation under Part B of IDEA, the mechanism for addressing transportation services is the Individualized Education Program (IEP). The "1997 IDEA Amendments" require that a public agency provide transportation to a preschool age child as a related service to the site at which the public agency provides special education and related services to the child, if that site is different from the site at which the child receives other preschool or day care services.

One of the major differences between the Individualized Family Service Plan (IFSP) services and IEP is that the early intervention program under Part C for infants and toddlers is a year-round program, whereas special education services under Part B represent a school-year program, unless otherwise specified by the IEP team. The decision for transportation personnel to attend IFSP and IEP meetings should be made on a case-by-case basis. This decision should be based on the individual needs of the child and family and the need for transportation personnel to provide this service safely.

Transporting young children requires careful planning prior to initiating transportation services in school buses. Due to the ages of these children, the type of service required and frequency and duration of transportation must be determined on a case-by-case basis.

Prior to initiation of service, during the first IEP meeting, in conjunction with a physician or school nurse, the following questions and concerns should be addressed:

1. Is the child medically stable to be transported?
2. What is the length of the ride? Does the length of ride place the child at risk based upon the child's age, developmental and functional level, and environmental factors, such as weather and temperature in the bus?
3. Which physical, cognitive, communicative, social-emotional and behavioral concerns should be addressed prior to initiating transportation services?
4. Which assistive or adaptive devices are necessary to accommodate the special needs of a child during the provision of transportation services?
5. What type of supervision is necessary to assure safe transportation? What parental responsibilities are to be addressed on the IFSP or IEP documents?
6. When a child is medically fragile and requires special handling, who is responsible for emergency procedures? Who is responsible for monitoring universal precautions in the school bus if it is known that a child has an infectious disease that requires special precautions?
7. If a child is provided with a private-duty nurse (non-IEP, parent-requested), how are the services addressed on an IEP? It is recommended that authorized transportation, special education, and early intervention personnel committed to special services converse prior to the IFSP or IEP team meeting. The mechanism for decision-making for all special services is the IFSP or IEP process for children receiving services under IDEA.
8. What transportation equipment or equipment modification is required to accommodate the child's special needs and safety?

### NHTSA Recommendations

When pre-school age children are transported in a school bus, the National Highway Transportation Safety Administration (NHTSA) recommends these guidelines be followed:

1. Each child should be transported in a Child Safety Restraint System (suitable for the child's weight and age) that meets applicable Federal Motor Vehicle Safety Standards (FMVSSs).
2. Each child should be properly secured in the Child Safety Restraint System.
3. The Child Safety Restraint System should be properly secured to the school bus seat, using anchorages that meet FMVSS 225.

### Colorado Universal Preschool Program

The Colorado Universal Preschool Program took the place of the Colorado Preschool Program.

Beginning in the 2023-24 school year, every child in the year before they are eligible for kindergarten is eligible for up to half-day (15 hours) of state-funded, voluntary preschool to support their preschool enrollment for the 2023-24 school year.

**Eligibility** - Some participating school districts around Colorado have local Board of Education adopted policies allowing for alternative dates for kindergarten eligibility.

Only 3-year-olds who have one or more of the qualifying factors listed below will be able to enroll with the program for part-time preschool services.

- Household income below 270% of the 2023 federal poverty guideline
- Individualized Education Program (IEP)
- Homelessness
- Dual language learner
- Foster/Kinship care

## Equipment Considerations

Great strides have been made in the type of equipment used to assist toddlers and pre-school children, including those with special needs. These children present multiple challenges to providers of transportation. To assure child passenger safety in the school bus, transportation personnel will need training to work with toddlers and pre-school children who use a variety of equipment. Challenges relating to proper use and installation of Child Safety Restraint Systems (CSRS's), including car seats, arise. Many of these challenges are addressed in NHTSA's "Guideline for the Safe Transportation of Pre-school Age Children in School Buses" (June 2015).

Note: Refer to "Proper Use of Child Safety Restraint Systems in School Buses"

<https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/cps-restraint-school-buses-participant-manual-810906b.pdf>

For the children's sake, let us keep them safe while they travel in a school transportation vehicle. When preschoolers with disabilities are transported, restraints should be appropriate for the level of disability.

At any age, a child is safer riding in the back seat of a small capacity vehicle (vehicle capacity of less than 12) than in the front passenger seat. It is important that the restraint system be appropriate for the child's size, age, weight, and disability. A safety restraint system and/or safety seat should be secured according to the manufacturer's instructions. The design and type of appropriate equipment may be determined by the child's physician, occupational therapist, physical therapist, school nurse, parent, and school transportation representative.

The transportation department representative's input is especially important at the IEP staffing. The transportation representative's responsibility is to match the appropriate safety equipment with the appropriate vehicle and to assist in the planning for the training of transportation employees. In some cases, the appropriate vehicle may not be immediately available, or an additional employee may need to be hired.

Preschoolers depend on us to make safety decisions from them. Because their bodies are different, they need their own special restraint system designed to distribute crash forces over the body area. Children up to the age of four are not only small but have soft, flexible bones. A safety belt, which is designed for an adult, does not offer adequate protection to a preschooler in a small capacity vehicle. School bus seats do not offer "passive" restraint

protection (compartmentalization) to this age and weight passenger under the current FMVSS 222, "School Bus Passenger Seating and Crash Protection."

### *Child Safety Restraint Systems (CSRS's)*

A Child Safety Restraint System is any device (except a passenger system lap seat belt or lap/shoulder seat belt), designed for use in a motor vehicle to restrain, seat, or position a child who weighs less than 50 pounds. CSRS's that are used in school buses must be appropriate for the individual child and must be used correctly. All of the restraint systems used for transportation must be secured to the bus seat in the manner prescribed and approved by both the school bus and CSRS manufacturer.

### *Elements of Correct Installation of CSRS's*

It is recognized that compartmentalization, the passive safety restraint system required in school buses under FMVSS No. 222, provides a higher level of safety to children over 40 pounds. Children diagnosed with medical complexities or fragility might require special securement or positioning systems.

1. Direction
  - a. Position (rear- or forward-facing) and adjust recline angle accordingly. Some rear-facing seats are designed for rear-facing only and may not be used in a forward-facing position. (Check manufacturer's instructions.)
2. Belt Paths and Harness Strap Location
  - a. Use the correct belt path and harness strap slots on the CSRS as directed by the manufacturer's instructions. Note: Heavy coats should be removed to ensure a tighter fit.
3. Installation
  - a. To achieve tight installation, place hand on and push down in the CSRS to compress the bus seat cushion. With the buckle(s) engaged, pull the loose end of the seat belt(s) to tighten and lock the safety belt. The CSRS should not move more than one inch forward or side-to-side when tested by grasping the seat at the belt path.

**NHTSA recommends the following guidelines for CSRS use and installation.**

### *Child Safety Restraint System Specifications*

The provider of the CSRS should ensure:

1. Each pre-school age child to be transported has a CSRS appropriate for the child's weight, height, and age.
2. Each CSRS meets all applicable FMVSSs (look for the manufacturer's certification on the label attached to the system).
3. Each CSRS has been registered with the CSRS's manufacturer to facilitate any recalls the manufacturer might conduct. If the CSRS is the subject of a recall, any necessary repairs or modifications have been made to the manufacturer's specifications.
4. Each CSRS is maintained as recommended by its manufacturer, including disposal of any CSRS that has been involved in a crash.

## Proper Securement

The transportation provider should ensure:

1. The CSRS is used and secured correctly in the school bus.
2. Each child is secured in CSRS's according to manufacturer's instructions.
3. All CSRS attachment hardware and anchorage systems meet FMVSS 210, Seat Belt Assembly Anchorages or FMVSS 225, Tether Anchorages and Child Restraint Anchorage Systems.
4. School bus seats designated for CSRS's meet FMVSS 225, or include lap belts that meet FMVSS 209, Seat Belt Assemblies, and anchors that meet FMVSS 210 (designed to secure adult passengers or CSRS).
5. Personnel responsible for securing CSRS's onto school bus seats and children into CSRS's are properly trained and all personnel involved with CSRS's are provided with up-to-date information and training.
6. When transported in the school bus, pre-school age children are supervised according to their developmental and functioning level.

## School Bus Seats Designated for Child Safety Restraint Systems

The transportation provider should ensure:

1. School-bus seats designated for CSRS's are located starting at the front of the vehicle to provide drivers with quick access to and a clear view of the CSRS occupants.
2. CSRS anchorages on school bus seats should meet all applicable FMVSSs. When ordering new school buses, the maximum spacing specified under FMVSS No. 222, School Bus Passenger Seating and Crash Protection, (within 24 inches from the seating reference point) is recommended for seats designated for CSRS's to provide adequate space for the CSRS's.
3. The combined width of CSRS and/or other passengers on a single seat does not exceed the width of the seat.
4. If other students share seats with the CSRS's, the CSRS's are placed in window seating position.

Simply securing a safety seat according to the manufacturer's instructions may not always prevent it from tipping forward or tipping sideways. The Colorado State Pupil Transportation Association Special Needs Committee recommends that a secured safety seat (secured according to the manufacturer's instructions) be "hands-on" tested by trying to pull (tip) the top of the safety seat forward when it is properly secured. If the safety seat, with an occupant, can be pulled away from the bus seat back by three inches or more, the safety seat could rotate on its restraint system (seat belt) and tip upside-down with the occupant in a collision. Sideways tipping should also be checked before transporting preschoolers in school transportation vehicles. Always review manufacturer's recommendations.

The shape, design, material, incline, stitching, etc. of a seat bottom and seat back, may alter the effectiveness of the manufacturer's recommended location for securement. Also, the placement, style, buckle, or a shoulder strap of safety belt restraint systems may also adversely influence the securement of a safety seat. The only way to appropriately anticipate



problems before they occur and adjust to changing vehicles and equipment is consistency in "hands-on" testing the secured safety seat.

In a school transportation vehicle, an additional restraint system (seat belt or strap) may be available and necessary to wrap around or attach to the upper third of the safety seat and the school transportation vehicle seat back; behind, not around the preschooler. The straighter the vehicle seat back is the more likely it is that the safety seat will tip forward with its occupant.

### Additional Items to Consider

- The spacing between the bus seats needs to be evaluated when considering using a safety seat.
- The type of vehicle compared to the child's age needs to be determined. Evaluate the child size to the window height, feet to floor measurement, seat style, seat back height/incline and seat cushion length/width.
- Is there a need for a paraprofessional? Procedures could be developed to determine the necessity for a paraprofessional when transporting a large number of preschoolers in a school transportation vehicle. The IEP may require a paraprofessional for an individual preschooler.
- Driver, paraprofessional and substitute driver/paraprofessional appropriate training should be given and documented.
- Are lap belts available? If added to bus seat, is the seat frame seat-belt ready?
- Emergency evacuation plans should be developed and practiced more frequently than the required two times a year.
- School district student stop procedures should be developed for this age. What are the parental responsibilities at the student stop location, boarding and disembarking, and on the school transportation vehicle?
- Who will supply the safety equipment, if needed? What are the manufacturer's recommendations, maintenance requirements and procedures for the safety equipment? How will recalls be tracked and responded to?

### Interactions Between Transportation Staff and Preschoolers

The driver and paraprofessional should interact frequently with preschoolers, demonstrating appropriate affection and touch. Nonverbal interaction may be demonstrated with a smile. Friendly greetings are important when preschoolers board or disembark the school transportation vehicle. Learning and using their names is helpful. Always give these children adequate time to respond.

It is important to see and encourage appropriate humor in situations and to respect their privacy in matters of personal hygiene and care. Songs, word games, and CDs with music or rhymes may gain their interest while being transported. These passengers need to be reassured frequently and comforted in times of distress. Listen to preschoolers with attention

and respect. Continually reassure these passengers that they are liked and cared about. Always respond to their questions and requests. Communicate with preschoolers at their eye level by sitting or stooping next to them. Repetition is often necessary when it comes to teaching them about safety considerations.

### Colorado Child Passenger Safety Law

	Younger than 1	Age 1-3	Age 4-7	Age 8-15
Less than 20 lbs.	Rear-facing safety seat in back seat only	Rear-facing safety seat		
20-40 lbs.	Rear-facing safety seat	Rear- or forward-facing safety seat	Forward-facing safety seat or booster	
Exceeds seat weight limit and 40+ lbs.		Forward-facing safety seat or booster	Forward-facing safety seat or booster	Booster or seat belt

*All safety seats should be installed and fitted according to the manufacturers' instructions and the vehicle owner's manual.*

Statute	42-4-236 (2)(a)(II)	42-4-236 (2)(a)(III)	42-4-236 (2)(a)(I)	42-4-236 (2)(b)
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Proper use of a booster seat and seat belt means the shoulder belt crosses the shoulder and chest (not the neck or face), and the lap belt lies flat across the upper thighs (not the stomach).

Child safety restraint system factors in Colorado are found in statute requirement (42-4-236 CRS):

- A child safety restraint system (i.e., safety seat, booster seat, harness) is required when transporting a child who is less than four years of age and weighs less than forty pounds in a privately - owned small capacity vehicle.
- Every child who is at least four years of age but less than 16 years of age or who is less than four years of age and weighs 40 pounds or more, being transported in a privately-owned small capacity vehicle shall be provided with a seat belt system.





## SERVICE ANIMALS

Decisions regarding the accommodation required for any student are made on an individual basis. A school district cannot unilaterally prohibit the use of service animals or other accommodations or modifications deemed necessary for a student to access a public-school program. When establishing a policy for the use of service animals, consideration for the need and integration of a service animal should be addressed in the student's individual educational plan (IEP) or developed under section 504 of the Rehabilitation Act of 1973 (section 504 plan), with documentation supporting the need for the service animal as an accommodation deemed necessary for the student to access the school program. The information provided applies the legal standards as set forth in the following:

1. Individuals with Disabilities Education Act (IDEA)
2. Section 504 of the Rehabilitation Act of 1973, as amended (Section 504)
3. Americans with Disabilities Act (ADA): Title II

### What is a Service Animal?

A "service animal" is a dog (regardless of breed or size) or miniature horse that is individually trained to perform "work or tasks" for the benefit of an individual with a disability, including an individual with a physical, sensory, psychiatric, intellectual, or mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals. Service animals are working animals that perform valuable functions; they are not pets. Service animals do not include animals that function solely to provide emotional support, comfort, therapy, companionship, or to promote emotional well-being.

1. The "work or tasks" performed by a service animal must be directly related to the individual's disability.
2. Examples of "work or tasks" include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.
3. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship are not "work or tasks" for the purposes of this policy.

### Miniature Horses

In addition to the provisions about service dogs, the Department's ADA regulations have a separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses

*where reasonable*. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are

9. Whether the miniature horse is housebroken;
10. Whether the miniature horse is under the owner's control;
11. Whether the facility can accommodate the miniature horse's type, size, and weight; and
12. Whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

### What is NOT a Service Animal

1. Therapy animal
2. Emotional support animals
  - a. Emotional support animals are companion animals who help their owners cope with the challenges associated with emotional and mental health conditions (such as depression and anxiety) by providing comfort with their presence. Unlike service and therapy dogs, emotional support animals are not expected to perform specific tasks related to their owner's condition, nor must they adhere to any behavior standards or training. Their presence alone is what is thought to provide their owner with solace and therapeutic benefit. Emotional support animals are not allowed in public places, with the exception of air travel, which requires special documentation.
3. A service animal undergoing training before being partnered with a person with disabilities.

### How Do I Know if it is a Service Animal?

The Americans with Disabilities Act permits two questions to be asked, regarding the service animal.

1. Is the animal needed because of a disability?
2. What tasks does the animal perform?

Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training for the dog.

### Documentation

According to the ADA, there is NO documentation required for a Service Animal. This means:

1. NO vest
2. NO badges or certification
3. NO size or breed limitation

A school district can ask for vaccination records, if local government requires animal vaccinations. Service animals are subject to the same licensing and vaccination rules that are applied to all dogs per local laws.

Municipalities and local laws that prohibit specific breeds of dogs must make an exception for a service animal of a prohibited breed, unless the dog poses a direct threat to the health or safety of others. Under the “direct threat” provisions of the ADA, local jurisdictions need to determine, on a case-by-case basis, whether a particular service animal can be excluded based on that particular animal’s actual behavior or history, but they may not exclude a service animal because of fears or generalizations about how an animal or breed might behave.

### General Statement of Policy

(Sample language below)

A student’s service animal is considered to be private property and cannot be brought onto school property without prior knowledge and approval by the school and/or district administration. The student’s need for the use of the service animal must be documented in the student’s individual educational plan (IEP) or Section 504 plan.

A service animal - “an animal that is trained to perform tasks for the Individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks. A service animal is not a pet.”

### Informing Other Parents

A Letter should be sent out to Parents that a service animal will be riding the bus with their student.

Dear Parents:

This letter is to let you know that your son’s/daughter’s bus will be transporting a service animal to assist a fellow student. The service animal is allowed during transport to and from school and is in compliance with CDE regulations.

If you need further information concerning service animals, please contact

\_\_\_\_\_.

Thank you,

Transportation

### Transportation of the Service Animal

In determining the necessity of a service animal for a student with a disability at school, the district may also need to provide directions for transporting the student and the service animal. Provide a clear description of the factors to be considered.

## Training - District Provided

The driver and assistant should meet with the animal's owner. The owner is responsible for providing information to the driver and assistant regarding critical commands needed for daily interaction and emergency/evacuation.

The animal's owner should provide an orientation to students riding the bus with the service animal regarding the animal's functions and how students should interact with the animal.

The service animal should practice the bus evacuation drills with the student. All loading and unloading practice should be completed before the student and animal are required to ride the bus.

The service animal should board the bus by the steps, not the lift.

## Seating Location

1. The service animal should be positioned on the floor, at the student's feet or on a seat across.
2. A representative of the Transportation Department will meet with the animal's owner to determine whether the service animal should be secured on the bus.

## Cessation of Transportation

Situations that would cause cessation of transportation of the service animal include:

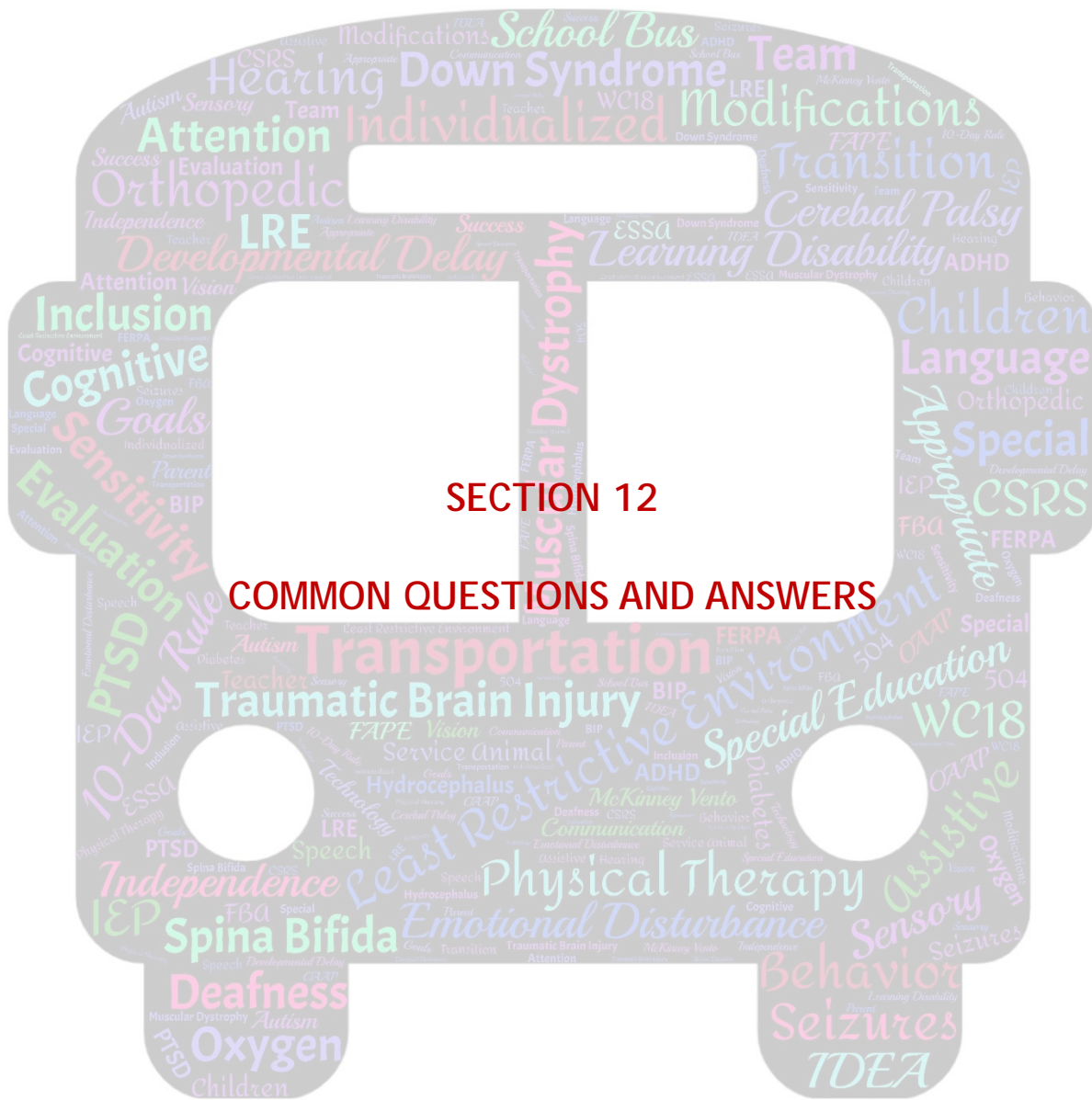
1. The service animal's behavior poses a direct threat to the health or safety of others.
2. The animal is not under control.
3. The service animal urinates or defecates on the bus.

If transportation is suspended due to any of the above reasons, transportation may be reinstated after additional training or medical issues are resolved.

Parents should be informed of these consequences prior to the first day of transportation. Although transportation may be suspended for the service animal, the school district maintains the responsibility of transporting the student.

## Supervision and Care

Schools are not responsible under ADA for care and supervision of the animal, but they may assist the student to do so if it is determined in the IEP that assistance is required.



## SECTION 12

### COMMON QUESTIONS AND ANSWERS



## COMMON QUESTIONS AND ANSWERS

1. **Does a wheelchair need brakes in order to use the transportation service?**
  - a. No, the DOT ADA regulations' definition of a wheelchair does not include a requirement for brakes or any other equipment. A transportation operator may not deny transportation to a wheelchair user because the device does NOT have brakes, or the user does not choose to set the brakes.
2. **Is there a process that is established to communicate necessary information to sub drivers who may have to relief a route with a special needs child?**
  - a. Please check with your department/district/charter policy
3. **Are we required to put signs on school buses transporting students with oxygen? A sign (in a visible location, and not covering required lettering or reflective tape) that states, "Oxygen on board" for emergency responders and the public.**
  - a. It is not required to have a placard for transporting personal oxygen tanks, but the oxygen tank must be properly secured while being transported.
4. **What is a "sled test?"**
  - a. Sled testing allows engineers to reproduce the dynamic conditions of a full-scale crash event in a controlled environment and at a fraction of the cost of a crash test. Sled systems provide repeatable and reliable impact conditions around which automotive seats, seat belts, and supplemental restraints can be developed. Sled testing offers a method of testing products to simulate crash conditions at a much lower cost than crashing a new off-the-line vehicle.
5. **What is the definition of Special Needs?**
  - a. As far as transportation is concerned, this would be any student that cannot access education without transportation. This sometimes can require adaptive equipment, paraprofessional assistance, and other student specific modifications.
6. **What is Child Find, and what purpose does this organization serve?**
  - a. Child Find is a program to identify a child who has special needs as early as age 3 to help them access resources to allow them to have a more successful education and access FAPE.
7. **What are the differences between Accommodation and Modification?**
  - a. Accommodation - a convenient arrangement (i.e., route changes, private property drop-off)
  - b. Modification - when something is required by an IEP, or an action performed to a CSRS/Wheelchair device.
8. **Why must there be an extremely specific reason that a length of ride is specified?**

- a. If it is a medical reason then it should be accompanied by a physician's letter, etc. If not, parents could ask that a time be specified without justification, just their preference, which could end up being virtually impossible for the transportation department to comply with. i.e., 12 kids that are only permitted to be on the bus for 30 minutes, they live 20 miles apart, one is in a wheelchair and the district only has one driver.
9. **If a district/charter decides to have a parent transport, what documentation is needed?**
- a. Districts must have documentation of some kind for proof that the parent transported and appropriate mileage,
  - b. Proof of insurance that is compliant with the Colorado Division of Motor Vehicles and the Local Education Agency
  - c. Proof of attendance at the school
10. **What is a BIP? What is a Seizure Action Plan? What is a Medical Action Plan? Are there similarities, and what are the differences between these plans?**
- a. *BIP* - Behavior Intervention Plan, this plan is put in place during an IEP meeting to better help the student in obtaining good behavior goals.
  - b. *Seizure Action Plan* - the predefined actions that are taken in the event that the student has a seizure.
  - c. *Medical Action Plan* - a set of predefined actions that are taken for either general or specific medical concerns.
  - d. Each of these plans should be included in the student's informational file/book and provided to the driver (sub, as need to know)
11. **Can a Special Needs Team (driver/paraprofessional) arbitrarily place a student they are having behavioral issues with into a CSRS?**
- a. No, this can be done through an IEP ONLY. This can be a modification to a current IEP through an amendment process.
12. **How does a Special Needs Team know if a behavior is a manifestation of a student's disability if no information is provided?**
- a. The only way to determine if it is a manifestation is to go through a manifestation hearing with the IEP team.
13. **Can a Special Needs Team request an emergency IEP staffing if new behaviors (violent, aggressive, etc....) are emerging? Behaviors that are not a manifestation of current IEP behavior prognosis.**
- a. Yes, a special needs team, along with their supervisor, may request an emergency IEP staffing.
14. **Can Special Needs Team (driver/paraprofessional) attend an IEP meeting?**



- a. Yes, and transportation should be present at all IEP meetings for the individuals that we transport as defined in IDEA.
15. **Can a Special Needs Team, trainers, or transportation staff make modifications to any CSRS/wheelchairs when any required equipment is missing or broken?**
- a. No, please refer to the manufacturer.
16. **What are the legal ramifications of going against an IEP?**
- a. It is a violation of a student's Civil Rights and is in violation of FAPE.
  - b. Legal ramifications can be anywhere from a simple reprimand to a lawsuit.
17. **Do wheelchair securement system sets have to match lap/shoulder belt and the four tie-downs.**
- a. Yes, best practice has manufacturer and model being the same. This is so that if there were ever an accident, you would be covered by manufacturer warranties.
  - b. This is also found in Colorado Minimum Standards - 1 CCR 301-25: 38.8, "Each individual wheelchair securement system shall consist of materials from one brand only."
18. **What is a wheelchair inspection? Why do a wheelchair inspection?**
- a. A wheelchair inspection can be broken down into two sections. The first being pre-transport and you are looking for attachment points on the wheelchair, seeing if the wheelchair is WC19, and if there is any other adaptive equipment that is needed to transport the student. The second being during transportation, and this monitors the wheelchair to ensure that the device remains structurally sound and free of defects.
19. **How do you inspect a wheelchair lift?**
- a. Inspect all elements. Starting from the outside and going into the vehicle. Check the door, the hold open is present and working, the control pendant, check for proper movement of the lift (completely deploy and stow), check the cables and lift plates.
20. **How do you perform an emergency evacuation out the back door with a wheelchair?**
- a. This can be done with 1, 2, or 3 people, but can only be done with a manual wheelchair as the powerchairs are too large to lift out of the rear door.
  - b. **1 Person evacuation**
    - i. This is done very carefully. Begin by placing your hip against the wheelchair and progress slowly towards the rear emergency exit door. As you reach the door gently move the wheelchair out the door, leaning the chair back against your hip and SLOWLY dropping to your knees as

the wheelchair descends towards the ground. Once you can go no further on your knees, drop to your belly, and finish the descent.

- ii. There will be a slight drop for the back of the wheelchair once you have reached the end of your abilities to lower the wheelchair any further while still holding on.
- iii. Release the wheelchair, evacuate bus, and move to safety.

**c. 2 Person evacuation**

- i. Begin by placing your hip against the wheelchair and progress slowly towards the rear emergency exit door as the second person slides out of the rear door. As you reach the door, gently move the wheelchair out the door and lean the chair back against your hip. The aide outside will then grab on to the wheelchair frame and help with the descent. SLOWLY dropping to your knees as the wheelchair descends towards the ground, the aide is still guiding and maneuvering the chair as you carefully slide the wheelchair down the outside of the vehicle. Once you can go no further on your knees, drop to your belly, and finish the descent with the aide reaching back and taking the weight of the wheelchair and moving to safety.

**d. 3 Person evacuation**

- i. Begin by placing your hip against the wheelchair and progress slowly towards the rear emergency exit door as the second and third people slide out of the rear door. As you reach the door, gently move the wheelchair out the door and lean the chair back against your hip. The aides outside will then grab onto the wheelchair frame and help with the descent. SLOWLY drop to your knees as the wheelchair descends towards the ground, the aides are still guiding and maneuvering the chair as you carefully slide the wheelchair down the outside of the vehicle. Once you can go no further on your knees, drop to your belly, and finish the descent with the aides reaching back and taking the weight of the wheelchair and moving to safety.

**e. Emergency Evacuations for lifting/blanket drags.**

**General Lifting Guidelines**

1. Never lift anyone more than half your weight. Ask for help if you are unsure.
2. Test your lifting ability with a small movement that can be stopped. If the student weighs too much, use another method.
3. Process for lifting a student:
  - a. Clear the path to the exit.
  - b. Tell the student exactly what you are going to do before you do it.

- c. If necessary, cut the seat belt and other positioning straps.
- d. Stand balanced with your feet shoulder width apart. Face the student.
- e. Get a good grip on the student or the student's clothing. Use your palms, not just your fingers.
- f. Squat down but keep your heels off the floor. Get as close to the student as you can.
- g. Lift gradually (without jerking) using your leg, abdominal, and buttock muscles. Keep the student as close to you as possible.
- h. Keep your chin tucked in so as to keep a relatively straight back and neck in line.
- i. Lift straight up; avoid twisting at the waist while carrying the students.
- j. Take small steps. Keep the student close to your body.
- k. With students with poor muscle control:
  - o Curl the student as much as possible
  - o Keep the student's arms and legs from flopping.
  - o Support the student's head and neck.

#### **One Person Lift**

1. Follow general lifting guidelines.
2. Pass the student's nearest arm over your shoulder.
3. Place one of your arms behind the student's shoulders with your hand under the student's other arm.
4. Place your other arm under the student's knees.
5. Squat down, feet shoulder width apart.
6. Lift the student with the load equally divided between both arms, holding the student close to you.

#### **Two Person Lift**

1. Follow general lifting guidelines.
2. Move the student in a wheelchair as close to the exit as possible. Slide the student on a seat next to the aisle.
3. The taller person stands behind the student and the other person stands in front of the student and off to the side.
4. If the student is in a wheelchair, the person in front should remove the

armrests and fold up the footrests.

5. The person in back reaches under the student's arms and **either** grasps right hand to student's right wrist and left hand to student's left wrist **or** clasps hands across the student's chest.
6. The person in front lifts the lower extremities under the thighs and hips.
7. Squat down and lift together on a count of 3.
8. Move to the designated area and lower the student on the count of 3.

#### **Blanket Drag**

1. Follow general lifting guidelines.
2. Fold a blanket in half and place it on the floor next to the student.
3. Lower the student's legs onto the blanket first, then the head. Place the student with his head toward the exit.
4. Wrap the blanket around the student to prevent arms and legs from being caught on obstacles.
5. Grasp the blanket near the student's head and drag the student to the exit.

#### **Practice**

1. Practice lifts and the blanket drag.
  2. Practice operating the lift manually.
  3. Conduct regular evacuation drills with the students on the school grounds with school personnel observing.
21. **Who is responsible for a student in a wheelchair when the student has a nurse assigned and rides the bus daily?**
    - a. The Nurse. That nurse is there for that specific student only.
  22. **Can you separate a service dog if it is tethered to a wheelchair?**
    - a. Yes, you can separate the dog from the WHEELCHAIR, not the STUDENT.
  23. **Where would the service dog sit/lay safely on a school bus if tethered to a wheelchair?**
    - a. The dog can lay/sit next to the wheelchair in any location except the aisle.
  24. **Should a driver/para place their hand on the wheelchair as the chair is utilizing the lift?**
    - a. NHTSA states that best practice is that the school personnel who are operating the lift, should have their hand on the wheelchair to assist the student and to help steady the wheelchair as the lift raises and lowers.



## ADDITIONAL RESOURCES

### Rules and Regulations

- CSPTA Special Needs Manual(s) 1996, 2007, 2019.
- National Highway Transportation Safety Administration. School Bus Safety. <https://www.nhtsa.gov/school-buses/school-bus-driver-service-safety-series>
- Understood for Learning and Attention Issues. At a Glance. <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/at-a-glance-which-laws-do-what>

### Americans with Disabilities Act (ADA)

- Americans with Disabilities Act. ADA Disabilities Law Handbook. [https://adata.org/sites/adata.org/files/files/DisabilityLawHandbook\\_2013-rev-2015.pdf](https://adata.org/sites/adata.org/files/files/DisabilityLawHandbook_2013-rev-2015.pdf)
- ADA Title II Regulations § 35.136 (Service Animals).
- United States Department of Justice - Civil Rights Division. [https://www.ada.gov/2010\\_regs.htm](https://www.ada.gov/2010_regs.htm)
- United States Equal Employment Opportunity Commission. <https://www.eeoc.gov/eeoc/publications/fs-ada.cfm>

### Colorado Law - Article 10

- Colorado Department of Education.
- Colorado Revised Statute.
- Find Law - Colorado Revised Statute. <https://codes.findlaw.com/co/title-19-childrens-code/co-rev-st-sect-19-3-304.html>

### Colorado Law - Traffic Code 42-4-1903

- Justia Law Find. <https://law.justia.com/codes/colorado/2016/title-42/regulation-of-vehicles-and-traffic/article-4/part-19/section-42-4-1903/>
- State of Colorado - Model Traffic Code.
- State of Colorado: Secretary of State - Minimum Standards.

### Exceptional Children Act

- Colorado Department of Education - ECEA.
- Colorado Department of Education - Gifted Identification. <https://www.cde.state.co.us/gt/identification>
- State of Colorado - Secretary of State. <https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=6251&fileName=1%20CCR%20301-8>

### Every Student Succeeds Act (ESSA)

- Every Student Succeeds Act. <http://www.everystudentsucceedsact.org/>
- US Department of Education. Every Student Succeeds Act. <https://www.ed.gov/essa>
- Understood for Learning and Attention Issues. ESSA. <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/every-student-succeeds-act-essa-what-you-need-to-know>

### Extended School Year (ESY)

- Colorado Department of Education - Extended School Year.  
[https://www.cde.state.co.us/cdesped/esy\\_guidelines\\_rev2017](https://www.cde.state.co.us/cdesped/esy_guidelines_rev2017)
- Understood.org - What you need to know about Extended School Years.  
<https://www.understood.org/en/friends-feelings/child-social-situations/summer-camp-summer-school/extended-school-year-services-what-you-need-to-know>
- United States Department of Education - Extended School Year.  
<https://sites.ed.gov/idea/regs/b/b/300.106>

### Free Access to Public Education (FAPE)

- Cornell Law: Legal Law Institute - Free Appropriate Public Education.  
<https://www.law.cornell.edu/cfr/text/34/300.101>
- Understood.org - What is covered under FAPE?  
<https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/what-is-and-isnt-covered-under-fape>
- United States Department of Education - Free Appropriate Public Education.  
<https://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>

### Family Education Rights Privacy Act (FERPA)

- Cornell Law: Legal Law Institute - Family Education Rights Privacy Act.  
<https://www.law.cornell.edu/uscode/text/20/1232g>
- Electronic Privacy Information Center - FERPA.  
<https://www.epic.org/privacy/student/ferpa/>
- United States Department of Education - Family Education Rights Privacy Act.  
<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

### Head Start

- United States Department of Health and Human Services - Head Start.  
<https://www.acf.hhs.gov/ohs>
- United States Department of Health and Human Services - Head Start Regulations.  
<https://eclkc.ohs.acf.hhs.gov/policy>
- United States Department of Health and Human Services - Head Start Transportation.  
<https://eclkc.ohs.acf.hhs.gov/transportation/article/requirements-program-transportation-services>

### Individuals with Disabilities Education Act (IDEA)

- Congressional Research Service. Individuals with Disabilities Education Act, Part B.  
<https://fas.org/sgp/crs/misc/R41833.pdf>
- National Center for Learning Disabilities - IDEA.  
<https://www.nclld.org/wp-content/uploads/2014/11/IDEA-Parent-Guide1.pdf>
- US Department of Education. Individuals with Disabilities Education Act.  
<https://sites.ed.gov/idea/>

### Individualized Education Plan (IEP (&TEAM))

- Smart Kids with Learning Disabilities - IEP and Team.  
<https://www.smartkidswithld.org/getting-help/know-your-childs-rights/idea-iep-process/>

- United States Department of Education - Individualized Education Plan. <https://www2.ed.gov/parents/needs/speced/iepguide/index.html>
- Wrights Law - Individualized Education Plan. <https://www.wrightslaw.com/info/iep.index.htm>

### Individualized Family Service Plan (IFSP)

- Center for Parent Information and Resources - Individualized Family Service Plans. <https://www.parentcenterhub.org/ifsp/>
- Special Education Guides. <https://www.specialeducationguide.com/early-intervention/the-who-what-why-of-an-individual-family-services-plan-ifsp/>
- United States Department of Education - Individualized Family Service Plan. <https://sites.ed.gov/idea/regs/c/d/303.344>

### Infants and Toddlers - IDEA Part C

- Center for Parent Information and Resources - Part C. <https://www.parentcenterhub.org/partc/>
- Early Childhood Technical Assistance Center - IDEA PART C. <http://ectacenter.org/partc/partc.asp>
- United States Department of Education - IDEA PART C. <https://sites.ed.gov/idea/regs/c>

### Least Restrictive Environment (LRE)

- Center for Parent Information and Resources - Least Restrictive Environment. <https://www.parentcenterhub.org/fapebrief-ref-list-lre/>
- Understood.org: Least Restrictive Environment, What you need to know. <https://www.understood.org/en/school-learning/special-services/special-education-basics/least-restrictive-environment-lre-what-you-need-to-know>
- United States Department of Education - IDEA Least Restrictive Environment. <https://sites.ed.gov/idea/regs/b/b/300.114>

### McKinney-Vento

- National Center for Homeless Education. <https://nche.ed.gov/mckinney-vento/>
- Schoolhouse Connection: McKinney-Vento. <https://www.schoolhouseconnection.org/mckinney-vento-act-two-page-summary/>
- United States Department of Education: McKinney-Vento. <https://www2.ed.gov/programs/homeless/legislation.html>

### Nurse Practice Act

- Colorado Department of Education - Guidance on Delegation of Colorado Nurses. <https://www.cde.state.co.us/healthandwellness/guidanceondelegationforschoolnurses>
- National Council of State Boards of Nursing. <https://www.ncsbn.org/npa.htm>
- State of Colorado - Revised Statutes: Nurses Practice Act. <https://drive.google.com/file/d/0B-K5DhxXxJZbOHRFaGVIV0xVSEk/view>



## Preschool Transportation

- National Highway Transportation Safety Administration. Preschool Transportation. <https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/cps-restraint-school-buses-participant-manual-810906b.pdf>

## Public Law 94-142

- Project Ideal: Public Law 94-142. <http://www.projectidealonline.org/v/special-education-public-policy/>
- United States Department of Education - Public Law 94-142: IDEA. <https://sites.ed.gov/idea/IDEA-History>
- United States Department of Education - Public Law 94-142 Archive. <https://www.govinfo.gov/content/pkg/STATUTE-89/pdf/STATUTE-89-Pg773.pdf>

## Section 504

- United States Department of Education: Office for Civil Rights - Resource Guide. <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>
- United States Department of Education: Office for Civil Rights - Protecting Students with Disabilities. <https://www2.ed.gov/about/offices/list/ocr/504faq.html>
- Wright's Law - Section 504. <https://www.wrightslaw.com/info/sec504.index.htm>

## Sexual Harassment

- Association for Supervision and Curriculum Development - What to do to Stop Sexual Harassment at School. <http://www.ascd.org/publications/educational-leadership/nov93/vol51/num03/What-to-Do-To-Stop-Sexual-Harassment-at-School.aspx>
- Equal Rights Advocates - Sexual Harassment in Schools. <https://www.equalrights.org/legal-help/know-your-rights/sexual-harassment-at-school/>
- United States Department of Education - Sexual Harassment. <https://www2.ed.gov/about/offices/list/ocr/docs/sexhar00.html>

## 14<sup>TH</sup> Amendment

- Cornell Law: Legal Law Institute - 14<sup>th</sup> Amendment. <https://www.law.cornell.edu/constitution/amendmentxiv>
- Encyclopaedia Britannica - 14<sup>th</sup> Amendment of the United States Constitution. <https://www.britannica.com/topic/Fourteenth-Amendment>
- Library of Congress - Research Guide 14<sup>th</sup> Amendment. <https://guides.loc.gov/14th-amendment>

## 10-Day Rule

- Children's Hospital of Philadelphia: Car Autism Roadmap - Understanding the 10-day Rule for School Transportation. <https://www.research.chop.edu/car-autism-roadmap/school-discipline>
- Department of Education: Massachusetts - 10-day Rule Flow Chart. [http://www.doe.mass.edu/sped/IDEA2004/spr\\_meetings/disc\\_chart.pdf](http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.pdf)
- Kids Legal. 10 Day Rule. <https://kidslegal.org/special-education-discipline-suspensions-and-expulsions>

## HEALTH CONCERNS

### Anaphylactic Shock

- American Academy of Allergy Asthma and Immunology. <https://www.aaaai.org/conditions-and-treatments/allergies/anaphylaxis>
- Food Allergy Research and Education. <http://www.foodallergy.org/>
- Food Allergy Research and Education. Care Plan. <https://www.foodallergy.org/life-with-food-allergies/food-allergy-anaphylaxis-emergency-care-plan>

### Asthma

- American Lung Association. <https://www.lung.org/lung-health-and-diseases/lung-disease-lookup/asthma/>
- American Academy of Allergy Asthma and Immunology. <https://www.aaaai.org/conditions-and-treatments/asthma>
- National Heart, Lung, and Blood Institute. <https://www.nhlbi.nih.gov/health-topics/asthma>

### Attention Deficit Hyperactivity Disorder (ADHD OR ADD)

- Children and Adults with Attention Deficit Hyperactivity Disorder. <https://chadd.org/understanding-adhd/>
- Help Guide. <https://www.helpguide.org/articles/add-adhd/attention-deficit-disorder-adhd-in-children.htm/>
- Kids Health from Nemours. <https://kidshealth.org/en/parents/adhd.html>

### Cerebral Palsy

- Centers for Disease Control and Prevention. <https://www.cdc.gov/ncbddd/cp/facts.html>
- Cerebral Palsy. <https://cerebralpalsygroup.com/cerebral-palsy/>
- National Institute of Neurological Disorders and Stroke. <https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Hope-Through-Research/Cerebral-Palsy-Hope-Through-Research>

### Colostomy

- American Cancer Society. <https://www.cancer.org/treatment/treatments-and-side-effects/physical-side-effects/ostomies/colostomy/what-is-colostomy.html>
- Johns Hopkins Medicine. Colostomy. [https://www.hopkinsmedicine.org/healthlibrary/test\\_procedures/gastroenterology/colostomy\\_92,p07727](https://www.hopkinsmedicine.org/healthlibrary/test_procedures/gastroenterology/colostomy_92,p07727)

### Cystic Fibrosis (C.F.)

- American Lung Association. Cystic Fibrosis. <https://www.lung.org/lung-health-and-diseases/lung-disease-lookup/cystic-fibrosis/>
- Cystic Fibrosis Foundation. <https://www.cff.org/What-is-CF/About-Cystic-Fibrosis/>

- National Heart, Lung, and Blood Institute. Cystic Fibrosis. <https://www.nhlbi.nih.gov/health-topics/cystic-fibrosis>

## Diabetes

- Medline Plus - US National Library of Medicine. Diabetes. <https://medlineplus.gov/diabetes.html>
- Medline Plus - US National Library of Medicine. Diabetes in Children and Teens. <https://medlineplus.gov/diabetesinchildrenandteens.html>
- National Institute of Diabetes and Digestive and Kidney Diseases. [http://www.ndep.nih.gov/diabetes/pubs/Youth\\_SchoolGuide.pdf](http://www.ndep.nih.gov/diabetes/pubs/Youth_SchoolGuide.pdf)

## Down Syndrome

- Association for Children with Down Syndrome. <http://www.acds.org/>
- Centers for Disease Control and Prevention. Down Syndrome. <https://www.cdc.gov/ncbddd/birthdefects/downsyndrome.html>
- National Down Syndrome Society. <https://www.ndss.org/about-down-syndrome/down-syndrome/>

## Gastrostomy (G-TUBE)

- Children's Hospital of Pittsburgh. Gastrostomy. <http://www.chp.edu/our-services/transplant/intestine/education/patient-procedures/gastrostomy>
- Kids Health from Nemours. Gastrostomy. <https://kidshealth.org/en/parents/g-tube.html>

## Hearing Disability

- American Speech-Language-Hearing Association. <https://www.asha.org/public/hearing/causes-of-hearing-loss-in-children/>
- Disabled World, Hearing Impairment. <https://www.disabled-world.com/disability/types/hearing/>
- Hands and Voices. Deaf people and Their Perspective. [http://www.handsandvoices.org/articles/articles\\_index.html#misc](http://www.handsandvoices.org/articles/articles_index.html#misc)

## Heart Disease

- American Heart Association. Heart Disease. <https://www.heart.org/en/health-topics/consumer-healthcare/what-is-cardiovascular-disease/top-10-myths-about-cardiovascular-disease?s=q%3Dheart%2520disease%26sort%3Drelevancy>
- American Heart Association. Cardiovascular Disease. <https://www.heart.org/en/health-topics/consumer-healthcare/what-is-cardiovascular-disease?s=q%3Dheart%2520disease%26sort%3Drelevancy>
- American Heart Association. Family History and Heart Disease. <https://www.heart.org/en/health-topics/consumer-healthcare/what-is-cardiovascular-disease/family-history-and-heart-disease-stroke?s=q%3Dheart%2520disease%26sort%3Drelevancy>

## Hemophilia

- Centers for Disease Control and Prevention. <https://www.cdc.gov/ncbddd/hemophilia/facts.html>
- National Hemophilia Foundation. <https://www.hemophilia.org/Bleeding-Disorders/Types-of-Bleeding-Disorders/Hemophilia-A>
- United States National Library of Medicine: Medline Plus - Hemophilia. <https://medlineplus.gov/hemophilia.html>

## Hydrocephalus

- American Association of Neurological Surgeons - Hydrocephalus. <https://www.aans.org/Patients/Neurosurgical-Conditions-and-Treatments/Hydrocephalus>
- United States National Library of Medicine - Hydrocephalus. <https://medlineplus.gov/hydrocephalus.html>

## Kidney Disease

- Kids Health by Nemours - Kidney Disease. [http://kidshealth.org/parent/medical/kidney/chronic\\_kidney\\_disease.html](http://kidshealth.org/parent/medical/kidney/chronic_kidney_disease.html)
- National Kidney Foundation - Kidney Disease. <https://www.kidney.org/kidneydisease>
- United States National Library of Medicine: Medline Plus - Kidney Disease. <https://medlineplus.gov/kidneydiseases.html>

## Leukemia

- American Cancer Society - Leukemia. <https://www.cancer.org/cancer/leukemia.html>
- Kids Health by Nemours - Leukemia. [http://kidshealth.org/parent/medical/cancer/cancer\\_leukemia.html](http://kidshealth.org/parent/medical/cancer/cancer_leukemia.html)
- Leukemia and Lymphoma Society. <https://www.lls.org/leukemia>

## Mononucleosis (Mono)

- American Academy of Pediatric Physicians - Mononucleosis. <https://familydoctor.org/condition/mononucleosis/?adfree=true>
- Centers for Disease Control and Prevention - Mononucleosis. <https://www.cdc.gov/epstein-barr/about-mono.html>
- Kids Health by Nemours - Mononucleosis. <https://kidshealth.org/en/teens/mononucleosis.html>

## Multiple Sclerosis (MS)

- Johns Hopkins Medicine - Multiple Sclerosis. <https://www.hopkinsmedicine.org/health/conditions-and-diseases/multiple-sclerosis-ms>
- Mayo Clinic - Multiple Sclerosis. <https://www.mayoclinic.org/diseases-conditions/multiple-sclerosis/symptoms-causes/syc-20350269>

- National Multiple Sclerosis Society - Multiple Sclerosis.  
<https://www.nationalmssociety.org/>

### Muscular Dystrophy (MD)

- Kids Health by Nemours.  
[http://kidshealth.org/parent/medical/genetic/muscular\\_dystrophy.html](http://kidshealth.org/parent/medical/genetic/muscular_dystrophy.html)
- Muscular Dystrophy Association. <https://www.mda.org/disease>
- United States National Library of Medicine: Medline Plus - Muscular Dystrophy.  
<https://medlineplus.gov/musculardystrophy.html>

### Neurofibromatosis (NF)

- American Association of Neurological Surgeons - Neurofibromatosis.  
<https://www.aans.org/Patients/Neurosurgical-Conditions-and-Treatments/Neurofibromatosis>
- Kids Health by Nemours - Neurofibromatosis.  
<http://kidshealth.org/parent/system/ill/nf.html>
- United States National Library of Medicine: Medline Plus - Neurofibromatosis.  
<https://medlineplus.gov/neurofibromatosis.html>

### Oxygen

- National Congress of School Transportation - Oxygen.  
[www.nasdpts.org/resources/Documents/NCSTFiles/NCST%202015%20Specification%20and%20Procedures%204.20.18.pdf](http://www.nasdpts.org/resources/Documents/NCSTFiles/NCST%202015%20Specification%20and%20Procedures%204.20.18.pdf)
- School Bus Fleet - Oxygen on School Buses.  
<https://www.schoolbusfleet.com/article/610689/oxygen-transport-guide>
- Synovia Solutions - Oxygen on School Buses.  
<https://blog.synoviasolutions.com/Transporting-Oxygen-on-School-Buses>

### Seizure Disorders - Epilepsy

- American Association of Neurological Surgeons - Epilepsy.  
<https://www.aans.org/Patients/Neurosurgical-Conditions-and-Treatments/Epilepsy>
- Centers for Disease Control and Prevention - Epilepsy.  
<https://www.cdc.gov/epilepsy/index.html>
- Epilepsy Foundation. <https://www.epilepsy.com/>

### Spina Bifida (Myelomeningocele) and Spinal Cord Injuries

- Centers for Disease Control and Prevention - Spina Bifida.  
<https://www.cdc.gov/ncbddd/spinabifida/facts.html>
- Centers for Disease Control and Prevention - Spina Bifida.  
<https://www.cdc.gov/ncbddd/spinabifida/school-age.html>
- Mayo Clinic - Spina Bifida. <https://www.mayoclinic.org/diseases-conditions/spina-bifida/symptoms-causes/syc-2037786>
- American Association of Neurological Surgeons - Spinal Cord Injuries.  
<https://www.aans.org/Patients/Neurosurgical-Conditions-and-Treatments/Spinal-Cord-Injury>

- Johns Hopkins Medicine Health Library - Spinal Cord Injuries. [https://www.hopkinsmedicine.org/healthlibrary/conditions/physical\\_medicine\\_and\\_rehabilitation/spinal\\_cord\\_injury\\_85,p01180](https://www.hopkinsmedicine.org/healthlibrary/conditions/physical_medicine_and_rehabilitation/spinal_cord_injury_85,p01180)
- United States National Library of Medicine: Medline Plus - Spinal Cord Injuries. <https://medlineplus.gov/spinalcordinjuries.html>

### Tourette Syndrome

- Centers for Disease Control and Prevention - Tourette's Syndrome. <https://www.cdc.gov/ncbddd/tourette/index.html>
- Mayo Clinic - Tourette Syndrome. <https://www.mayoclinic.org/diseases-conditions/tourette-syndrome/symptoms-causes/syc-20350465>
- Tourette Association of America - Tourette Syndrome. <https://tourette.org/>

### Tracheostomy

- Connecticut Children's Hospital - Tracheostomy. [https://www.connecticutchildrens.org/wp-content/uploads/2017/02/ENT\\_tracheostomy\\_care\\_handbook.pdf](https://www.connecticutchildrens.org/wp-content/uploads/2017/02/ENT_tracheostomy_care_handbook.pdf)
- St. Jude's Children's Organization - Tracheostomy. <https://together.stjude.org/en-us/patient-education-resources/care-treatment/clean-trach-site.html>
- United States National Library of Medicine: Medline Plus - Tracheostomy. <https://medlineplus.gov/ency/article/002955.htm>

### Traumatic Brain Injury (TBI)

- American Association of Neurological Surgeons - Traumatic Brain Injuries. <https://www.aans.org/Patients/Neurosurgical-Conditions-and-Treatments/Traumatic-Brain-Injury>
- Mayo Clinic - Traumatic Brain Injuries. <https://www.mayoclinic.org/diseases-conditions/traumatic-brain-injury/symptoms-causes/syc-20378557>
- Merck Manual - Traumatic Brain Injuries. <https://www.merckmanuals.com/professional/injuries-poisoning/traumatic-brain-injury-tbi/traumatic-brain-injury-tbi>

**Universal Precautions:** Please also see District policies on this.

- Aftermath: Trauma Cleaning and Biohazard Removal. <https://www.aftermath.com/content/universal-precautions-bloodborne-pathogens>
- National Center for Biotechnology Information - Universal Precautions. <https://www.ncbi.nlm.nih.gov/books/NBK470223/>
- United States Department of Labor: Occupation Safety and Health Administration - Universal Precautions. <https://www.osha.gov/SLTC/etools/hospital/hazards/univprec/univ.html>

### Vision Disability

- California Optometric Association - Visual Disabilities - <https://www.coavision.org/m/pages.cfm?pageid=3625>

- World Health Organization – Blindness and Vision Impairment.  
<https://www.who.int/news-room/fact-sheets/detail/blindness-and-visual-impairment>

### V-P Shunt

- Johns Hopkins Medicine Health Library – VP Shunt.  
[https://www.hopkinsmedicine.org/neurology\\_neurosurgery/centers\\_clinics/cerebral-fluid/procedures/shunts.html](https://www.hopkinsmedicine.org/neurology_neurosurgery/centers_clinics/cerebral-fluid/procedures/shunts.html)
- Memorial Sloan Kettering Cancer Center – VP Shunt.  
<https://www.mskcc.org/cancer-care/patient-education/about-your-ventriculoperitoneal-vp-shunt-surgery>
- United States National Library of Medicine: Medline Plus – VP Shunt.  
<https://medlineplus.gov/ency/article/003019.htm>

### IDEA 13 Disabilities

- National Highway Transportation Safety Administration.
- United States Department of Education – IDEA.  
<https://sites.ed.gov/idea/regs/b/a/300.8>
- United States Department of Education – Office of Special Education Programs.  
<https://www2.ed.gov/about/offices/list/osers/osep/index.html>

### Service Animals

- Americans with Disabilities Act and Service Animals.  
[https://adata.org/sites/adata.org/files/files/Service\\_Animals\\_LP\\_final2018.pdf](https://adata.org/sites/adata.org/files/files/Service_Animals_LP_final2018.pdf)  
Service Animals and Emotional Support Animals, Where are they allowed and under what conditions? <https://adata.org/publication/service-animals-booklet>
- Legal Information on Service Animals.  
<https://www.law.cornell.edu/cfr/text/28/35.136>
- 4 Paws for Ability. (ADA Service Dog description and what each dog is trained to do according to individual’s disability)
  - <https://www.4pawsforability.org/types-of-service-dogs/>

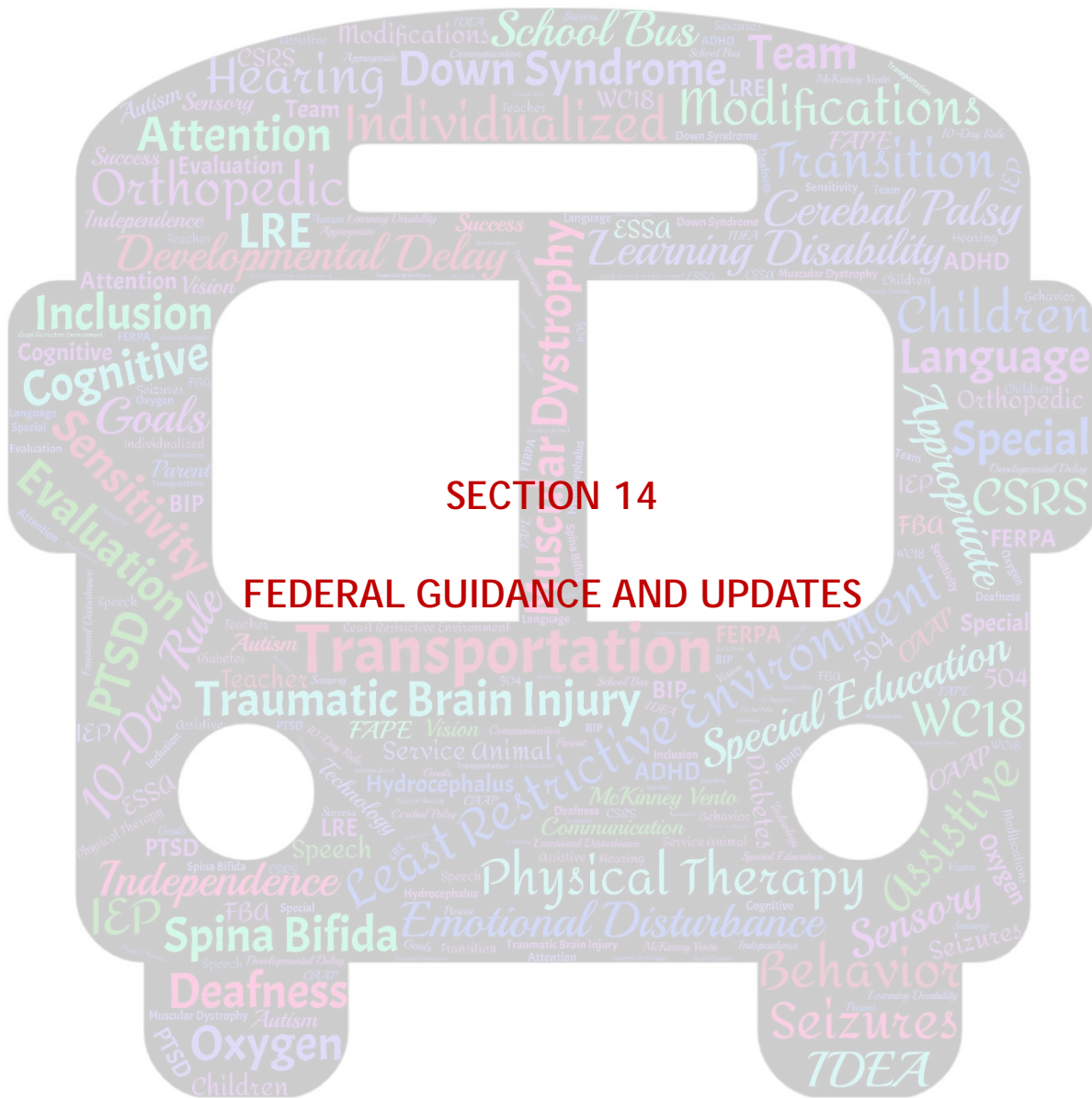
### Travel Training

- National Association of Special Education Teachers. Travel Training.  
<https://www.naset.org/professional-resources/transition-services/travel-training>

### Wheelchair Securements

- Q’Straint Wheelchair Securements. <https://www.qstraint.com/securement-101/>
- Q’Straint Wheelchair Securements. <https://www.qstraint.com/qrt-max/>
- Q’Straint Wheelchair Securements. <https://www.qstraint.com/qrt-deluxe/>





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U.S. Department of Health



U.S. Department of Education and Human Services

**JOINT GUIDANCE ON THE APPLICATION OF THE FAMILY EDUCATIONAL RIGHTS  
AND PRIVACY ACT (FERPA) AND THE HEALTH INSURANCE PORTABILITY AND  
ACCOUNTABILITY ACT OF 1996 (HIPAA) TO STUDENT HEALTH RECORDS**

December 2019 Update  
(First Updated November 2008)

### *Which Rule Applies?*

1. Does the HIPAA Privacy Rule apply to an elementary or secondary school?
2. Does FERPA or HIPAA apply to student health records maintained by a health care provider acting for a FERPA-covered elementary or secondary school that is not employed by the school?
3. Does FERPA or HIPAA apply to records on students at health clinics or other health care facilities run by postsecondary institutions?
4. Does FERPA or HIPAA apply to records on students who are patients at a university hospital?
5. Does FERPA or HIPAA apply to the health records of an individual who is both a student and an employee of a university at which the person receives health care?
6. Are all student records maintained by a health clinic within a postsecondary institution considered "treatment records" under FERPA?
7. Can a postsecondary institution be a "hybrid entity" under the HIPAA Privacy Rule?

### *What Information Can Be Shared?*

8. Where HIPAA applies, when an individual reaches the age of majority or becomes emancipated, who controls the protected health information (PHI) concerning health care services rendered while the individual was an unemancipated minor?
9. Where HIPAA applies, when can a health care provider share an adult child's PHI with a parent if the adult child has not signed an authorization or asked the provider to send a copy of their records to the parent?
10. Where FERPA applies, when can a school disclose an eligible student's personally identifiable information (PII) from education records to his or her parent if the eligible student has not provided written consent?
11. Does HIPAA allow a health care provider to disclose PHI about a minor child with a mental health condition and/or substance use disorder to the parents of the minor?
12. Does FERPA permit a school to disclose PII from the education records of a student, who is under the age of 18 years and is not attending a postsecondary institution, with a mental health condition and/or substance use disorder to the parents of the student?
13. What options do family members of an adult patient with mental illness have under HIPAA if they are concerned about the patient's mental health and the patient refuses to agree to let a health care provider subject to HIPAA share information with the family?
14. What options do the parents of an eligible student with mental illness have under FERPA if they are concerned about the student's mental health and the eligible student refuses to provide consent to permit a school subject to FERPA to share PII from education records with the family?
15. Does HIPAA allow a health care provider to disclose PHI about a student to a school nurse or physician?
16. Does FERPA allow a school official to disclose PII from a non-eligible student's education records to a third-party health care provider without the

- written consent of the parent?
17. Does HIPAA allow a parent to access the medical records of his or her deceased child?
  18. Does FERPA allow a parent to access the education records of his or her deceased child?
  19. Under FERPA, may an eligible student's treatment records be shared with parties other than treating professionals?
  20. When does FERPA permit an eligible student's treatment records to be disclosed to a third-party health care provider for treatment?
  21. Under HIPAA, when can information be shared about someone who presents a serious danger to self or others?
  22. Under FERPA, when can PII from a student's education records be shared, without prior written consent, about someone who presents a serious danger to self or others?
  23. Under FERPA, can an educational agency or institution disclose, without prior written consent, PII from a student's education records, including health records, to the educational agency's or institution's law enforcement officials?
  24. Does HIPAA permit a covered entity to disclose PHI to a Protection and Advocacy system where the disclosure is required by law?
  25. Does FERPA permit an educational agency or institution to disclose PII from a student's education records to a Protection and Advocacy system?
  26. Does HIPAA permit a school-based health care provider to report a student to the National Criminal Background Check System (NICS)?
  27. Does FERPA permit an educational agency or institution to disclose, without prior written consent, PII from a student's education records to the NICS?

## Introduction

The purpose of this guidance is to explain the relationship between the Family Educational Rights and Privacy Act (FERPA) statute and implementing regulations and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule. This document updates and expands on prior guidance to help address potential confusion on the part of school administrators, health care professionals, and others on how FERPA and HIPAA apply to records maintained on students. It also addresses certain disclosures that are allowed without the written consent of the parent or eligible student under FERPA or without authorization under the HIPAA Privacy Rule, especially those related to emergency health or safety situations. While this guidance seeks to answer many questions that school officials, parents, and others may have about the intersection of these Federal laws, ongoing discussions may raise additional questions. Contact information for submitting additional questions or suggestions for purposes of informing future guidance is provided at the end of this document. The U.S. Departments of Education and Health and Human Services are committed to a continuing dialogue on these important matters affecting the safety and security of our nation's schools, students, and communities.

Note: This guidance does not have the force and effect of law and is not meant to bind the public in any way. Instead, it is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

## Overview of FERPA

FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of students' "education records." FERPA affords parents certain rights with respect to their children's education records maintained by educational agencies and institutions and their agents to which FERPA applies. These include the right to access their children's education records, the right to seek to have these records amended, and the right to provide consent for the disclosure of personally identifiable information (PII) from these records, unless an exception to consent applies. See 34 CFR Part 99, Subparts B, C, and D. These rights transfer to the student when the student reaches the age of 18 years or attends a postsecondary institution at any age, thereby becoming an "eligible student" under FERPA. 20 U.S.C. §1232g(d); 34 CFR §§ 99.3 (definition of "eligible student") and 99.5(a)(1).

FERPA applies to educational agencies and institutions that receive Federal funds under any program administered by the U.S. Department of Education. 20 U.S.C. §§ 1221(c)(1) and 1232g(a)(3); 34 CFR § 99.1(a). If an educational agency or institution receives Federal funds under one or more of these programs, FERPA applies to the recipient as a whole, including each of its components, such as a department within a university. 34 CFR § 99.1(d). The term "educational agency or institution" generally refers to public elementary and secondary schools, school districts, and postsecondary institutions, including medical and other professional schools. Private and religious schools at the elementary and secondary levels generally do not receive funds from the U.S. Department of Education and are, therefore, not subject to FERPA.

An educational agency or institution subject to FERPA may not disclose the education records, or PII from education records, of a student without the prior written consent of a parent or the student if the student is an "eligible student," unless an exception applies. 20 U.S.C. §§ 1232g (b)(1) and (b)(2); 34 CFR §§ 99.30 and 99.31. FERPA contains several

exceptions to the general consent requirement which are set forth in 20 U.S.C. §§ 1232g(b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (h), (i), and (j), and 34 CFR § 99.31. For example, educational agencies and institutions can disclose PII from a student's education records, including health and medical information, to teachers and other school officials within the school, without prior written consent, if these school officials have been determined to have "legitimate educational interests" in the education records, pursuant to criteria set forth in the school's annual notification of FERPA rights. 20 U.S.C. § 1232g(b)(1)(A); 34 CFR §§ 99.7(a)(3)(iii) and 99.31(a)(1)(i)(A). Educational agencies and institutions can also disclose PII from a student's education records, without prior written consent, to appropriate parties in connection with an emergency, if these parties' knowledge of the information is necessary to protect the health or safety of the student or other individuals. 20 U.S.C. § 1232g(b)(1)(l); 34 CFR §§ 99.31(a)(10) and 99.36.

The term "education records" is defined to mean, with certain exceptions, 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. 20 U.S.C. § 1232g(a)(4)(A); 34 CFR § 99.3 (definition of "education records"). For instance, a student's health records, including immunization records, maintained by an educational agency or institution (such as by an elementary or secondary school nurse) would generally constitute education records subject to FERPA.

Records that educational agencies and institutions maintain on children with disabilities, including records of children referred under the Individuals with Disabilities Education Act (IDEA), are also covered as education records under both FERPA and IDEA. IDEA includes confidentiality provisions that are similar to, but broader than, FERPA to protect the privacy of PII in the early intervention or education records of children referred to the IDEA. See 20 U.S.C. §1417(c) and for children ages 3 through 21 the IDEA Part B regulations at 34 CFR §§ 300.610- 300.626 and for children with disabilities under the age of three the IDEA Part C regulations at 34 CFR §§ 303.400 - 303.416. The IDEA Part B and C confidentiality provisions contain informed parent consent and notice provisions that are separate from FERPA and permit disclosure of PII without parent consent to officials of participating agencies (as defined separately within the IDEA Part B and C regulations). The IDEA regulations contain additional exceptions and generally incorporate the FERPA exceptions to the prior consent requirements.

For a comparison of the FERPA and IDEA confidentiality provisions, please refer to Department technical assistance guidance entitled, "IDEA and FERPA Confidentiality Provisions" available at: <https://studentprivacy.ed.gov/resources/ferpaidea-cross-walk>.

Under FERPA, "treatment records," as they are commonly called, are excluded from the definition of "education records." Treatment records are: records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a

physician or other appropriate professional of the student's choice. 20 U.S.C. § 1232g(a)(4)(B)(iv); 34 CFR § 99.3 (definition of "education records"). Assuming certain conditions are satisfied, treatment records may include, for instance, a student's health or medical records that a college's psychologist maintains solely in connection with providing treatment to the student. An educational agency or institution may only disclose an eligible student's treatment records to individuals who are providing treatment to the student (including health care professionals who are not part of, nor acting on behalf of, the educational agency or institution (e.g., third-party health care providers)), and a physician or other appropriate professional of the student's choice. *Id.* For all other disclosures of an eligible student's treatment records, an educational agency or institution must obtain the student's prior written consent or satisfy one of the exceptions to FERPA's general written consent requirement, as the records would no longer qualify as "treatment records" (and thereby be excluded from the definition of "education records") and, instead, become subject to all other FERPA requirements. FERPA's implementing regulations and other helpful information about FERPA can be found at: <https://studentprivacy.ed.gov/resources/family-educational-rights-and-privacy-act-regulations-ferpa>.

## Overview of HIPAA

Congress enacted HIPAA in 1996 to, among other things, improve the efficiency and effectiveness of the health care system through the establishment of national standards and requirements for electronic health care transactions and to protect the privacy and security of individually identifiable health information. Collectively, these are known as the HIPAA Administrative Simplification provisions, and the U.S. Department of Health and Human Services has issued a suite of rules, including the Privacy Rule, to implement these provisions. Entities subject to the HIPAA Administrative Simplification Rules (known as the HIPAA Rules) (see 45 CFR Parts 160, 162, and 164), called "covered entities," are health plans, health care clearinghouses, and health care providers that transmit health information in electronic form in connection with covered transactions. See 45 CFR § 160.103. "Health care providers" include institutional providers of health or medical services, such as hospitals, as well as non-institutional providers, such as physicians, dentists, and other practitioners, along with any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. Covered transactions are those for which the U.S. Department of Health and Human Services has adopted a standard, such as health care claims submitted to a health plan. See 45 CFR § 160.103 (definitions of "health care provider" and "transaction") and 45 CFR Part 162, Subparts K-R. Once a health care provider becomes a covered entity, the HIPAA Privacy Rule applies to the individually identifiable health information held by, or on behalf of, the health care provider as a health care provider.

The HIPAA Privacy Rule requires covered entities to protect individuals' health records and other personal health information the entities maintain or transmit, known as protected health information (PHI), by requiring appropriate safeguards to protect privacy, and setting limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The rule also gives patients certain rights with respect to their health information, including rights to examine and obtain a copy of their health records, and to request corrections (amendments).

## HIPAA Disclosures that are Relevant in Emergency Situations

Where the HIPAA Privacy Rule applies, it permits covered entities to disclose PHI without patient authorization in certain circumstances, including emergency or other situations. Examples of such permitted disclosures include:

- **Disclosures for Treatment:** Covered entities may disclose, without a patient's authorization, PHI about the patient as necessary to treat the patient or to treat another person (who might be, for example, affected by the same emergency situation). Treatment includes the coordination or management of health care and related services by one or more health care providers and others, consultation between providers, and the referral of patients for treatment. See 45 CFR §§ 164.502(a)(1)(ii), 164.506(c), and the definition of "treatment" at § 164.501.
- **Disclosures to Family, Friends, and Others Involved in an Individual's Care and for Notification:** Covered entities are permitted to share PHI with family members (or other caregivers) that is directly relevant to the involvement of a family member in the patient's health care or payment for care if, when given the opportunity, the patient does not object to the disclosure. A covered entity also may share this information with such a family member when the patient is not present—or when it is impracticable, because of emergency circumstances or the patient's incapacity, for the covered entity to ask the patient about sharing information with a family member—if it determines, in the exercise of professional judgment, that doing so would be in the best interest of the patient. See 45 CFR § 164.510(b).

A covered entity also may share information about a patient as necessary to identify, locate, and notify family members, guardians, or anyone else responsible for the patient's care, of the patient's location, general condition, or death. This may include situations where it is necessary to notify family members and others, the police, the press, or the public at large. See 45 CFR § 164.510(b).

- **Disclosures to Prevent a Serious and Imminent Threat:** Health care providers may share PHI with anyone as necessary to prevent or lessen a serious and imminent threat to the health or safety of the individual, another person, or the public - consistent with applicable law (such as State statutes, regulations, or case law) and the provider's standards of ethical conduct. This permission includes the sharing of psychotherapy notes, which otherwise receive special protection under the Privacy Rule. See 45 CFR § 164.508(a)(2). Thus, without a patient's authorization or agreement, health care providers may disclose a patient's health information to anyone who is in a position to prevent or lessen the threatened harm, including family, friends, caregivers, and law enforcement. The HIPAA Privacy Rule expressly presumes the good faith of health care providers in their determination of the nature and severity of the threat to health or safety and the need to disclose information. See 45 CFR § 164.512(j).

Additional information about how HIPAA permits uses and disclosures for emergency preparedness, planning, and response, is available on OCR's website at <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency->

[preparedness/index.html](#).

## Where FERPA and HIPAA May Intersect

In a few limited circumstances, an educational agency or institution subject to FERPA can also be subject to HIPAA. For instance, a school that provides health care to students in the normal course of business, such as through its health clinic, is also a “health care provider” under HIPAA. If a school that is a “health care provider” transmits any PHI electronically in connection with a transaction for which HHS has adopted a transaction standard, it is then a covered entity under HIPAA. As a covered entity, the school’s health care transactions must comply with the HIPAA Transactions and Code Sets Rule (or Transactions Rule).

However, many schools that meet the definition of a HIPAA covered entity do not have to comply with the requirements of the HIPAA Rules because the school’s only health records are considered “education records” or “treatment records” under FERPA. See 45 CFR § 160.103 (definition of “protected health information”). The HIPAA Privacy Rule specifically excludes from its coverage those records that are protected by FERPA by excluding such records from the definition of “protected health information.”

## Frequently Asked Questions and Answers: Which Rule Applies?

### Does the HIPAA Privacy Rule apply to an elementary or secondary school?

Generally, no. In most cases, the HIPAA Privacy Rule does not apply to an elementary or secondary school because the school either: (1) is not a HIPAA covered entity or (2) is a HIPAA covered entity but maintains health information only on students in records that are “education records” under FERPA and, therefore, not PHI covered by the HIPAA Privacy Rule. In some circumstances a private school would be required to comply with the HIPAA Privacy Rule when it is a HIPAA covered entity and not subject to FERPA because it does not receive funds from the U.S. Department of Education. Elementary or secondary schools would fall into one of the following categories:

- *The school is not a HIPAA covered entity.* The HIPAA Privacy Rule only applies to health plans, health care clearinghouses, and those health care providers that transmit health information electronically in connection with certain administrative and financial transactions (“covered transactions”). See 45 CFR § 160.102. Covered transactions are those for which the U.S. Department of Health and Human Services has adopted a standard, such as health care claims submitted to a health plan. See the definition of “transaction” at 45 CFR § 160.103 and 45 CFR Part 162, Subparts K-R. Thus, even though a school employs school nurses, physicians, psychologists, or other health care providers, the school is not generally a HIPAA covered entity because the providers do not engage in any of the covered transactions, such as billing a health plan electronically for their services. It is expected that most elementary and secondary schools fall into this category.
- *The school is a HIPAA covered entity but does not have PHI.* Even if a school is a covered entity and must comply with the HIPAA Transactions and Code Sets Rules, the school would not be required to comply with the HIPAA Privacy Rule if it only maintains health information in FERPA “education records.” For example, a



public high school might employ a health care provider that bills Medicaid electronically for services provided to a student under the IDEA. The school is a HIPAA covered entity because it engages in one of the covered transactions electronically, and therefore, would be subject to the HIPAA transaction standard requirements. However, if the school provider maintains health information only in “education records” under FERPA, the school is not required to comply with the HIPAA Privacy Rule because the Privacy Rule explicitly excludes FERPA “education records.” See 45 CFR § 160.103 (definition of “protected health information,” ¶¶ (2)(i), (ii)). Importantly, although the HIPAA Privacy Rule does not apply, FERPA’s and IDEA’s privacy requirements do apply, including the requirement to obtain prior written parent or eligible student consent (under 20 U.S.C. §§ 1232g(b)(1) and (b)(2) and 34 CFR §§ 99.30, 300.9 and 300.622) to disclose to Medicaid billing information about a service provided to a student.

- *The school is a HIPAA covered entity and is not subject to FERPA.* Schools that are covered entities and are not subject to FERPA must comply with both the HIPAA transaction requirements and the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules regarding any individually identifiable health information the school has about students and others to whom it provides health care. For example, if a private elementary or secondary school not subject to FERPA employs a physician who bills a health plan electronically for the care provided to students (making the school a HIPAA covered entity), the school must comply with the HIPAA Rules regarding the individually identifiable health information of its patients.
- *Certain private school placements.* Where a student is placed in a private school for the provision of Individualized Education Program (IEP) services on behalf of a school or school district subject to FERPA, the education records of the privately placed student maintained by the private school are subject both to FERPA and to the confidentiality requirements under the IDEA, which incorporate the provisions of FERPA, and not the HIPAA Privacy Rule. The U.S. Department of Education is in the process of preparing a Notice of Proposed Rulemaking to amend the FERPA regulations to add this provision and will provide an opportunity for the public to comment on this proposed amendment.

[Does FERPA or HIPAA apply to student health records maintained by a health care provider acting for a FERPA-covered elementary or secondary school that is not employed by the school?](#)

Health records that directly relate to students and are maintained by a health care provider, such as a third-party contractor, acting for a FERPA-covered elementary or secondary school, would qualify as education records subject to FERPA regardless of whether the health care provider is employed by the school.

Conversely, student health records that are maintained by a health care provider that provides services directly to students and that is not acting for a FERPA-covered educational agency or institution do not constitute FERPA-protected education records. For example, the records created and maintained by a public health nurse who provides immunizations to students on a FERPA-covered elementary or secondary school’s grounds, but who is not acting for the school, would not qualify as “education records” under FERPA. (Note: If the

school wishes to disclose PII from student education records that it maintains to the public health nurse, the school would have to comply with FERPA and obtain prior written parent or eligible student consent or satisfy an exception to FERPA's general consent requirement.)

HIPAA would apply to student records maintained by a health care provider that are not subject to FERPA only if the provider transmits any PHI electronically in connection with a transaction for which HHS has adopted a transaction standard, e.g., health care claims, and the records contain PHI.

### [Does FERPA or HIPAA apply to records on students at health clinics or other health care facilities run by postsecondary institutions?](#)

FERPA applies to most public and private postsecondary institutions and, thus, to the records on students maintained by the campus health clinics and other health care facilities operated by such institutions. These records will be either education records or treatment records under FERPA, both of which are excluded from coverage under the HIPAA Rules, even if the school is a HIPAA covered entity. See 45 CFR § 160.103 (definition of "protected health information," ¶¶ (2)(i), (ii)).

While the health records of students maintained by postsecondary institutions may be subject to FERPA, if the institution is a HIPAA covered entity and provides health care to nonstudents, the individually identifiable health information of the nonstudent patients is subject to the HIPAA Rules. Thus, for example, postsecondary institutions that are subject to both HIPAA and FERPA and that operate clinics or other health care facilities open to staff, the public, or both (including family members of students) are required to comply with FERPA with respect to the health records (i.e., "education records" or "treatment records") of their student patients, and with the HIPAA Rules with respect to the health records (i.e., PHI) of their nonstudent patients.

### [Does FERPA or HIPAA apply to records on students who are patients at a university hospital?](#)

Patient records maintained by a hospital affiliated with a university that is subject to FERPA are not typically "education records" or "treatment records" under FERPA because university hospitals generally do not provide health care services to students for the university. Rather, these university hospitals generally provide such services without regard to the person's status as a student and not on behalf of a university. Assuming the hospital is a HIPAA covered entity, these records are subject to all of the HIPAA Rules, including the HIPAA Privacy Rule.

However, in a situation where a hospital does run the student health clinic on behalf of a university, records that the clinic maintains on students would be subject to FERPA, either as "education records" or "treatment records," and not subject to the HIPAA Rules.

### [Does FERPA or HIPAA apply to the health records of an individual who is both a student and an employee of a university at which the person receives health care?](#)

Health records that directly relate to an individual who is both a student and an employee of a university and that are maintained by the university at which the individual receives health care would be considered "education records" or "treatment records" protected under FERPA; thus, such records would be excluded from coverage under the HIPAA Rules. FERPA defines "education records" as, with certain exceptions, records that are directly

related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 20 U.S.C. § 1232g(a)(4)(A); 34 CFR § 99.3 (definition of “education records”). One of the exceptions to this definition of education records excludes certain records relating to employees of the educational agency or institution. To fall within this exclusion, such records must, among other things, relate exclusively to the individual in his or her capacity as an employee. See 20 U.S.C. § 1232g(a)(4)(B)(iii); 34 CFR § 99.3 (definition of “education records”). (Of note, this exclusion also does not apply to records relating to individuals in attendance at the educational agency or institution who are employed as a result of their status as students. 20 U.S.C. § 1232g(a)(4)(B)(iii); 34 CFR § 99.3 (definition of “education records,” ¶ (b)(3)(ii).) The health records that are maintained by a university as part of its provision of health care to a student who is also an employee of a university would not constitute employment records because the health records would not relate exclusively to the individual in his or her capacity as an employee but also would relate to the individual in his or her capacity as a student. Thus, such records would be covered as education records by FERPA and thus would not be covered by the HIPAA Rules.

#### [Are all student records maintained by a health clinic within a postsecondary institution considered “treatment records” under FERPA?](#)

No. Not all records on eligible students that are maintained by a college- or university-run health clinic are treatment records under FERPA because, among other things, many such records are not made, maintained, or used only in connection with the treatment of the students. For example, billing records that a college- or university-run health clinic maintains on a student are not solely made, maintained, and used in connection with the treatment of the student and, therefore, would constitute “education records,” not “treatment records,” under FERPA, the disclosure of which would require prior written consent from the eligible student unless an exception applies. In addition, records relating to the treatment of a student that the college- or university-run health clinic maintains and discloses to persons other than those providing treatment to the student, or physicians or other appropriate professionals of the student’s choice, are “education records,” not “treatment records,” under FERPA.

#### [Can a postsecondary institution be a “hybrid entity” under the HIPAA Privacy Rule?](#)

Yes. A postsecondary institution that is a HIPAA covered entity may have health information to which the Privacy Rule may apply not only in the health records of nonstudents in the health clinic, but also in records maintained by other components of the institution, such as a law enforcement unit or research department, where such records are not education records or treatment records under FERPA. In such cases, the institution, as a HIPAA covered entity, has the option of becoming a “hybrid entity” and, thus, have the HIPAA Privacy Rule apply only to its health care unit. The school can achieve hybrid entity status by designating the health unit as its “health care component.” As a hybrid entity, any individually identifiable health information maintained by other components of the university (i.e., outside of the health care component), such as a law enforcement unit, or a research department, would not be subject to the HIPAA Privacy Rule, notwithstanding that these components of the institution might maintain records that are not “education records” or “treatment records” under FERPA.

To become a hybrid entity, the covered entity must designate and include in its health care component(s) all components that would meet the definition of a covered entity (or

business associate) if they were separate legal entities. However, the hybrid entity is not permitted to include in its health care component other types of components that do not perform the covered functions of the covered entity or components that do not perform support activities for the components performing covered functions. That is, components that do not perform health plan, health care provider, or health care clearinghouse functions, and components that do not perform activities in support of these functions (as would a business associate of a separate legal entity) may not be included in a health care component(s). Within the hybrid entity, most of the HIPAA Privacy Rule requirements apply only to the health care component(s), although the hybrid entity retains certain oversight, compliance, and enforcement obligations. See 45 CFR § 164.105 of the Privacy Rule for more information. See also <https://www.hhs.gov/hipaa/for-professionals/faq/522/can-a-postsecondary-institution-be-a-hybrid-entity-under-hipaa/index.html> for additional information about hybrid entities under the HIPAA Privacy Rule.

### Frequently Asked Questions and Answers: What information can be shared?

Where HIPAA applies, when an individual reaches the age of majority or becomes emancipated, who controls the PHI concerning health care services rendered while the individual was an unemancipated minor?

The individual who is the subject of the PHI can exercise, with limited exceptions, all rights granted by the HIPAA Privacy Rule with respect to all PHI about him or her, including information obtained while the individual was an unemancipated minor, consistent with State or other law. Generally, State laws provide that parents are the personal representatives of minor children until such time as the child reaches the age of majority or becomes emancipated.

Parents of adult children or emancipated minors generally are not treated as personal representatives and, therefore, cannot exercise the rights of their children under HIPAA. Of course, any individual can designate a personal representative - which may include a parent - who can exercise rights on his or her behalf.

For example, if parents wanted to provide a specialist with an adult child's medical records from the family doctor, HIPAA would govern whether the parent could obtain said records from the family doctor. Under the HIPAA Privacy Rule, the parent could provide the doctor with a HIPAA authorization signed by the adult child, or have the adult child exercise the HIPAA right of access to direct the family doctor to send the records to the parent.

Where HIPAA applies, when can a health care provider share an adult child's PHI with a parent if the adult child has not signed an authorization or asked the provider to send a copy of their records to the parent?

HIPAA allows health care professionals to disclose some health information without a patient's authorization or agreement under certain circumstances, as described below.

- **Caregivers.** When the patient has not objected, and the provider shares health information with a caregiver that is directly related to the caregiver's involvement in the patient's health care or payment of care. 45 CFR § 164.510(b).

For example, an adult child's family physician conducts a depression screening

and believes the adult child shows positive markers for depression. The family physician, adult child, and parent have discussed the potential diagnosis in the past, and the patient did not object to the parent's presence or participation. The family physician may take into account the parents' history of involvement in determining that it is in the adult child's best interests to contact the parents with whom the adult child lives to discuss medical strategies at home.

- **Personal representatives.** A parent who serves as the personal representative of the adult child, or who holds a health care power of attorney or other legal appointment granting control of medical information for the adult child, generally has the right to access the child's records. 45 CFR § 164.502(g), 45 CFR § 164.524. An exception applies where the covered health care provider has a reasonable belief, based on professional judgment, that the adult child is subject to domestic violence, abuse, or neglect by the personal representative, or doing so would otherwise endanger the child. 45 CFR § 164.502(g)(5). The covered health care provider must verify the personal representative's authority to act on behalf of the adult child before disclosing information. 45 CFR § 164.514(h)(1).

For example, a parent holds a health care power of attorney for an adult child with serious mental illness. The parent can exercise the HIPAA right of access to obtain the adult child's records, so long as the health care provider first verifies the parent's authority (e.g., by viewing a copy of the health care power of attorney documentation).

- **Facility Directories.** Sharing facility directory information about an adult child (i.e., name, location in the facility, and general condition) with a parent or other person who identifies the adult child by name, if the provider determines that doing so is in the best interests of a patient who is incapacitated or there is an emergency treatment circumstance, provided that the disclosure is consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider. 45 CFR § 164.510(a).

For example, a parent calls the local hospital looking for an adult child who is missing. Hospital staff may inform the parent that the adult child is in serious condition in the intensive care unit if the staff are not aware of any objection the child may have to this disclosure. The level of the parent's involvement in the adult child's care does not affect the hospital staff's ability to disclose this information.

- **Health or Safety Threats.** Informing parents or others in a position to prevent or lessen a serious and imminent threat to the health or safety of the individual, another person, or public, consistent with applicable law and the provider's standards of ethical conduct. 45 CFR § 164.512(j).

For example, a young man who has reached the age of majority storms out of his therapist's office stating, "I know where my parents keep their guns." The therapist believes that the young man is on his way home and may try to use a weapon kept by the parents at home. The therapist may contact the parents, police, or others in a position to help, to warn them that the young man is on the

way home and may take a weapon.

### Where FERPA applies, when can a school disclose an eligible student's PII from education records to his or her parent if the eligible student has not provided written consent?

Although FERPA provides that the parents' rights afforded by FERPA transfer to the "eligible student," FERPA permits an educational agency or institution to share, without applicable prior written consent, PII from the eligible student's education records with his or her parents under certain circumstances. For example:

- Schools may release PII from an eligible student's education records to his or her parents, without the consent of the eligible student, if the student is claimed as a dependent for tax purposes under section 152 of the Internal Revenue Code. 20 U.S.C. § 1232g(b)(1)(H); 34 CFR § 99.31(a)(8).
- FERPA permits schools to disclose PII from an eligible student's education records to his or her parents, without the consent of the eligible student, in connection with a health or safety emergency if the parents' knowledge of the records is necessary to protect the health or safety of the student or other persons. 20 U.S.C. § 1232g(b)(1)(I); 34 CFR §§ 99.31(a)(10) and 99.36.
- FERPA permits a college or university to inform parents of students under the age of 21 (at the time of disclosure) that the student has violated any law or policy concerning the use or possession of alcohol or a controlled substance if the institution determines that the student committed a disciplinary violation with respect to that use or possession. 20 U.S.C. § 1232g(i); 34 CFR § 99.31(a)(15).
- Nothing in FERPA prohibits a school official from sharing information with parents that is based on that official's personal knowledge or observation and that is not based on information contained in an education record. Therefore, FERPA would not prohibit a teacher or other school official from letting a parent know of their concern about the parent's child that is based on their personal knowledge or observation.

### Does HIPAA allow a health care provider to disclose PHI about a minor child with a mental health condition and/or substance use disorder to the parents of the minor?

The HIPAA Privacy Rule generally allows a covered entity to disclose PHI about a minor child to the child's parent, as the minor child's personal representative, when the disclosure is not inconsistent with State or other law.<sup>1</sup>

In some cases, such as when a minor may receive treatment without a parent's consent under applicable law, the parents are not treated as the minor's personal representative. See 45 CFR § 164.502(g)(3). In such cases where the parent is not the personal representative of the minor, other HIPAA Privacy Rule provisions may allow the disclosure of PHI about the minor to the parent.

For example, if a provider believes a minor presents a serious danger to self or others, the HIPAA Privacy Rule permits a covered entity to disclose PHI to a parent or other person(s) if the covered entity has a good faith belief that: (1) the disclosure is necessary to prevent or lessen the serious and imminent threat and (2) the parent or other person(s) is reasonably



able to prevent or lessen the threat. The disclosure also must be consistent with applicable law and standards of ethical conduct. See 45 CFR § 164.512(j)(1)(i); see *also* provisions related to 42 CFR Part 2 regulating the disclosure and re-disclosure of substance-use disorder information by Part 2 programs.

For example, a minor makes statements to his physician that he plans to harm himself or others. The HIPAA Privacy Rule permits the physician, including a mental health provider, to contact a parent (or anyone) who the health care provider has a reasonable belief is in a position to lessen or prevent the harm.

For more detailed information, see 45 CFR § 164.502(g) and the fact sheets regarding personal representatives at:

- <http://www.hhs.gov/ocr/hipaa/guidelines/personalrepresentatives.pdf>
- <https://www.hhs.gov/sites/default/files/when-your-child.pdf>
- <https://www.hhs.gov/sites/default/files/am-i-my-childs.pdf>

Does FERPA permit a school to disclose PII from the education records of a student, who is under the age of 18 years and is not attending a postsecondary institution, with a mental health condition and/or substance use disorder to the parents of the student?

Yes. FERPA permits schools to disclose PII from education records to the parent of a student who is not an eligible student. See 34 CFR § 99.31(a)(12). Further, under FERPA, a school must generally provide a parent of a student who is not an eligible student with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. 20 U.S.C. § 1232g(a)(1)(A); 34 CFR § 99.10(b). While required to provide a parent of a student who is not an eligible student with access to their child's education records, a school is not generally required by FERPA to provide copies of education records. See 20 U.S.C. § 1232g(a)(1)(A); 34 CFR § 99.10. One of the exceptions in which a school may be required to provide a copy of the education records requested is in the context of a request for access to education records from a parent or student who is not an eligible student where the circumstances would effectively prevent the parent from exercising his or her right to inspect and review education records; in this context, the school would be required to either provide the parent with a copy of the education records requested or make other arrangements that would allow for the parent to inspect and view the requested records. 34 CFR § 99.10 (d). An example of circumstances effectively preventing a parent from inspecting or reviewing education records is where the parent does not live within commuting distance of the school.

What options do family members of an adult patient with mental illness have under HIPAA if they are concerned about the patient's mental health and the patient refuses to agree to let a health care provider subject to HIPAA share information with the family?

The HIPAA Privacy Rule permits a health care provider to disclose information to the family members of an adult patient who has decision-making capacity, and indicates that he or she does not want the disclosure made, only to the extent that the provider perceives a serious and imminent threat to the health or safety of the patient or others and the family members are in a position to lessen the threat. See 45 CFR § 164.512(j). Otherwise, under HIPAA, the provider must respect the wishes of the adult patient who objects to the disclosure.

HIPAA in no way prevents health care providers from listening to family members or other caregivers who may have concerns about the health and well-being of the patient. A provider can factor that information into the patient's care, and should the patient later request access to the health record, any such information disclosed under a promise of confidentiality (such as that shared by a concerned family member with the provider), may be withheld from the patient if the disclosure would be reasonably likely to reveal the source of the information. See 45 CFR § 164.524(a)(2)(v). This exception to the patient's right to access their PHI allows loved ones to disclose relevant health or safety information with providers without fear of disrupting their relationship with the patient.

[What options do the parents of an eligible student with mental illness have under FERPA if they are concerned about the student's mental health and the eligible student refuses to provide consent to permit a school subject to FERPA to share PII from education records with the family?](#)

Under FERPA, an eligible student's education records and treatment records (which constitute education records if made, maintained, or used for any purpose other than the eligible student's treatment) may be disclosed, without appropriate consent, if the disclosure meets one of the exceptions to FERPA's general consent rule. See 20 U.S.C. §§ 1232g(b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (h), (i), and (j); 34 CFR § 99.31. For example, a university physician treating an eligible student might determine that the student's treatment records should be disclosed to the student's parents. This disclosure may be made without the consent of the eligible student, if the eligible student is claimed as a dependent under section 152 of the Internal Revenue Code of 1986. 20 U.S.C. § 1232g(b)(1)(H); 34 CFR § 99.31(a)(8). If the eligible student is not claimed as a dependent, the disclosure may be made to the parents if the conditions of any other exception to FERPA's general requirement of consent are met, such as if the disclosure is in connection with a health or safety emergency and the parents' knowledge of the records is necessary to protect the health or safety of the eligible student or other persons. 20 U.S.C. § 1232g(b)(1)(I); 34 CFR §§ 99.31(a)(10) and 99.36.

If the exceptions to FERPA's general consent requirement do not apply and the eligible student refuses to provide written consent for the disclosure, then FERPA would prohibit the school from making the disclosure. However, FERPA would not prevent school officials from listening to the concerns of family members or other care givers, nor preclude a school official from sharing personal observations of the student not based on information contained in the student's education record.

[Does HIPAA allow a health care provider to disclose PHI about a student to a school nurse or physician?](#)

Yes. The HIPAA Privacy Rule allows covered health care providers to disclose PHI about students to school nurses, physicians, or other health care providers for several purposes, without the authorization of the student or student's parent.

HIPAA permits covered entities to disclose PHI for treatment purposes, without the authorization of the student or student's parent. For example, a student's primary care physician may discuss the student's medication and other health care needs with a school nurse who will administer the student's medication and provide care to the student while the student is at school.



The HIPAA Privacy Rule also permits a covered entity to disclose PHI to a person(s) if the covered entity has a good faith belief that: (1) the disclosure is necessary to prevent or lessen a serious and imminent threat and (2) the parent or other person(s) is reasonably able to prevent or lessen the threat. The disclosure also must be consistent with applicable law and standards of ethical conduct. See 45 CFR § 164.512(j)(1)(i).

For example, a parent tells their child's therapist they are worried because the child threatened to kill a teacher and has access to a weapon. HIPAA permits the therapist to contact school officials if, based on a credible representation by the parent, the therapist believes the disclosure to school officials is necessary to prevent or lessen a serious and imminent threat to the teacher.

#### [Does FERPA allow a school official to disclose PII from a non-eligible student's education records to a third-party health care provider without the written consent of the parent?](#)

In a couple of cases, yes. First, under FERPA, a school nurse or other school official may disclose PII from a non-eligible student's education records to the student's family physician, without the written consent of the parent, where a health or safety emergency exists and the physician's knowledge of the records is necessary to protect the health or safety of the student or other persons. 20 U.S.C. § 1232g(b)(1)(I); 34 CFR §§ 99.31(a)(10) and 99.36. Additionally, FERPA would permit a school official to verify information that is contained in a record created by a third party with that third party, such as verifying a physician's note excusing a student's absence with that physician, as long as other PII from the student's education records is not disclosed without written consent. See 34 CFR § 99.3 (definition of "disclosure"). This is because the definition of "disclosure" permits a targeted release of information back to the stated source for verification purposes. See *id.*

#### [Does HIPAA allow a parent to access the medical records of his or her deceased child?](#)

HIPAA defers to applicable State laws regarding who qualifies as an individual's personal representative, and thus who can obtain and make decisions about sharing the individual's health information upon the individual's death, when the individual dies without designating a legal personal representative. See 45 CFR § 164.502(g)(4). The parent of a deceased minor child generally is the child's personal representative.

When a child has reached the age of majority (under State law) before death and has designated a personal representative who is not a parent, a covered entity must obtain authorization from the personal representative before disclosing records to the parent.

#### [Does FERPA allow a parent to access the education records of his or her deceased child?](#)

Consistent with common law principles, the U.S. Department of Education interprets the FERPA rights of eligible students to lapse or expire upon the death of the eligible student. Therefore, FERPA would not protect the education records of a deceased eligible student, and an educational agency or institution may disclose such records at its discretion or consistent with State law. However, at the elementary and secondary level, FERPA rights do not lapse or expire upon the death of a non-eligible student because FERPA provides specifically that the rights it affords rest with the parents of students until that student reaches 18 years of age or attends a postsecondary institution. Once the parents are deceased, the records are no longer protected by FERPA.

## Under FERPA, may an eligible student's treatment records be shared with parties other than treating professionals?

Under FERPA, treatment records, by definition, are only available to professionals and paraprofessionals providing treatment to the student, or to physicians or other appropriate professionals of the student's choice. If an educational agency or institution that maintains a student's treatment records uses or discloses these records for other purposes or to other parties, they are no longer "treatment records," and become subject to the FERPA requirements concerning "education records." (As previously explained, any disclosure of "education records" requires prior written consent of a parent or eligible student or must satisfy one of the exceptions to FERPA's general consent requirement. See 20 U.S.C. §§1232g(b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (h), (i), and (j); 34 CFR §§ 99.30 and 99.31.)

For example, in order for a physician at a university-operated health clinic treating an eligible student to disclose the student's treatment records to the student's parents, the physician would need to either obtain the eligible student's prior written consent or satisfy one of the exceptions to FERPA's general consent requirement. Under one such exception, the physician could non-consensually disclose the records to the parents if the eligible student qualified as the parents' dependent, under section 152 of the Internal Revenue Code of 1986, for Federal income tax purposes. See 20 U.S.C. § 1232g(b)(1)(H); 34 CFR § 99.31(a)(8). The disclosure could also be made, without prior written consent, to parents, as well as other appropriate parties, in connection with a health or safety emergency if the parents, or other parties, respectively, knowledge of the records was necessary to protect the health or safety of the student or other persons. See 20 U.S.C. § 1232g(b)(1)(I); 34 CFR §§ 99.31(a)(10) and 99.36.

## When does FERPA permit an eligible student's treatment records to be disclosed to a third-party health care provider for treatment?

An eligible student's treatment records may be disclosed to individuals who are providing treatment to the student, including health care professionals who are not part of nor acting on behalf of an educational institution (i.e., third-party health care provider), as long as the information is being disclosed only for the purpose of providing treatment to the student. See 20 U.S.C. § 1232g(a)(4)(B)(iv); 34 CFR § 99.3 (definition of "education records," ¶ (b)(4)(iii)). In addition, an eligible student's treatment records may be disclosed to a third-party physician or other appropriate professional of the student's choice. See 20 U.S.C. § 1232g(a)(4)(B)(iv). In either of these situations, if the treatment records are disclosed to a third-party health care provider that is a HIPAA covered entity, the records would become subject to the HIPAA Privacy Rule. The treatment records maintained by the educational institution would continue to be treatment records under FERPA, so long as the records remain unavailable to anyone other than persons providing the eligible student with treatment, or a physician or other appropriate professional of the student's choice.

If the disclosure is for purposes other than treatment, an eligible student's treatment record only may be disclosed to a third party as an "education record," that is, with the prior written consent of the eligible student or if one of the exceptions to FERPA's general consent requirement is met. For example, if a university is served with a court order requiring the disclosure of the mental health records of a student maintained as treatment records at the campus clinic, FERPA would permit the university to disclose the records to comply with the court order in accordance with the provisions of 20 U.S.C. §§ 1232g(b)(2), and (j) and 34 CFR § 99.31(a)(9). Although FERPA would generally require the university to

make a reasonable effort to notify the eligible student in advance of compliance with such a court order so that the eligible student may seek protective action, the university may also wish to take additional measures to protect the privacy of student mental health records, such as obtaining a protective order or filing the records under seal. The university also should determine if the disclosure would comply with all other applicable laws, including any applicable State laws protecting the confidentiality of the mental health records. Thereafter, these mental health records that the university disclosed for non-treatment purposes would no longer be excluded from the definition of “education records” and, instead, become subject to all other FERPA requirements as “education records” under FERPA.

#### [Under HIPAA, when can information be shared about someone who presents a serious danger to self or others?](#)

The HIPAA Privacy Rule permits a covered entity to disclose PHI, including psychotherapy notes, when the covered entity has a good faith belief that the disclosure: (1) is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others and (2) is to a person(s) reasonably able to prevent or lessen the threat. This may include, depending on the circumstances, disclosure to law enforcement, family members, the target of the threat, or others whom the covered entity has a good faith belief can mitigate the threat. The disclosure also must be consistent with applicable law and standards of ethical conduct. See 45 CFR § 164.512(j)(1)(i).

For example, consistent with other laws and ethical standards, a mental health provider whose teenage patient has made a credible threat to inflict serious and imminent bodily harm on one or more fellow students may alert law enforcement, a parent or other family member, school administrators or campus police, or others the provider believes may be able to prevent or lessen the chance of harm. In such cases, the covered entity is presumed to have acted in good faith where its belief is based upon the covered entity’s actual knowledge (i.e., based on the covered entity’s own interaction with the patient) or in reliance on a credible representation by a person with apparent knowledge or authority (i.e., based on a credible report from a family member or other person). See 45 CFR § 164.512(j)(4).

For threats or concerns that do not rise to the level of “serious and imminent,” other HIPAA Privacy Rule provisions may apply to permit the disclosure of PHI. For example, covered entities generally may disclose PHI about a minor child to the minor’s personal representative (e.g., a parent or legal guardian), consistent with State or other laws. See 45 CFR § 164.502(b).

#### [Under FERPA, when can PII from a student’s education records be shared, without prior written consent, about someone who presents a serious danger to self or others?](#)

FERPA provides that PII from a student’s education records, including student health records, may be disclosed by educational agencies and institutions to appropriate parties in connection with a health or safety emergency, without the consent of the parent or eligible student, if knowledge of the information is necessary to protect the health or safety of the student or other individuals. 20 U.S.C. § 1232g(b)(1)(I); 34 CFR §§ 99.31(a)(10) and 99.36.

For example, if an eligible student storms out of a teacher’s office stating that, “I know where my parents keep their guns, and someone is going to pay” and the teacher believes that the student is on his way home to and may try to use the weapons, FERPA’s health or

safety exception would permit the teacher to contact the parents, police, or others in a position to help, to warn them that the student is on the way home and threatened to use a weapon against others.

Educational agencies and institutions are responsible for making the determination as to whether a health or safety emergency exists. See 34 CFR § 99.36(c). Pursuant to § 99.36(c) of the FERPA regulations, in determining whether it may rely on FERPA's health or safety emergency exception:

an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an *articulable and significant threat* to the health or safety of the student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a *rational basis for the determination*, the [U.S. Department of Education] will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

(Emphasis added.) See *also* 73 Fed. Reg. 74,806, 74,837 (Dec. 9, 2008) (explaining that the U.S. Department of Education amended FERPA's health or safety emergency exception to add subsection (c) in order to "provide[ ] greater flexibility and deference to school administrators so they can bring appropriate resources to bear on a circumstance that threatens the health or safety of individuals.").

The U.S. Department of Education discussed the health or safety emergency exception to FERPA's general consent requirement in some detail in the preamble to the 2008 *Federal Register* notice implementing changes to the FERPA regulations, 73 Fed. Reg. 74,806, 74,836-74,839 (Dec. 9, 2008), and in guidance entitled "Addressing Emergencies on Campus," issued in June 2011. In the preamble, the U.S. Department of Education explained that:

the phrase "articulable and significant threat" means that if a school official can explain why, based on all the information then available, the official reasonably believes that a student poses a significant threat, such as a threat of substantial bodily harm, to any person, including the student, the school official may disclose education records to any person whose knowledge of information from those records will assist in protecting a person from that threat.

73 Fed. Reg. at 74,838. The U.S. Department of Education also stated that:

to be "in connection with an emergency" means to be related to the threat of an actual, impending, or imminent emergency, such as a terrorist attack, a natural disaster, a campus shooting, or the outbreak of an epidemic. An emergency could also be a situation in which a student gives sufficient, cumulative warning signs that lead an educational agency or institution to believe the student may harm himself or others at any moment. It does not mean the threat of a possible or eventual emergency for which the likelihood of occurrence is unknown, such as would be addressed in emergency

preparedness activities.

Further, in the June 2011 guidance, the U.S. Department of Education explained the following:

In some situations, a school official may determine that it is necessary to disclose [PII] from a student's education records to appropriate parties in order to address a health or safety emergency . . . This exception to FERPA's general consent requirement is limited to the period of the emergency and generally does not allow for a blanket release of [PII] from a student's education records. Typically, law enforcement officials, public health officials, trained medical personnel, and parents (including parents of an eligible student) are the types of appropriate parties to whom information may be disclosed under this FERPA exception.

Disclosures for health or safety emergency reasons do not include disclosures to address emergencies for which the likelihood of occurrence is unknown, such as would be the case in emergency preparedness activities.

U.S. Department of Education, *Addressing Emergencies on Campus*, p. 3 (June 2011), available at <https://studentprivacy.ed.gov/resources/addressing-emergencies-campus>.

Finally, where an educational agency or institution non-consensually discloses PII from a student's education records pursuant to FERPA's health or safety emergency exception, within a reasonable period of time after the disclosure, the educational agency or institution must record in the student's education records the articulable and significant threat to the health or safety of the student or other individual(s) that formed the basis for the disclosure, and the parties to whom the information was disclosed. 34 CFR § 99.32(a)(5).

[Under FERPA, can an educational agency or institution disclose, without prior written consent, PII from a student's education records, including health records, to the educational agency's or institution's law enforcement officials?](#)

Yes, if certain conditions are met. By way of background, many schools have their own law enforcement units to monitor safety and security and enforce any local, State, or Federal law or refer such enforcement matters to appropriate authorities. Those schools that do not have specific law enforcement units may designate a particular office or school official to be responsible for monitoring safety and security and referring potential or alleged violations of law to local authorities. Some smaller school districts and colleges employ off-duty police or sheriff's department officers to serve as school security officers.

If a law enforcement official is an employee of an educational agency or institution and meets the criteria specified in the school's annual notification of FERPA rights to parents and eligible students for being a "school official" who has been determined to have a "legitimate educational interest" in the education records, then the law enforcement unit official may be considered a school official to whom PII from students' education records may be disclosed, without prior written consent of a parent or eligible student. See 20 U.S.C. § 1232g(b)(1)(A); 34 CFR §§ 99.7(a)(3)(iii) and 99.31(a)(1)(i)(A). Educational agencies and institutions may also consider law enforcement unit officials, such as off-duty police or sheriffs' department officers and School Resource Officers (SROs) who are not employees of the educational agency or institution, to be "school officials," to whom PII from student's

education records may be disclosed, without appropriate consent, if the law enforcement unit officials:

1. Perform an institutional service or function for which the educational agencies or institutions would otherwise use employees (*for, e.g.,* to ensure school safety and security);
2. Are under the “direct control” of the educational agencies or institutions with respect to the use and maintenance of the education records (*for, e.g.,* through a memorandum of understanding (MOU) that establishes data use restrictions and data protection requirements);
3. Are subject to FERPA’s use and re-disclosure requirements in 34 CFR § 99.33, which provides that the PII from education records may be used only for the purposes for which the disclosure was made (*for, e.g.,* to promote school safety and the physical security of students), and which limits the re- disclosure of PII from education records; and,
4. Meet the criteria specified in the educational agencies’ or institutions’ annual notification of FERPA rights for being “school officials” who have been determined to have “legitimate educational interests” in the education records.

See 20 U.S.C. § 1232g(b)(1)(A); 34 CFR §§ 99.7(a)(3)(iii) and 99.31(a)(1)(i)(A) and (B)(1)-(3).

In situations where the law enforcement official is not a school official with a legitimate educational interest, the school may only disclose a student’s education records, including health records, to that official with the prior, written consent of the parent or eligible student, unless an exception applies. One such exception that could apply is FERPA’s health or safety emergency exception (discussed in greater detail in Question 21 above). Under this FERPA exception, a student’s education records, including health records, may be disclosed, without the prior written consent of a parent or eligible student, to appropriate parties in connection with an emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals. See 20 U.S.C. § 1232g(b)(1)(I); 34 CFR §§ 99.31(a)(10) and 99.36.

For more information on this issue, see the following guidance entitled, “School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act (FERPA),” issued by the U.S. Department of Education’s Privacy Technical Assistance Center in February 2019 -

[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/SRO\\_FAQs\\_2-5-19\\_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/SRO_FAQs_2-5-19_0.pdf).

**Does HIPAA permit an educational agency or institution to disclose PHI to a Protection and Advocacy system where the disclosure is required by law?**

Yes. Protection and Advocacy (P&A) systems are designated by the governor of each State and territory to protect and advocate for the rights of individuals with disabilities, including by investigating incidents of abuse or neglect. Each P&A system administers multiple P&A programs authorized by Congress through legislation such as the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) (for individuals with developmental disabilities), the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI Act) (for individuals



with mental illness), and section 509 of the Rehabilitation Act of 1973 (Rehabilitation Act) (for certain individuals with disabilities who, for example, are not eligible for P&A services under the DD Act or PAIMI Act). These statutes and their implementing regulations require that access to records be provided to P&A systems under certain circumstances. See DD Act at 42 U.S.C. § 15043(a)(2)(I) and (J), 45 CFR § 1386.22; PAIMI Act at 42 U.S.C. § 10805(a)(4), 42 CFR § 51.41; and the Rehabilitation Act at 29 U.S.C. § 794e(f)(2), 34 CFR § 381.10(a)(2).

