

§ 303.403

Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1442)

§ 303.403 Definitions.

The following definitions apply to §§ 303.402 through 303.417 in addition to the definition of personally identifiable information in § 303.29 and disclosure in 34 CFR 99.3:

(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.

(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 and the regulations in this part.

(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 and the regulations in this part with respect to a particular child. A participating agency includes the lead agency and EIS 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 program) or private entities (such as private insurance companies) that act solely as funding sources for part C services.

(Authority: 20 U.S.C. 1221e-3, 1417(c), 1435(a)(5), 1439(a)(2), 1442)

§ 303.404 Notice to parents.

The lead agency must give notice when a child is referred under part C of the Act that is adequate to fully inform parents about the requirements in § 303.402, including—

(a) 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;

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(b) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;

(c) A description of all the rights of parents and children regarding this information, including their rights under the part C confidentiality provisions in §§ 303.401 through 303.417; and

(d) A description of the extent that the notice is provided in the native languages of the various population groups in the State.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1442)

§ 303.405 Access rights.

(a) Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to §§ 303.430(d) and 303.435 through 303.439, and in no case more than 10 days after the request has been made.

(b) The right to inspect and review early intervention records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;

(2) The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the early intervention records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters