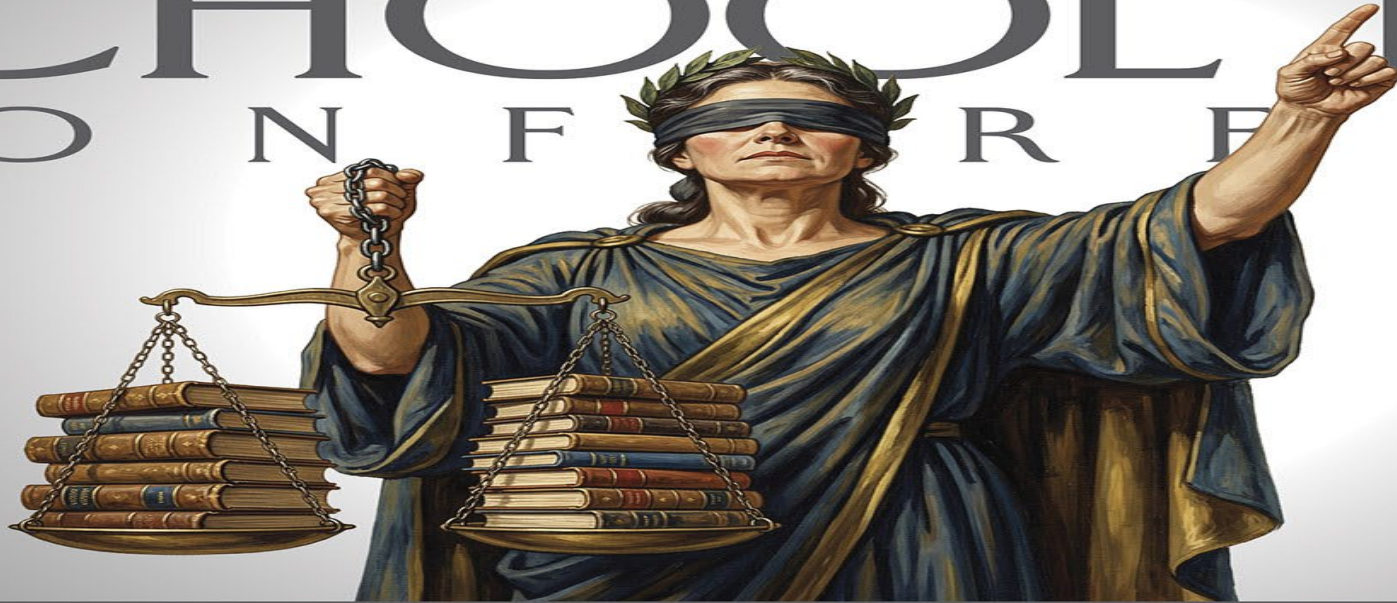


SOUTH CAROLINA SCHOOL BOARDS ASSOCIATION

SCHOOL LAW

CONFERENCE



AUG. 29-30, 2026 • GREENVILLE, S.C.

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SOUTH CAROLINA
DEPARTMENT OF EDUCATION



Special Education 2026

Did anything new happen this year???



Executive Branch Focus for 2026

- Dismantling the U.S. Department of Education (Education Department).
- Transferring the administration and oversight of education to the states.
- Eliminating programs that promote diversity, equity, and inclusion (DEI). (A lawsuit challenging 2025 guidance against DEI programs issued by the Education Department was closed after the Department confirmed it abandoned the February 14, 2025, guidance that threatened to withhold federal funding if public schools did not cease DEI efforts.)
- Reducing liability, even where practices merely "tend" to cause harm, and barring what is considered as affirmative action, or the increased promotion of participation in public programs for groups previously identified as being subjected to discrimination.



U.S. Department of Education Announces Additional Ed-Flex Approvals - Press Release August 21, 2026

Today, the U.S. Department of Education announced the approval of Arizona, Nevada, and South Carolina's Ed-Flex applications.

“Ed-Flex allows states to waive certain federal requirements that could hinder local efforts to improve education. Under this authority, state educational agencies (SEAs) can waive select statutory or regulatory requirements for districts and schools without first having to submit those waivers to the U.S. Department of Education for review and approval. For example, Ed-Flex states can allow districts flexibility on how to spend their Student Support and Academic Enrichment funds, releasing them from rigid spending caps.”

<https://ed.sc.gov/newsroom/ed-flex-application/>



Congressional Focus for 2026

- Proposed amendments that seek to clarify and expand services for students with complex communication needs and severe behavioral challenges.
- Increased use of assistive technology (AT) and artificial intelligence (AI) to increase personalized learning experiences, and to adapt curriculum content.
- Heightened focus on post-secondary transition services, preparing students with disabilities for successful post-secondary education, employment, and independent living. Expanded programs aimed at developing vocational skills, self-advocacy, and daily living skills integrated more seamlessly into individualized education programs (IEPs). The goal is to ensure that students are not only academically prepared but equipped with the life skills necessary for a fulfilling adult life.





Federal Reorganization

The U.S. Department of Education (Education Department) entered into fourteen interagency agreements, splitting K-12 programming among six federal agencies.



Interagency Agreements

U.S. Department of Health and Human Services (HHS) – Administrative Transfer

- HHS will provide administrative services to the Education Department in managing and overseeing grants for early intervention services (EIS) and special education. The Education Department will manage and lead programs currently under its Office of Special Education and Rehabilitative Services (OSERS), including coordination of policy documents, technical assistance (TA) and stakeholder outreach.
- HHS will take a role in administering family engagement and student support programs.
- HHS will oversee the work of the affiliated National Committee on Foreign Medical Education and Accreditation.

U.S. Department of Justice (DOJ) – Enforcement Transfer

- DOJ will work with the Education Department's Office for Civil Rights (OCR) to hold schools accountable for compliance with federal civil rights laws.
- DOJ will partner with the Education Department to coordinate federal privacy rights compliance activities, inform education agencies and institutions on student privacy rights obligations, and investigate and remedy violations.
- DOJ will provide TA in the Training and Advisory Services program at the request of school boards and other government agencies relative to the desegregate public schools.



Interagency Agreements (cont.)

U.S. Department of (DOL)

- DOL will help administer certain elementary and secondary education programs funded under the Elementary and Secondary Education Act, including programming for low-income school districts, homeless youth, migrant students, academic supports, afterschool programs, districts receiving Impact Aid and other activities.
- DOL will have a greater role in administering the Postsecondary Education Partnership, which is aimed at coordinating postsecondary education and workforce development programs.
- DOL will have a greater role in administering adult education and family literacy programs funded under Title II of the Workforce Innovation and Opportunity Act and Career and Technical Education programs funded by the Carl D. Perkins Career and Technical Education Act.

U.S. Department of Treasury (Treasury Department)

- The Treasury Department will manage the federal student loan portfolio and “assume operational responsibility” for collecting on defaulted student loans.
- The Treasury Department will eventually administer the Free Application for Federal Student Aid.

U.S. Department of Interior

- The Interior Department will have a greater role in administering Indian Education programs relating to elementary and secondary education, higher education, career and technical education and vocational rehabilitation.



What Did NOT Change under the Individuals with Disabilities Education Act (IDEA)?

- No changes have been made to the requirements in the IDEA relative to the identification, evaluation, placement, or the provision of a free appropriate public education (FAPE).
- IEPs are still written, implemented, and enforced at the school-district level, exactly as before. Your school district is still responsible for the delivery of special education and related services.
- The South Carolina Department of Education (SCDE) is still responsible for general supervision, which includes overseeing the IDEA dispute resolution systems. The HHS will monitor state compliance with the IDEA and issue annual determinations that grade each state's special education performance.



Federal IDEA Monitoring and Compliance

Key Compliance Issues:

1. Child Find Violations: Failure to identify and evaluate eligible students
2. Least Restrictive Environment (LRE) Implementation: Inadequate LRE practices relative to justification for placement determinations, data to support placement changes, and schedules for return to less restrictive settings
3. Data Collection: Insufficient tracking and reporting systems
4. Transition Services: Gaps in post-secondary preparation and lack of growth in outcomes

Other Concerns:

1. IEP Development and Implementation
2. Progress Monitoring: Regular monitoring of progress toward IEP goals, lack of valid and reliable data, not reviewing and adjusting goals in a timely manner
3. Dispute Resolution Systems
4. Lack of Appropriately Certified Personnel



General Supervision

Monitoring and Improvement

1.1 The Education Department's Office of Special Education Program (OSEP) finds that the State does not have a general supervision system that is reasonably designed to identify noncompliance with all IDEA Part B requirements in a timely manner as required under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.

Specifically:

- a. The State is not consistently issuing its written notifications of noncompliance (i.e., findings) to its local educational agencies (LEAs), generally, within three months of the State's identification of noncompliance.
- b. The State only identifies noncompliance with IDEA Part B requirements included in the State Performance Plan/Annual Performance Report (SPP/APR) indicators, rather than all IDEA Part B requirements. Solely relying on an LEA's performance on SPP/APR indicators does not constitute a reasonably designed general supervision system.



All Issues of Noncompliance Must be Identified and Evidence of Correction Must Be Provided by the LEA

c. The State does not include in the finding to its LEAs all of the information to ensure proper notice and promote timely correction of noncompliance, such as the statutory or regulatory IDEA requirement(s) with which the LEA is in noncompliance; a description of the quantitative and/or qualitative data (i.e., information, supporting the State's conclusion that there is noncompliance); and the timeline for submission of a corrective action plan or evidence of correction.

****The State must have evidence of the verification of the correction of systemic and individual noncompliance.**



Federal Requirements Related to General Supervision

- States cannot ignore credible noncompliance allegations outside formal monitoring. Sources of credible allegations:
 - Media
 - Reports from the public through calls or correspondence
 - Concerns about systemic issues of noncompliance as a result of dispute resolution systems
- States must monitor each LEA/EIS program within six-year cycle
- Three-month deadline for issuing noncompliance findings that are the result of credible allegations or concerns about systemic issues of noncompliance
- States must verify correction of ALL individual cases, not just subsets



Expectation for Quality Assurance Monitoring

1. File Compliance Review: Random sampling of student records
2. Service Delivery Observations: Classroom and therapy sessions
3. Stakeholder Interviews: Students, parents, and staff
4. Data Analysis: Progress and outcome indicators
5. Corrective Action Planning: Address identified issues



Staffing Failures Are Creating Barriers to Education

- The Education Department advised that it is more than aware that a national special education staffing crisis is creating findings of noncompliance for state and local educational agencies (LEA) and creating gaps in classrooms across the country. However, the rights afforded to children with disabilities on paper mean nothing without qualified people to implement these rights.
- Example of identified issue of noncompliance:
 - A special education classroom ran for nearly two full years staffed primarily by teaching assistants without qualified, licensed oversight.
 - Finding: This was found to be a systemic failure that exposed students with disabilities to unqualified instruction and clear violations of the standards IDEA exists to uphold.

Teaching assistants are valuable members of any team. They are not replacements for licensed special education teachers. When there is no qualified educator in the room, IEPs cannot be implemented with fidelity, data cannot be collected appropriately, and students lose access to the specialized instruction they are legally entitled to receive. These are real barriers to education for the students who already face the most significant obstacles.



What Did NOT Change under Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA)?

- Section 504 Plans are still written, implemented, and enforced at the school-district level, exactly as before.
- Section 504 complaints, which allege discrimination against a child because of a disability or other violation of ADA, are still filed with the Education Department's OCR, which for the time being, remains housed at the Education Department.
- Compliance with, and the enforcement of, Section 504 and the ADA, however, will fall under the OCR and DOJ.



Concerns Regarding the Enforcement of Section 504 and the ADA

- The IDEA, Section 504, and the Family Educational Rights and Privacy Act (FERPA) statutes are unchanged. Eligibility, FAPE, and the procedural safeguards under each law still apply. Congress would have to change the law.
- However, the Government Accountability Office (GAO) data from the OCR reports that during the period-of-time in 2025 when the federal government implemented its reduction in force (RIF), the OCR received more than 9,000 complaints of alleged discrimination between March 11 and September. In addition to closing 7 of the 12 OCR offices, the OCR resolved more than 7,000 of those complaints. 90 percent of these complaint were resolved through dismissals.
- The lawsuit, *Pro Publica Inc. v. U.S. Department of Education*, No. 1:26-cv-01576 (S.D.N.Y. 02/25/26), concerns a media request for updated information on the number of OCR complaints filed and the resolution of complaints.





Federal Guidance

**Are OCR and the DOJ Backing Off on
Disability Rights Enforcement?**



People With Disabilities Don't Have a Right To Community-Based Services

- Earlier this year, the Department of Justice (DOJ) brought a case against the state of Florida alleging widespread violations of the civil rights of children with significant disabilities. The 11th Circuit Court of Appeals upheld a 2023 order from a lower court earlier this year requiring the state to take a number of steps to improve community-based care for children with severe disabilities.
- In June 2026, under the direction of the President, the DOJ, Office of Legal Counsel issued a [39-page memo](#) stating that neither the ADA nor Section 504 “require states to treat mentally disabled patients in the most integrated setting appropriate to their needs.”



Olmstead v. L.C., 527 U.S. 581 (1999) – Related Memorandum

- On June 18, 2026, the DOJ issued an advisory opinion about the ADA and Section 504. The memorandum does not mention special education, but advocates and mental health organizations believe this memorandum may have ripple effects on the special education community.
 - The memo contradicts established interpretations of Olmstead v. L.C., a landmark 1999 Supreme Court decision on the rights of people with mental disabilities.
 - The Supreme Court found “states are required to provide community-based treatment for persons with mental disabilities” if certain conditions are met. Even the Justice Department noted in the memo that its new view of Olmstead “is out of step with the common understanding of that decision within the federal courts.”
-



Federal Guidance v. Federal and State Laws

- While the memo does not alter the law itself, it is the official position of the current United States government and federal officials.
- As a result, the DOJ has notified the appeals court that it has changed its stance and has pulled out of the Florida and other cases.
- This guidance does not negate the least restrictive environment (LRE) requirement under the IDEA.
- Additionally, S.C. has provisions in state law requiring the return of children in state facilities to their communities and the promotion of community education by the South Carolina Department of Education (SCDE) to address health, education, social services, recreation, and cultural needs of members of communities in the State.



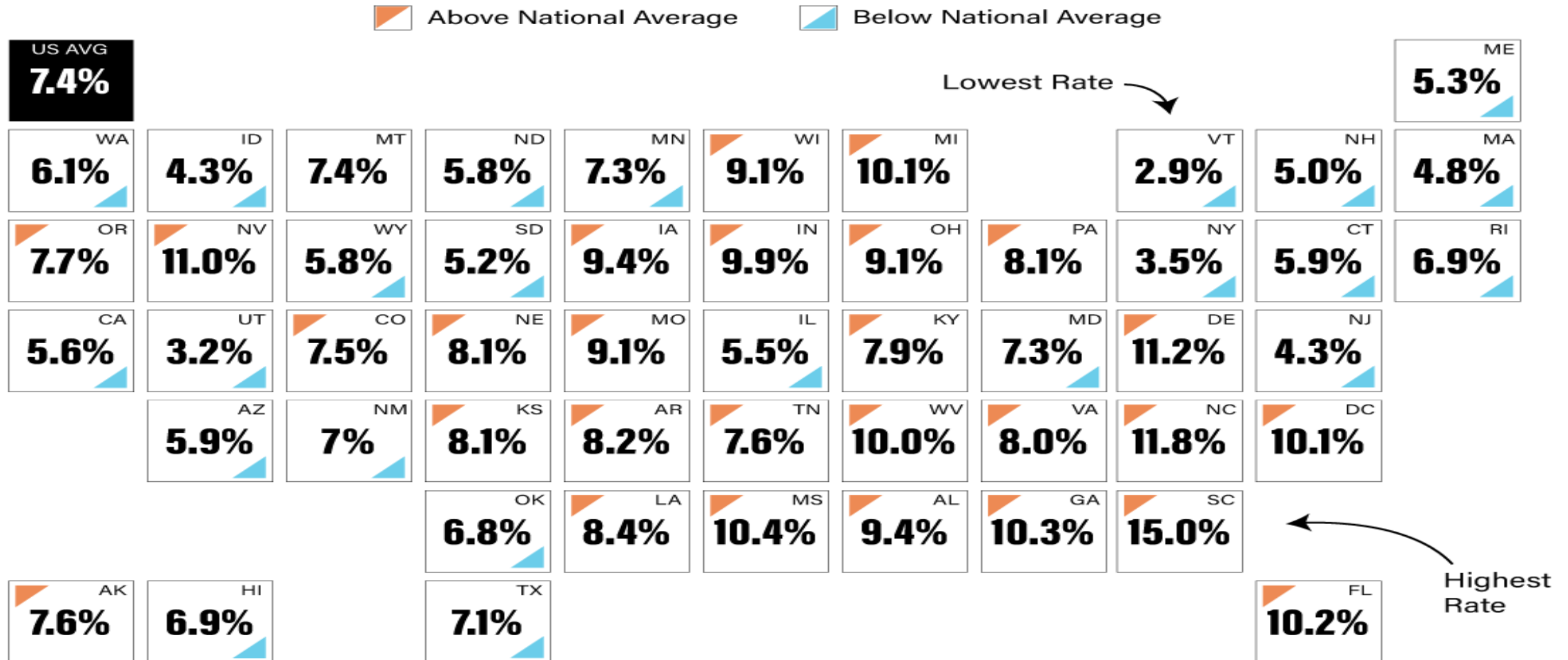
Disproportionality

- The IDEA currently requires states to collect and analyze data to identify districts with significant disproportionality in special education identification, placement, or discipline. 34 C.F.R § 300.646.
- In July 2026, the Department announced intends to amend the 2016 IDEA regulations that established a standard methodology states must use to determine whether significant disproportionality based on race and ethnicity is occurring in states.
- The Department must set specific programmatic requirements on how states are required to comply with Section 618(d)(2) of the IDEA statute. The Department announced it will release proposed rules in August 2026, but more details are still unknown.



Analysis by The 74 of 2022-23 IDEA data

Rate of Suspensions for Students with Disabilities, by State



Guidance on Pupil Discipline and Compliance with Title VI - Office for Civil Rights (August 18, 2026)

- Recent Rule Changes from the DOJ and DOL
 - A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.



Education Department's Removal of Consideration of Disparate Impact

- “This guidance makes clear that neither Title VI nor the Constitution requires the use of race in student discipline and that the use or consideration of race in student discipline violates Title VI and the Constitution absent truly extraordinary circumstances that satisfy strict scrutiny. There is nothing inherently unlawful with a school adopting discipline policies with mandatory punishments, discipline standards that give schools flexibility in enforcing discipline policies, or discipline standards that require a teacher's or a school administrator's use of discretion.”
- According to new guidance from the Education Department's OCR, the use of race to identify discipline disparities is no longer an allowable practice for schools.



What Does This Look Like in Terms of an OCR Investigation?

- On August 18, 2026, the OCR also issued a press release announcing it is investigating Fayetteville Public Schools in Arkansas.
- The reason, according to OCR, is that teachers allegedly "were directed to take students' racial identities into account when issuing discipline as part of an effort to bring about 'restorative justice' to address the disproportionality of discipline on students of color."
- Superintendent John Mulford says the district notice of the investigation roughly two hours before the Education Department publicly named Fayetteville as a target in its national release.
- Milwaukee Public Schools reports it also received notice that it is under investigation, but states a specific reason was not provided.



U.S. Department of Education OCR Opens Disability Discrimination Investigation into Texas School District –

Press Release – May 8, 2026

- Public schools are required – to the maximum extent appropriate – to ensure that children with disabilities are educated alongside their nondisabled peers and to follow specific procedures when making placement decisions about how and where children with disabilities are educated.
- The OCR opened an investigation into the Houston Independent School District (the District) in Houston, Texas to determine whether the District is violating Section 504 and Title II of the ADA by not following these requirements and are thereby discriminating against students with disabilities.



LRE

- The District is allegedly centralizing certain special education services and proposing to separate students with disabilities from the larger student population beginning in the 2026-27 school year, despite parental concerns that their children should be in general education classrooms where their social skills improve more significantly around their peers. Parents have also expressed concerns that longer transportation times to the proposed specialty schools would be challenging for children with medical and behavioral needs.
- “Schools cannot exclude students with disabilities simply because of their disability status. Placement decisions must be made individually, based on each student’s needs, rather than by blanket policies that segregate students by disability category,” said Assistant Secretary for Civil Rights Kimberly Richey. “The allegations described here are alarming.”



OCR Complaint – Frederick County Public Schools

(June 15, 2026)

- Based on the evidence collected to date, OCR has concerns regarding whether the District denied Student A a FAPE when Teacher A responded in a manner that exacerbated Student A's dysregulation when she repeatedly took his hood off his head, which Student A uses to self regulate, and then physically held Student A's body and arms even after the Classroom Teacher told her to stop.
- OCR is concerned that the District did not consider whether this conduct constituted harassment based on disability and whether School staff responded appropriately. In addition, OCR is concerned that School staff who were responsible for supervising Student A were not aware of Student A's Section 504 plan and did not understand how to use appropriate deescalation techniques when he became dysregulated per his Section 504 plan, which were part of the services needed to provide a FAPE.
- Lastly, OCR is concerned that the Section 504 team failed to consider whether Student A was denied a FAPE because of the incident and whether Student A was in need of compensatory or other services such as counseling to address his increased dysregulation, emotional outbursts, and elopement that may have been caused by the incident.



What is the Impact of the Interagency Agreements on FERPA?

- In June 2026, the Education Department announced the "Student Privacy Protection Partnership," an interagency agreement with the DOJ. Under this agreement, DOJ will be responsible for reviewing "the investigation, processing, review, and adjudication of complaints of alleged privacy rights violations," including alleged violations of the Pupil Protection Rights Act (PPRA).
- The DOJ will now review complaints alleging privacy violations, conduct necessary investigations, and recommend potential resolutions. The Education Department will continue to perform the management and leadership of SPPO and will have "final authority over the resolution of matters," including final determinations regarding enforcement decisions, programs, policies, practices, and personnel decisions.



Enforcement

- The FERPA regulations at 34 C.F.R. 99.66; and 34 C.F.R. 99.67 and Part E of the General Education Provisions Act provides for the following enforcement actions:
 1. Withhold further payments under any applicable program.
 2. Issue a complaint to compel compliance through a cease-and-desist order.
 3. Terminate eligibility to receive funding under any applicable program.
- The IDEA regulations at 34 C.F.R § 300.623 includes requirements that:
 1. Each participating agency must protect the confidentiality of personally identifiable information (PII) at collection, storage, disclosure, and destruction stages.
 2. One official at each participating agency must assume responsibility for ensuring the confidentiality of any PII.
 3. All persons collecting or using PII must receive training or instruction regarding the State's policies and procedures under §300.123; 34 CFR part 99.
 4. 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 PII.



Photos And Videos May Qualify As Education Records

- To meet the definition of an "education record" a photo or video must be directly related to a student and maintained by the school district or educational agency.
- A photo or video should be considered "directly related" to a student if:
 - The educational agency uses the photo or video for disciplinary actions or other official purposes involving the student;
 - The photo or video depicts an activity that:
 - Resulted or may result in the use of the photo or video for disciplinary actions or other official purposes.
 - Shows a student violating local, state, or federal law.
 - Shows a student getting injured, attacked, victimized, ill, or having a health emergency.
 - The individual taking the photo or video intends to make a specific student the focus of the photo or video; or
 - The audio or visual content of the photo or video otherwise contains PII contained in a student's education records.



Frequently Asked Questions on Photos and Videos under FERPA (FPCO 04/19/18)

- If redaction or segregation of an education record of multiple students can be reasonably accomplished without destroying the meaning of the education record, can educational agencies and institutions charge parents or eligible students for the costs of the redaction or segregation?
- Can an educational agency charge for copies of a video?
- If a video is an education record for multiple students, can the parent of one of the students (or the eligible student) receive a copy of the video without the consent of the parents of the other students?



What Fees are Allowable?