The Privacy Rule permits a covered entity to disclose PHI without an individual's authorization to a P&A system to the extent that such disclosure is required by law and the disclosure complies with the requirements of that law. See 45 CFR § 164.512(a). Thus, a covered entity may disclose PHI to the P&A system, as required by the DD Act, PAIMI Act, or section 509 of the Rehabilitation Act, as well as any other Federal statute authorizing a P&A program, when the P&A system requests access to such records in carrying out its protection and advocacy functions under these Acts. Similarly, covered entities may disclose PHI to the P&A system where another Federal, State, or other law mandates such disclosures, consistent with the requirements in such law.

Where disclosures are required by law, the Privacy Rule's minimum necessary standard does not apply; instead, the law requiring the disclosure will establish the limits on what should be disclosed. Moreover, with respect to disclosures required by law, a covered entity cannot use the Privacy Rule as a reason not to comply with its other legal obligations.

#### [Does FERPA permit an educational agency or institution to disclose PII from a student's education records to a Protection and Advocacy system?](#)

Yes, in certain circumstances. For instance, an educational agency or institution may disclose PII from a student's education records to a P&A system, where a parent of a student under 18 and not in attendance at an institution of postsecondary education, or an eligible student, provides prior written consent to disclose such PII to the P&A system. Additionally, as we previously stated in an *amici curiae* brief jointly filed by the U.S. Departments of Education and Health and Human Services before the U.S. Court of Appeals for the Second Circuit, there are also circumstances in which an educational agency or institution may disclose such PII to the P&A system without obtaining such prior written consent, such as in connection with an emergency under FERPA's health or safety exception (set forth in 20 U.S.C. § 1232g(b)(1)(I) and 34 CFR §§ 99.31(a)(10) and 99.36), if the P&A system's knowledge of the PII is necessary to protect the health or safety of the student or other individuals. We noted that "the facts supporting a P&A's determination that a mentally ill student's health or safety is in serious jeopardy, see 42 U.S.C. § 10805(a)(4)(C), for example, might also support a school's determination that an 'emergency' existed in which disclosure of [PII from education records] was 'necessary to protect the health or safety of the student or other persons.' 20 U.S.C. § 1232g(b)(1)(I)." *Id.* at 15-16. However, we also recognized that a P&A system's request for name and contact information might not always satisfy a FERPA exception to the general requirement of consent and that, in those instances where the DD Act, the PAIMI Act, or section 509 of the Rehabilitation Act conflict with FERPA, "FERPA does not bar a P&A from obtaining access to the name of and contact information for a parent, guardian, or other legal representative of a minor student with a disability or mental illness where the P&A's probable cause determination satisfies the requirements for access to records under the PAIMI Act and the DD Act." *Id.* at 15-16. We concluded that where the statutes are in conflict, "the specific access provisions of the PAIMI Act and the DD Act (and [section 509 of the Rehabilitation Act] by incorporation) are properly understood as a limited override of FERPA's generally applicable non-disclosure requirements." *Id.* at 15. We

viewed a P&A system's access to such PII from education records as generally being consistent with Congress' intent relating to student privacy in part because a P&A system "is required to maintain the confidentiality of any student records it receives, see 42 U.S.C. § 10806(a) ..., " such that we saw little risk of the public disclosure of the information that FERPA is intended to prevent. *Id.* at 19-20.

### [Does HIPAA permit a school-based health care provider to report a student to the National Instant Criminal Background Check System \(NICS\)?](#)

Most likely not. Although HIPAA allows limited disclosures to the National Instant Criminal Background Check System (NICS) by a designated set of covered entities, this permission most likely would not apply to covered entities that operate in the school context.

NICS is maintained by the Federal Bureau of Investigation (FBI) to conduct background checks on persons who may be disqualified from possessing or receiving firearms based on State law or Federal prohibited categories, including those who have been "involuntarily committed to a mental institution" or "adjudicated as a mental defective" (*e.g.*, found incompetent to stand trial). See 27 CFR § 478.11.

HIPAA's permission to disclose to NICS applies only to covered entities that are: (1) An entity designated by a State to report, or which collects information for purposes of reporting, on behalf of a State, to the NICS; or (2) A court, board, commission, or other lawful authority that makes a commitment or adjudication that causes an individual to become subject to disqualification as described above. For these covered entities, the Privacy Rule allows disclosure of only the limited demographic and certain other information needed for purposes of reporting to NICS and expressly prohibits the disclosure of diagnostic or clinical information for such purposes. See 45 CFR § 164.512(k)(7).

It is unlikely that a school health provider is a HIPAA covered entity designated by a State to report to NICS or given the authority to order a student's involuntary commitment, but if it is, such a provider could make limited disclosures concerning a student to NICS.

More information can be found online at OCR's [NICS page](#).

### [Does FERPA permit an educational agency or institution to disclose, without prior written consent, PII from a student's education records to the NICS?](#)

FERPA permits records of a law enforcement unit of an educational agency or institution, subject to the provisions of 34 CFR § 99.8, to be reported to NICS without obtaining the prior written consent of parents or eligible students because such records are not covered as "education records" under FERPA. Among the exclusions from the definition of "education records" - and thus from the privacy protections of FERPA - are records of a law enforcement unit of an educational agency or institution. 20 U.S.C. 1232g(a)(4)(B)(ii); 34 CFR § 99.3 (definition of "education records," subsection (b)(2)). These records must be: (1) created by a law enforcement unit; (2) created for a law enforcement purpose; and (3) maintained by the law enforcement unit. 20 U.S.C. 1232g(a)(4)(B)(ii); 34 CFR § 99.8(b)(1). Law enforcement unit records do not include the following: (1) records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or (2) records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or



institution. 34 CFR § 99.8(b)(2). Under FERPA, “law enforcement unit” means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or noncommissioned security guards, that is officially authorized or designated by that agency or institution to (1) enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or (2) maintain the physical security and safety of the agency or institution. 34 CFR § 99.8(a)(1). Therefore, subject to State or local law, educational agencies and institutions may disclose records of a law enforcement unit, as set forth in 34 CFR § 99.8, to anyone, including NICS, without consent from parents or eligible students.

## Conclusion

While the educational agency or institution has the responsibility to make the initial, case-by-case determination of whether a disclosure meets the requirements of FERPA, the U.S. Department of Education’s Student Privacy Policy Office is available to offer technical assistance to school officials in making such determinations.

For quick, informal responses to routine questions about FERPA, school officials may e-mail the Department at [FERPA@ed.gov](mailto:FERPA@ed.gov). For more formal technical assistance on the information provided in this guidance in particular or FERPA in general, please contact the Student Privacy Policy Office at the following address:

Student Privacy Policy Office

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

You may also find additional information and guidance on the Department’s website at: <https://studentprivacy.ed.gov>.

For more information on the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules, please visit the U.S. Department of Health and Human Services’ HIPAA Privacy Rule Web site at: <http://www.hhs.gov/ocr/hipaa/>. The Web site offers a wide range of helpful information about the HIPAA Privacy Rule, including the full text of the Privacy Rule, a HIPAA Privacy Rule summary, over 400 frequently asked questions, and both consumer and covered entity fact sheets. Information on the other HIPAA Administrative Simplification Rules is available at: <http://www.cms.hhs.gov/HIPAAGenInfo/>.

In addition, if you would like to submit additional questions not covered by this guidance document or suggestions for purposes of informing future guidance, please send an e-mail to [OCRPrivacy@hhs.gov](mailto:OCRPrivacy@hhs.gov) and [FERPA@ed.gov](mailto:FERPA@ed.gov).

UNITED STATES DEPARTMENT OF EDUCATION STUDENT PRIVACY POLICY OFFICE

AN ELIGIBLE STUDENT GUIDE TO THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY  
ACT (FERPA)

The Family Educational Rights and Privacy Act or FERPA (20 U.S.C. §1232g; 34 CFR Part 99) provides certain rights for parents regarding their children’s education records. When a student reaches 18 years of age or attends an institution of postsecondary education at any age, the student becomes an “eligible student,” and all rights under FERPA transfer from the parent to the student. This guide discusses an eligible student’s rights under FERPA. A companion document discussing parents’ rights under FERPA is available on our website at <https://studentprivacy.ed.gov/resources/ferpa-general-guidance-parents>.

FERPA is a Federal law that is administered by the Student Privacy Policy Office (SPPO) in the U.S. Department of Education (Department). FERPA protects “education records,” which are generally defined as records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. An “educational agency or institution,” hereinafter referred to as a “school,” generally means a school district, a public elementary or secondary school, or an institution of postsecondary education, such as a college or university. There are also a few exemptions to the definition of “education records,” such as law enforcement unit records and sole possession records. More information is available at <https://studentprivacy.ed.gov/faq/what-records-areexempted-ferpa>.

FERPA applies to all schools that receive funding under any program administered by the Department. Private and faith-based schools at the elementary and secondary levels generally do not receive such funding and are, therefore, generally not subject to FERPA. Private institutions of postsecondary education, however, generally do receive such funding (e.g., student aid under title IV of the Higher Education Act of 1965, as amended) and are, therefore, generally subject to FERPA. In addition, the confidentiality of personally identifiable information (PII) in the education records of students with disabilities is further protected by Part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1417(c) and 34 CFR §§ 300.610-300.626). The IDEA and its implementing regulations contain confidentiality provisions that are similar to, but broader than, FERPA, and cover students with disabilities who have turned 18 but are still eligible under IDEA. Depending on State law, the rights accorded to parents under IDEA Part B may not automatically transfer to the student when the student with a disability reaches 18 years old or attends an institution of postsecondary education at any age. The IDEA-FERPA crosswalk contains additional information comparing IDEA and FERPA and is available at <https://studentprivacy.ed.gov/resources/ferpaidea-crosswalk>.

The rights provided by FERPA to an eligible student include, but are not limited to:

### **Access to Education Records**

Under FERPA, a school or State educational agency (SEA) must provide an eligible student with an opportunity to inspect and review their education records within a reasonable period of time, but not more than 45 calendar days following the receipt of a request. A school or SEA is generally not required to provide an eligible student with copies of education records unless circumstances effectively prevent an eligible student from exercising their right to inspect and review the education records. For example, if an eligible student who does not live within commuting distance of the school requests access to their education records, the school would be required to make other arrangements for the eligible student to inspect and review the requested records, or to provide a copy of the requested records. FERPA’s access

provisions apply to education records maintained by educational agencies or institutions, including documents such as academic transcripts. While eligible students have a right to inspect and review their education records, including academic transcripts maintained by their schools, eligible students do not necessarily have a right to obtain a copy of such records under FERPA.

### **Amendment of Education Records**

Under FERPA, an eligible student has the right to seek amendment or correction of their education records that the eligible student believes to be inaccurate, misleading, or in violation of their rights of privacy. However, while a school is not required to amend an education record in accordance with an eligible student's request, a school is required to consider the request for amendment, to inform the student of its decision, and, if the request is denied, to advise the student of their right to a hearing on the matter. If, as a result of the hearing, a school decides not to amend the education records, then the eligible student has the right to insert a statement in the record commenting on the contested information or stating why they disagree with the decision, or both. That statement must remain with the contested part of the education record for as long as the record is maintained and be included whenever the contested part is disclosed. While an eligible student has the right to seek to amend non-substantive factual errors in the student's education records, the right is not unlimited. A school is not required by FERPA to afford an eligible student the right to seek to change substantive decisions made by school officials, such as substantive decisions made in the context of grades given to a student based on their performance, other evaluations of the student's performance, or disciplinary decisions.

### **Disclosure of Education Records**

Under FERPA, a school generally may not disclose PII from an eligible student's education records to a third party unless the eligible student has provided prior written consent. Even with the prior written consent of an eligible student, a school is not required by FERPA to disclose PII from education records to third parties. Accordingly, under FERPA, a school may have a policy of not disclosing PII from education records to third parties if the eligible student owes money to the school. There are several exceptions to FERPA's general consent requirement, some of which are described below. Under these exceptions, schools are permitted to disclose PII from education records without consent to a third party, but they are not required to do so by FERPA.

#### *School Official*

FERPA allows "school officials," including faculty and staff within an institution of postsecondary education, to access PII from education records without consent, provided the school has determined that they have a "legitimate educational interest" in the information. The school's annual notification of rights under FERPA must specify the criteria for determining which parties are "school officials" and what the school considers to be a "legitimate educational interest." Typically, a school official has a legitimate educational interest if the official needs to review an education record in order to fulfill their professional responsibility.

Also, under the "school official" exception to the consent requirement, FERPA permits a school to disclose PII from education records to contractors (e.g., software/application

vendors or lawyers), consultants (e.g., nutritional or information technology consultants), volunteers (e.g., student volunteers or tutors) or other third parties to whom the school has outsourced institutional services or functions, provided that the outside party:

1. Performs an institutional service or function for which the school would otherwise use employees;
2. Is under the direct control of the school with respect to the use and maintenance of education records;
3. Is subject to the requirements in FERPA that PII from education records may be used only for the purposes for which the disclosure was made, and which govern the redisclosure of PII from education records; and
4. Meets the criteria specified in the school's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

### Seeks or Intends to Enroll

Another exception to FERPA's general consent requirement permits a school to disclose PII from an eligible student's education records, without consent, to another school in which the student seeks or intends to enroll, or where the student is already enrolled, as long as the purpose of the disclosure is related to the student's enrollment or transfer. A school that discloses education records under this exception must make a reasonable attempt to notify the eligible student of the disclosure, unless the disclosure is initiated by the student, or the school's annual notification of rights under FERPA includes a notice that it forwards education records to other schools that have requested the records and in which the student seeks or intends to enroll or is already enrolled, as long as the disclosure is for purposes related to the student's enrollment or transfer. A school that discloses education records under this exception also must provide the student, upon request, a copy of the records that were disclosed and, upon request, an opportunity for a hearing to amend the records that were disclosed. Under this exception, a school has the discretion to disclose academic, disciplinary, or any other PII from the student's education records to the new school. Further, an eligible student does not, under FERPA, have the right to prevent a school from disclosing such PII from the student's education records, or from communicating information about a student more generally, to the school in which the student seeks or intends to enroll.

### Directory Information

FERPA also permits a school to disclose PII from an eligible student's education records, without consent, when such information has been appropriately designated as "directory information," and the eligible student has not opted out of the disclosure of such designated information. The FERPA regulations define "directory information" as information in a student's education record that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information may include information such as the student's name, address, telephone number, email address, photograph, date and place of birth, major field of study, grade level, enrollment status (e.g., undergraduate or graduate, full-time or part-time), dates of attendance (i.e., the period of time during which the student attends or attended the school), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent school attended. FERPA provides that a school may disclose, without consent, directory

information if the school has given public notice to eligible students of the types of PII that it has designated as directory information and the process, including period of time, for eligible students to opt out of certain directory information disclosures. This notice is often included in the annual notification discussed below. For more information regarding directory information, visit <https://studentprivacy.ed.gov/training/b-cs-student-directoryinformation>.

### Dependent Student

FERPA provides ways in which a school may share, without the consent of an eligible student, education records of the eligible student with their parents. Schools may, but are not required to, disclose any and all PII from education records to parents, without the consent of the eligible student, if the student is a “dependent student,” as that term is defined in Section 152 of the Internal Revenue Code. Generally, if either parent has claimed the student as a dependent on the parent’s most recent income tax return, a school may disclose the student’s education records to either parent, without the eligible student’s consent.

This exception to FERPA’s general consent rule, where applicable, also permits institutions of postsecondary education to share, without the prior written consent of an eligible student, PII from education records of students who are enrolled in both a high school and the college or university (dually enrolled) with the parents of such dually enrolled students. In this situation, the parents retain the rights over the student’s education records maintained by the high school, if the student is under the age of 18 years, but the student retains the rights over the education records maintained by the college or university.

### Other Exceptions

Provided certain conditions are met that are not included in the summary below, other exceptions to FERPA’s general consent requirement that permit the disclosure of PII from education records include, but are not limited to:

- To authorized representatives of, among others, the U.S. Secretary of Education, as well as 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;
- In connection with financial aid for which the student has applied or received;
- To organizations conducting studies for, or on behalf of, the school for the purposes of administering predictive tests, administering student aid programs, or improving instruction;
- To the victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense concerning the final results of a disciplinary hearing conducted by an institution of postsecondary education against the alleged perpetrator of such crime or offense with respect to the alleged crime or offense;
- To any third party the final results, as described in FERPA regulations, of a disciplinary proceeding conducted by an institution of postsecondary education against a student who is the alleged perpetrator of a crime of violence or non-forcible sex offense if the student is found by the institution to have violated its rules or policies as a result of the disciplinary proceeding, as long as the

disclosure does not include the name of any other student, including a victim or witness, without the written consent of that other student;

- To comply with a judicial order or a lawfully issued subpoena;
- In connection with a health or safety emergency; and
- To a parent of a student at an institution of postsecondary education regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, where the institution determines that the student has committed a disciplinary violation with respect to that use or possession, and the student is under 21 years of age at the time of the disclosure to the parent.

### **Annual Notification of FERPA Rights**

Under FERPA, a school must annually notify eligible students of their rights under FERPA. The annual notification must include information regarding an eligible student's right to inspect and review their education records, the right to seek to amend their records, the right to consent to disclosure of PII from their records (except in certain circumstances), and the right to file a complaint with SPPO regarding an alleged failure by a school to comply with FERPA. The notification must also inform eligible students of the school's criteria for the terms "school official" and "legitimate educational interest" in certain instances. A school is not required to notify eligible students individually, but rather is required to provide the notice by any means that are reasonably likely to inform eligible students of their rights. These means could include publication in a school activities calendar, newsletter, student handbook, or on a school's website.

### **Complaints of Alleged Violations of FERPA**

Eligible students who believe that their FERPA rights may have been violated may file a complaint with SPPO at <https://studentprivacy.ed.gov/file-a-complaint>.

SPPO will review the complaint to ensure that the complaint:

- Is filed, in writing, by an eligible student who maintains FERPA rights over the education records that are the subject of the complaint;
- Is submitted to SPPO within 180 days of the date of the alleged violation or of the date that the eligible student knew or reasonably should have known of the alleged violation; and
- Contains specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred.

SPPO will then make a case-by-case determination of the best mechanism for resolving the complaint. Sometimes the action will be an investigation, while for other complaints, consistent with the statute and applicable regulations, we will take other appropriate actions, such as acting as an intermediary or providing resolution assistance. More information regarding our complaint process is available at <https://studentprivacy.ed.gov/file-a-complaint>.

### **Additional Information**

For more information regarding FERPA and other student privacy issues, please visit our website at <https://studentprivacy.ed.gov>.