- Under the FERPA, if an educational agency offers online instruction, recordings of virtual class lessons may qualify as education records subject to parental inspection requests or copies for a fee.
- An educational agency may charge a fee for copies of education records, but the educational agency must waive the fees when the imposition of a charge would effectively prevent the parent from exercising the right to review and inspect the records. 34 C.F.R. 99.11(a).
- However, FERPA does not permit educational agencies to charge parents a fee to search for or to retrieve a student's education records. 34 C.F.R. 99.11(b).
- The IDEA also allows educational agencies to charge a fee for copies of records "if the fee does not effectively prevent the parents from exercising their right to inspect and retrieve those records." 34 C.F.R § 300.617(a).



Directly Related v. Not Directly Related

- A photo or video should not be considered directly related to a student if the student's image is incidental or captured only as part of the background, or if a student is shown participating in school activities that are open to the public and without a specific focus on any individual.
 - Examples of situations that may cause a video to be an education record:
 - A school surveillance video showing two students fighting in a hallway, used as part of a disciplinary action, is directly related to the students fighting.
 - A classroom video that shows a student having a seizure is directly related to that student because the depicted health emergency becomes the focus of the video.
 - If a school maintains a close-up photo of two or three students playing basketball with a general view of student spectators in the background, the photo is directly related to the basketball players because they are the focus of the photo, but it is not directly related to the students pictured in the background. Schools often designate photos or videos of students participating in public events (e.g., sporting events, concerts, theater performances, etc.) as directory information.
-



FERPA and Dual Enrollment

- In August 2026 the SPPD reiterated its guidance regarding students enrolled in both high school and a postsecondary institution, receiving high school credit for successfully completing college coursework
- In a situation where a student is enrolled in both a high school and a postsecondary institution, the two schools may exchange information on that student. If the student is under 18, the parents still retain the rights under FERPA at the high school and may inspect and review any records sent by the postsecondary institution to the high school. Additionally, the postsecondary institution may disclose PII from the student's education records to the parents, without the consent of the eligible student, if the student is a dependent for tax purposes under the IRS rules.
- <https://studentprivacy.ed.gov/dual-enrollment/>



Other Trending FERPA Issues

- Data breaches – Incident Response
 - Preparation
 - Identification
 - Containment
 - Eradication
 - Recovery
 - Lessons Learned
- Data Requests
 - Meta Data
 - Unstripped – If linked to a student (such as digital behavioral tracking, device logs, or timestamps) is protected as part of a student's education record if it contains PII or can trace a student's identity.
 - Stripped (De- identified) – If stripped of all direct and indirect personal identifiers is generally exempt from FERPA restrictions.
- Artificial Intelligence (AI)



Notice of Proposed Rulemaking Related to FERPA

Expected in September 2026

- Strengthening protections for student data collected and used by AI-powered educational platforms by amending the FERPA to update, clarify, and improve the current regulations by clarifying the definition of education record. The Department states it intends to govern non-consensual disclosure of personally identifiable information (PII) in education records to third parties (including commercial vendors), disclosures in response to law enforcement warrants or judicial subpoenas, and the complaint and investigation procedures and remedies that apply to the Department's enforcement of FERPA.
- Conveying the stance that good intentions do not excuse a violation of the IDEA's confidentiality provisions. As such, LEAs must take steps to prevent administrative or technical errors from resulting in unauthorized disclosures.
- Providing an updated version of the FERPA *Model Notice for Directory Information*. The updated notice may help ensure parents are properly informed about the types of directory information that may be disclosed and their right to opt-out of disclosure.



Possible Examples of Directory Information

- Student's name.
- Address.
- Telephone listing.
- Electronic mail address.
- Photograph.
- Date and place of birth.
- Major field of study.
- Dates of attendance.
- Grade level.
- Participation in officially recognized activities and sports.
- Weight and height of members of athletic teams.
- Degrees, honors, and awards received.
- The most recent educational agency or institution attended.
- Student ID number, user ID, or other unique personal identifier used to communicate in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.
- A student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.



Parental Notice

- The SPPO states in the model notice that an LEA may, but isn't required to, include all the preceding examples in its directory information notice.
- Nonetheless, districts should inform parents that directory information may be included in school publications, such as a playbill, the yearbook, honor roll, graduation programs, and sports activity sheets, the notice indicated.
- LEAs are required to provide notice of the right to opt out of the disclosure of directory information.
- A "parent" can include a natural parent, guardian, or person acting as a parent, he said. An eligible child is a student age 18 and older.



Requests to Amend Education Records

- Parents have the right under FERPA to request the amendment of a student's education records. 34 C.F.R 99.20 through 34 C.F.R. 99.22.
- Any parent who believes that his child's records contain information that is "inaccurate, misleading, or in violation of the privacy rights of the student" may ask the district to amend the record or ask for a hearing to correct or amend the records.
- The IDEA also affords parents the right to amend education records that are inaccurate, misleading, or otherwise in violation of the student's privacy rights. Generally, the IDEA's provisions governing the amendment of education records track the amendment rules and requirements under FERPA. The right to request amendment does not apply to files and documents that fall outside the definition of "education records" under FERPA.
- Nothing in FERPA requires record amendment hearings to be conducted in accordance with the formal rules of evidence pertaining to judicial proceedings. The adoption of any rules governing admission of evidence is a matter of state or local discretion.



FERPA v. Freedom of Information Act (FOIA)

- FERPA exists for two primary reasons: 1) to protect the student's confidentiality, and 2) to provide parents with the right to access their child's educational records.
- FOIA is the broad right of the public at large to know things, such as how the government operates. FOIA captures broader information. If it's not an education record under FERPA, then it could be a record under FOIA.
- Staff emails can be subject to disclosure under FERPA if they are centrally maintained in some sort of educational cloud storage. Analyze whether the intent is to maintain the email as a part of the student's education record. Although some staff emails discuss matters related to a student, it's important to remember that emails that aren't centrally maintained aren't education records under FERPA.
- If the email is maintained by the educational agency, but not in the student's education record, the email may still be accessible under FOIA as a public record.



FERPA vs. IDEA

FERPA

- Educational agencies must provide access to educational records within a reasonable amount of time and at least within 45 calendar days after the request. 34 C.F.R. 99.10(b).
- Both custodial and noncustodial parents the right to access their children's education records and the right to consent to the release of those records. This is true unless a court order or state law explicitly eliminates those rights. *Letter to Anonymous* (FPCO 2017).
- The right to review and inspect education records is personal to the parent. This means the district is not required to allow the parent to assign or delegate a representative -- such as an attorney, parent advocate, friend, or relation -- to review records on her behalf. *See Letter to Longest* (OSEP 1988); and *Letter to Segura* (FPCO 2012).



IDEA

- Educational agencies must comply with a parent's inspection or review request: 1) without unnecessary delay; 2) before any IEP meeting, resolution session, or due process hearing; and 3) in no case more than 45 calendar days after the request is made.
- For students with disabilities the IDEA grants a designated representative the right to inspect a student's records on behalf of the student's parents. 34 C.F.R. § 300.613(b)(3).
- *In re: Student With a Disability* the conclusion was that a district did not violate the IDEA by requiring a signed release before turning over the student's records to the parent's representative.



Notice of Proposed Rulemaking Related to the PPRA Expected in August 2026

- The PPRA seeks to ensure that schools obtain written parental consent before students participate in any survey, analysis, or evaluation that reveals information concerning certain sensitive subjects. The law also ensures that schools make instructional materials, including teacher manuals, films, supplementary materials) available for inspection by parents if those materials will be used in connection with any survey, analysis, or evaluation in which their children participate.
- LEAs that receive funds under any Education Department-sponsored program must develop and adopt policies in consultation with parents regarding the PPRA.



LEAs Must Obtain Prior Written Consent Prior to Administering Surveys Regarding:

- Political affiliations;
- Mental and psychological problems of the student or the student's family;
- Sexual behavior or attitudes;
- Illegal, antisocial, self-incriminating, or demeaning behavior;
- Critical appraisals of student's family members;
- Religious practices, affiliations, or beliefs of the student or student's parent (note that the regulations do not include this category, but the statute does);
- Privileged or similar relationships recognized by law, such as those with physicians; or
- Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program).



U.S. Department of Education Finds Burlington Public Schools Violated Federal Parental Rights Laws by Ignoring Parent Requests to Opt Children Out of Inappropriate Survey - Press Release - July 29, 2026

- The U.S. Department of Education's SPPO determined that Burlington Public Schools (District) in Massachusetts violated the PPRA by requiring student participation in a survey containing sensitive, sexually explicit questions after parents expressly requested that their children not partake.
- The SPPO found the District ignored parents' requests to opt their children out of a survey that asked students as young as 7th graders explicit questions about sexual encounters, drug and alcohol use, and their so-called "gender identity," a clear violation of the PPRA and parents' authority to shape the moral education of their children.



Disability Rights Texas v. Klein Independent School District (ISD) (August 2026) - How Does FERPA Apply?

- Days after a former Klein ISD classroom aide was arrested on felony charges for allegedly injuring a student, additional concerns surfaced regarding special education classroom safety and district transparency.
- According to court filings, when organization advocates attempted to inspect classrooms at Benfer Elementary, district officials unlawfully blocked independent advocates from entering campuses to monitor special education classrooms for potential abuse and neglect. The Klein ISD police issued criminal trespass warnings under threat of arrest.
- Klein ISD denies violating federal law, contending in court filings and official statements that its local visitor policies require administrative oversight to maintain campus safety and the protection of student privacy.





**Keep Your Hands (and other body parts) to
Yourself and on the Steering Wheel**



S.C. Code Ann. § 56-5-3890

Cell Phones

- It is unlawful for a person to use a wireless electronic communication device to compose, send, or read a text-based communication while operating a motor vehicle on the public streets and highways of this State.
- Even a hands-free device can be a distraction.