If you have questions about FERPA that are not addressed here, you may also submit a question through our website at <https://studentprivacy.ed.gov/contact>, or write to SPPO for additional guidance at the following address:

Student Privacy Policy Office  
U.S. Department of Education  
400 Maryland Avenue,  
SW Washington, DC 20202-8520



US DEPARTMENT OF EDUCATION

IDEA AND FERPA CROSSWALK: A SIDE-BY-SIDE COMPARISON OF THE PRIVACY  
PROVISIONS UNDER PARTS B AND C OF THE IDEA AND FERPA

08/24/2022

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## **Applicability** - How do Parts B and C of the IDEA and FERPA apply?

**Definitions** - (Child/Student/Parent, Record, Participating Agency/Educational Agency, or Institution, Personally Identifiable Information-PII)

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.

## **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.

## **Consent**

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.

- Definition of Consent
- Requirement of Consent
- Exceptions to Consent

## **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 to be provided copies of certain records, generally, FERPA does not require parents to be provided copies of records.

- Access Rights
- Fees for Records
- Amendment of Record at Parent's Request
- Opportunity for Hearing
- Result of Hearing
- Hearing Procedures

### **Retention of Records**

Parts B and C of IDEA require a record of access to be maintained and 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.

- Record of Access
- Records on More Than One Child
- Types and Locations of Information
- Safeguards
- Destruction of Information

### **Procedural Safeguards**

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

- Notice to Parents

### **Dispute Resolution**

- State Complaint

**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 <sup>1</sup>	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	<p><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.</p> <p><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.</p>	<p><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).</p> <p><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</p>	<p><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</p>

Applicability	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>1</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	<p>(8) Confidentiality.—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).</p> <p><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.</p>	<p>a statewide system that meets the requirements of section 635.</p> <p><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.</p> <p><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.</p>	<p>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...</p>

<sup>1</sup>The 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.

**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 <sup>2</sup>	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 <sup>3</sup>	<p><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.</p> <p>(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</p>	<p><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.</p> <p><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</p>	<p>§ 99.3 [Definitions.<sup>5</sup>] <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.</p> <p><u>Eligible student</u> means a student who has reached 18 years of age or is attending an institution of postsecondary education.</p> <p><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.</p> <p><u>Attendance</u> includes, but is not limited to— (a) Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic</p>

<sup>2</sup>The 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. <sup>3</sup>For 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.

<sup>5</sup>The 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 <sup>2</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	<p>related service and not special education, the child is not a child with a disability under this part.</p> <p>(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.</p> <p><u>§ 300.30 Parent.</u></p> <p>(a) Parent means—</p> <p>(1) A biological or adoptive parent of a child;</p> <p>(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;</p> <p>(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);</p> <p>(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</p> <p>(5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act [IDEA].</p>	<p>grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or</p> <p>(5) A surrogate parent who has been appointed in accordance with § 303.422 or section 639(a)(5) of the Act [IDEA].</p> <p>(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.</p> <p>(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 provider<sup>4</sup> or a public agency provides any services to a child or any family member of that child, that</p>	<p>information and telecommunications technologies for students who are not physically present in the classroom; and</p> <p>(b) The period during which a person is working under a work-study program.</p> <p><u>Dates of attendance.</u></p> <p>(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.</p> <p>(b) The term does not include specific daily records of a student's attendance at an educational agency or institution.</p>

<sup>4</sup>"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 <sup>2</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	<p>(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.</p> <p>(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.</p>	<p>EIS provider or public agency may not act as the parent for that child.</p>	
<p>Education Record</p>	<p><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)).</p>	<p><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.</p>	<p><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.</p>



Definitions	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>2</sup>	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	<p><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].</p>	<p><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 solely as funding sources for part C services.</p>	<p><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).</p>

Definitions	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>2</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Personally Identifiable Information (PII)	<p><u>§ 300.32 Personally identifiable.</u> Personally identifiable means information that contains—</p> <p>(a) The name of the child, the child's parent, or other family member;</p> <p>(b) The address of the child;</p> <p>(c) A personal identifier, such as the child's social security number or student number; or</p> <p>(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.</p>	<p><u>§ 303.29 Personally identifiable information</u></p> <p>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.</p>	<p>(e) Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;</p> <p>(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</p> <p>(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.</p> <p>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.</p>

**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 <sup>6</sup>	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	<p><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.</p> <p><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.</p>	<p><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.<sup>7</sup></p> <p><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</p>	<p><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.</p>

<sup>6</sup>The 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. <sup>7</sup>IDEA 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 <sup>6</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
		<p>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.</p> <p><u>§ 303.401 Confidentiality and opportunity to examine records.</u></p> <p>(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.</p> <p>(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,</p>	

Confidentiality	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>6</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
		<p>in accordance with the protections under [FERPA] in 20 U.S.C.</p> <p><u>1232g and 34 CFR part 99.</u></p> <p>Each State must have procedures in effect to ensure that—</p> <p>(1) Participating agencies (including the lead agency and EIS providers) comply with the part C confidentiality procedures in §§ 303.401 through 303.417; and</p> <p>...</p> <p>(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—</p> <p>(d) Is contained in early intervention records collected, used, or maintained under this part by the lead agency or an EIS provider; and</p> <p>(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.</p>	

**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 <sup>8</sup>	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	<p><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</p>	<p><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.</p> <p><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.</p>	<p><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.</p>

<sup>8</sup>The 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 <sup>8</sup>	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	<p><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.</p>	<p><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;<sup>9</sup></p>	<p><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</p>

<sup>9</sup> § 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

Consent	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>8</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
		<p><u>Opt-Out Policy Exception:</u> <u>§ 303.401 Confidentiality and opportunity to examine records.</u></p> <p>(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</p>	<p>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,</p>



Consent	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 3008	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
		<p>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).</p>	<p>administering student aid programs, or improving instruction;</p> <p>(7) To accrediting organizations to carry out their accrediting functions;</p> <p>(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;</p> <p>(9) To comply with a judicial order or a lawfully issued subpoena;</p> <p>(10) To appropriate parties in connection with a health or safety emergency;</p> <p>(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</p> <p>(12) To the parent of a student who is not an eligible student or to the student.</p>

**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 to 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 <sup>10</sup>	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	<p><u>§ 300.613 Access rights.</u></p> <p>(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.</p> <p>(b) The right to inspect and review education records under this section includes—</p> <p>(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;</p> <p>(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</p> <p>(3) The right to have a representative of the parent inspect and review the records.</p>	<p><u>§ 303.405 Access rights.</u></p> <p>(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.</p> <p>(b) The right to inspect and review early intervention records under this section includes—</p> <p>(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;</p> <p>(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</p>	<p><u>§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?</u></p> <p>(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—</p> <p>(1) Any educational agency or institution; and</p> <p>(2) Any State educational agency (SEA) and its components.</p> <p>(i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.</p> <p>(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.</p> <p>(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.</p>

<sup>10</sup>The 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.

Inspection and Review	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>10</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	<p>(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.</p>	<p>(3) The right to have a representative of the parent inspect and review the early intervention records.</p> <p>(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.</p> <p><u>§ 303.401 Confidentiality and opportunity to examine records.</u></p> <p>(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.</p>	<p>(c) The educational agency or institution, or SEA or its component shall respond to reasonable requests for explanations and interpretations of the records.</p> <p>(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—</p> <p>(1) Provide the parent or eligible student with a copy of the records requested; or</p> <p>(2) Make other arrangements for the parent or eligible student to inspect and review the requested records.</p> <p>(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.</p> <p>(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.</p> <p><u>§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?</u></p> <p>(c) The following parties may inspect the record relating to each student:</p> <p>(1) The parent or eligible student.</p>

Inspection and Review	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>10</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
			<p>(2) The school official or his or her assistants who are responsible for the custody of the records.</p> <p>(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.</p>
Fees for Records	<p><u>§ 300.617 Fees.</u></p> <p>(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.</p>	<p><u>§ 303.409 Fees for records.</u></p> <p>(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.</p> <p>(b) A participating agency may not charge a fee to search for or to retrieve information under this part.</p> <p>(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.</p>	<p><u>§ 99.11 May an educational agency or institution charge a fee for copies of education records?</u></p> <p>(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.</p> <p>(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.</p>
Amendment of Record at Parent's Request	<p><u>§ 300.618 Amendment of records at parent's request.</u></p> <p>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</p>	<p><u>§ 303.410 Amendment of records at a parent's request.</u></p> <p>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</p>	<p><u>§ 99.20 How can a parent or eligible student request amendment of the student's education records?</u></p> <p>(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</p>

Inspection and Review	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>10</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	<p>maintains the information to amend the information.</p> <p>(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.</p>	<p>that maintains the information amend the information.</p> <p>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.</p>	<p>ask the educational agency or institution to amend the record.</p> <p>(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.</p> <p>(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.</p>
Opportunity for Hearing	<p><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.</p>	<p><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).</p>	<p><u>§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?</u></p> <p>(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.</p>
Result of Hearing	<p><u>§ 300.620 Result of hearing.</u></p> <p>(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the</p>	<p><u>§ 303.412 Result of hearing.</u></p> <p>(a) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in</p>	<p><u>§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?</u></p>

Inspection and Review	<u>IDEA PART B</u> <u>20 U.S.C. 1400 and 34 CFR</u> <u>Part 300</u>	<u>IDEA PART C</u> <u>20 U.S.C. 1400 and 34 CFR</u> <u>Part 303</u>	<u>FERPA</u> <u>20 U.S.C. 1232g and 34 CFR</u> <u>Part 99</u>
	<p>privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.</p> <p>(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.</p> <p>(c) Any explanation placed in the records of the child under this section must—</p> <p>(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</p> <p>(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.</p>	<p>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.</p> <p>(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.</p> <p>(c) Any explanation placed in the early intervention records of the child under this section must—</p> <p>(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</p> <p>(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.</p>	<p>(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:</p> <p>(i) Amend the record accordingly; and</p> <p>(ii) Inform the parent or eligible student of the amendment in writing.</p> <p>(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.</p> <p>(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:</p> <p>(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and</p> <p>(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.</p>

Inspection and Review	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>10</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
Hearing Procedures	<p><u>§ 300.621 Hearing procedures.</u> A hearing held under § 300.619 must be conducted according to the procedures in 34 CFR 99.22.</p>	<p><u>§ 303.413 Hearing procedures.</u> A hearing held under § 303.411 must be conducted according to the procedures under 34 CFR 99.22.</p>	<p><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:</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>



**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 <sup>11</sup>	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	<p><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.</p>	<p><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.</p>	<p><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</p>



Retention of Records	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>11</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
			<p>(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.</p> <p>(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:</p> <p>(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</p> <p>(ii) The parties to whom the agency or institution disclosed the information.</p> <p>(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:</p> <p>(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</p> <p>(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</p>

<sup>11</sup>The 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.

Retention of Records	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>11</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
			<p>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:</p> <p>(d) An educational agency or institution that has not recorded the further disclosures under paragraph (b)(1) of this section; or</p> <p>(e) Another State or local educational authority or Federal official or agency listed in § 99.31(a)(3).</p> <p>(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.</p> <p>(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.</p> <p>...</p>

Retention of Records	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>11</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
			(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	§ 300.615 <u>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.	§ 303.407 <u>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.	§ 99.12 <u>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	§ 300.616 <u>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.	§ 303.408 <u>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	§ 300.623 <u>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	§ 303.415 <u>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 <sup>11</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	<p>confidentiality of any personally identifiable information.</p> <p>(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.</p> <p>(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.</p>	<p>(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.</p> <p>(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.</p> <p>(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.</p>	
Destruction of Information	<p><u>§ 300.611 Definitions.</u></p> <p>(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.</p> <p><u>§ 300.624 Destruction of information.</u></p> <p>(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.</p> <p>(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</p>	<p><u>§ 303.403 Definitions.</u></p> <p>(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.</p> <p><u>§ 303.416 Destruction of information.</u></p> <p>(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.</p> <p>(b) Subject to paragraph (a) of this section, the information must be destroyed at the</p>	<p>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).</p> <p>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).</p>

Retention of Records	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>11</sup>	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.	

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:** 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.

Procedural Safeguards	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>12</sup>	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	<p><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.</p> <p><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.</p>	<p><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.</p> <p><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.</p>	
Notice to Parents	<p><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</p>	<p><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</p>	<p><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.</p>

Procedural Safeguards	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 300 <sup>12</sup>	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
	<p>of the various population groups in the State;</p> <p>(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;</p> <p>(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</p> <p>(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.</p> <p>(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.</p>	<p>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;</p> <p>(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</p> <p>(d) A description of the extent that the notice is provided in the native languages of the various population groups in the State.</p>	<p>(2) The notice must inform parents or eligible students that they have the right to—</p> <p>(i) Inspect and review the student's education records;</p> <p>(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;</p> <p>(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</p> <p>(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.</p> <p>(3) The notice must include all of the following:</p> <p>(i) The procedure for exercising the right to inspect and review education records.</p> <p>(ii) The procedure for requesting amendment of records under § 99.20.</p> <p>(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.</p> <p>(b) An educational agency or institution may provide this notice by any means that</p>

Procedural Safeguards	IDEA PART B 20 U.S.C. 1400 and 34 CFR Part 30012	IDEA PART C 20 U.S.C. 1400 and 34 CFR Part 303	FERPA 20 U.S.C. 1232g and 34 CFR Part 99
			<p>are reasonably likely to inform the parents or eligible students of their rights.</p> <p>(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.</p> <p>(2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.</p>

<sup>12</sup>The 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.



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:** 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.

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	<p><u>§ 300.151 Adoption of State complaint procedures.</u></p> <p>(a) General. Each SEA [State educational agency] must adopt written procedures for—</p> <p>(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 300.153 by—</p> <p>(i) Providing for the filing of a complaint with the SEA; and</p> <p>(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</p> <p>(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.</p>	<p><u>§ 303.432 Adoption of State complaint procedures.</u></p> <p>(a) General. Each lead agency must adopt written procedures for—</p> <p>(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</p> <p>(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&amp;A) agencies, and other appropriate entities, the State procedures under §§ 303.432 through 303.434.</p> <p>(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</p>	

<sup>13</sup>The 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
	<p>(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—</p> <p>(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</p> <p>(2) Appropriate future provision of services for all children with disabilities.</p>	<p>authority under part C of the Act [IDEA], must address—</p> <p>(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</p> <p>(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.</p>	
Minimum Procedures	<p><u>§ 300.152 Minimum State complaint procedures.</u></p> <p>(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—</p> <p>(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;</p> <p>(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;</p> <p>(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—</p> <p>(i) At the discretion of the public agency, a proposal to resolve the complaint; and</p>	<p><u>§ 303.433 Minimum State complaint procedures.</u></p> <p>(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—</p> <p>(1) Carry out an independent on-site investigation, if the lead agency determines that an investigation is necessary;</p> <p>(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;</p> <p>(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—</p> <p>(i) At the discretion of the lead agency, a proposal to resolve the complaint; and</p>	

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
	<p>(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 300.506;</p> <p>(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</p> <p>(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—</p> <p>(i) Findings of fact and conclusions; and</p> <p>(ii) The reasons for the SEA's final decision.</p> <p>(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must—</p> <p>(1) Permit an extension of the time limit under paragraph (a) of this section only if—</p> <p>(i) Exceptional circumstances exist with respect to a particular complaint; or</p> <p>(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</p>	<p>(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;</p> <p>(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</p> <p>(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—</p> <p>(i) Findings of fact and conclusions; and</p> <p>(ii) The reasons for the lead agency's final decision.</p> <p>(b) Time extension; final decision; implementation. The lead agency's procedures described in paragraph (a) of this section also must—</p> <p>(1) Permit an extension of the time limit under paragraph (a) of this section only if—</p> <p>(i) Exceptional circumstances exist with respect to a particular complaint; or</p> <p>(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</p> <p>(2) Include procedures for effective implementation of the lead agency's final decision, if needed, including—</p>	

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
	<p>(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—</p> <p>(i) Technical assistance activities;</p> <p>(ii) Negotiations; and</p> <p>(iii) Corrective actions to achieve compliance.</p> <p>(c) Complaints filed under this section and due process hearings under § 300.507 or §300.530 through 300.532.</p> <p>(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.</p> <p>(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—</p> <p>(i) The due process hearing decision is binding on that issue; and</p> <p>(ii) The SEA must inform the complainant to that effect.</p> <p>(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.</p>	<p>(i) Technical assistance activities;</p> <p>(ii) Negotiations; and</p> <p>(iii) Corrective actions to achieve compliance.</p> <p>(c) Complaints filed under this section and due process hearings under § 303.430(d).</p> <p>(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.</p> <p>(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—</p> <p>(i) The due process hearing decision is binding on that issue; and</p> <p>(ii) The lead agency must inform the complainant to that effect.</p> <p>(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.</p>	

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	<p><u>§ 300.153 Filing a complaint.</u></p> <p>(a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152.</p> <p>(b) The complaint must include—</p> <p>(1) A statement that a public agency has violated a requirement of Part B of the Act [IDEA] or of this part;</p> <p>(2) The facts on which the statement is based;</p> <p>(3) The signature and contact information for the complainant; and</p> <p>(4) If alleging violations with respect to a specific child—</p> <p>(i) The name and address of the residence of the child;</p> <p>(ii) The name of the school the child is attending;</p> <p>(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;</p> <p>(iv) A description of the nature of the problem of the child, including facts relating to the problem; and</p> <p>(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.</p>	<p><u>§ 303.434 Filing a complaint.</u></p> <p>(a) An organization or individual may file a signed written complaint under the procedures described in §§ 303.432 and 303.433.</p> <p>(b) The complaint must include—</p> <p>(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];</p> <p>(2) The facts on which the statement is based;</p> <p>(3) The signature and contact information for the complainant; and</p> <p>(4) If alleging violations with respect to a specific child—</p> <p>(i) The name and address of the residence of the child;</p> <p>(ii) The name of the EIS provider serving the child;</p> <p>(iii) A description of the nature of the problem of the child, including facts relating to the problem; and</p> <p>(iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.</p>	<p><u>§ 99.64 What is the investigation procedure?</u></p> <p>(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.</p>

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	<p><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.</p>	<p><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.</p>	<p><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.</p>
Who Gets Complaint?	<p><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.</p> <p>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 <a href="#">IDEA Part B regulation in 34 CFR § 300.506</a> and <a href="#">IDEA Part C regulation in 34 CFR § 303.431</a>. For due process hearings, see <a href="#">IDEA Part B regulations in 34 CFR §§ 300.518 through 300.518</a> and <a href="#">IDEA Part C regulations referenced in 34 CFR § 303.430</a>.</p>	<p><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.</p> <p>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 <a href="#">IDEA Part B regulation in 34 CFR § 300.506</a> and <a href="#">IDEA Part C regulation in 34 CFR § 303.431</a>. For due process hearings, see <a href="#">IDEA Part B regulations in 34 CFR §§ 300.507 through 300.518</a> and <a href="#">IDEA Part C regulations referenced in 34 CFR § 303.430</a>.</p>	<p><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.</p>