Settlement Reached after Deadly South Carolina School District Bus Crash

- In February 2025, a settlement of \$1,525,000 was reached following the deadly school bus crash that killed a father of three in 2019.
- The crash happened on September 9, 2019, when a school bus crossed over the center line striking a car head-on and killing a Woodruff, South Carolina pastor.
- The school district's bus driver was on his phone scrolling Facebook at the time of the crash, records showed.
- On December 11, 2023, the bus driver pleaded guilty to involuntary manslaughter in Laurens County General Sessions Court.



S.C. Code Ann. § 16-3-755

Inappropriate Relationships

- It is illegal for any “person affiliated with a public or private secondary school in an official capacity,” including bus drivers, to engage in a sexual relationship with a student.
- If the student is 16 or 17 years old, the violation is a felony. If the student is 18 years old, the violation is a misdemeanor or a felony depending on the supervisory authority over the student.



Abuse and Lack of Supervision

- Families have filed lawsuits against school districts in South Carolina and the South Carolina Department of Education (SCDE) following instances of children being sexually assaulted, left unattended for hours on school buses, or properly supervised while riding the bus.
- These cases usually allege negligence, failure to train staff, and/or failure to have support staff on school buses to appropriately monitor students and drivers.





Transporting Students with Disabilities

What Are the Requirements?



Transportation Includes

34 C.F.R. § 300.24(b)(15)

1. Travel to, from, and between schools;
2. Travel in and around school buildings; and
3. Specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.



Transportation – School Buses

- Transporting Students with Disabilities
 - IDEA
 - Section 504
 - Title II of the ADA
- Sharing student information with transportation personnel
 - FERPA
- Impact of late arrivals and shortened school days
- Attendants on buses



Students With Specialized Transportation Needs

- Separate Transportation
 - The school district provides the separate transportation
 - The school district contracts with a third-party provider to provide transportation
 - The school district contracts with the parent to provide transportation
- Wheelchair Accessible Transportation
 - Field Trips
 - Extracurricular Activities
- Securement Devices
 - Students who lack upper body strength
 - Students with missing limbs



Specialized Transportation Needs

Adult Education Assistance (AEA)

- Problem behaviors
- Impact of the student's disability – student's size, strength, other needs

Specialized Healthcare Needs

- Oxygen
- Medically Fragile

Door-to-door transportation

- Runner
- Vulnerability

Assistive Devices

- Communication Devices





Transportation

Ripped From the Headlines



The District Fails to Provide Transportation for Students with Disabilities

- Parents and guardians of children with disabilities living in the District of Columbia, along with the Arc of the United States, filed a class action lawsuit on March 7, 2024, against DC's Office of the State Superintendent of Education (OSSE) for failing to provide safe, reliable and effective transportation to and from schools for children with disabilities, thereby denying students equal access to their education and unnecessarily segregating them from their peers.
- The lawsuit alleges that late arrivals, missed pickups, and inconsistent service have disrupted students' access to education and, in some cases, affected their health and well-being. Students arrive at school hungry, soiled, having missed medication, and tired, but sometimes they don't arrive at all.
- In February 2026, A D.C. Superior Court judge ruled the class action can move forward. The case was first filed by six parents. The case has since expanded to include nearly 4,000 students.



South Carolina Lowcountry Student Misses School Over Transportation

- A South Carolina mother says her son has missed the first eight days of school because the school district has not yet been able to provide the specialized transportation he needs. Students returned to class on August 12, this student, who has Down syndrome and Autism, has not yet started the school year.
- The student requires specialized transportation to safely get to and from school. His mother says that service is necessary because she has seizures and cannot drive him to school herself.
- The mother says she has been in contact with the school district since the start of the school year. She says she was initially told the delay was due to staffing shortages. She later learned the bus also needs a specialized harness to safely secure him during transportation. The mother reports school leaders told her the harness is expected to arrive Friday, with transportation expected to resume Monday.



Other Parents in the Same South Carolina Lowcountry District Also Report School Bus Delays

- A mother of four reports she has called the school district eight times. She has four children at three schools and reported dropping them off herself is not realistic, especially when both she and her husband work.
- The parents want their 9-year-old with developmental delays to ride with his siblings, so he does not feel like there is something different about him and feels included in everyday activities. However, because of the delays, the family asked the school district if their son could return to specialized transportation for more consistency and routine. The mother reports the school district said it could not justify that switch unless there is proof of regression or lost learning time.
- The mother reports we made therapy appointment for 3:00 because the bus is supposed to drop our son off at 2:30. We can't do that anymore. Now we have to go pick them up on those days to take him to his therapies."
- The school district says a bus driver shortage and unexpected call-outs are behind the delays. The school started the year with 27 bus driver vacancies.



OCR Complaint - Apache Junction Unified School District - January 17, 2025

- According to spreadsheets that the District provided, as of December 2024, 116 District students at the five schools received special transportation home from school in the afternoon.
- The District's narrative response to OCR acknowledged that starting on the first day of SY 2024-25 (July 17, 2024), and until November 13, 2024 (a total of 73 school days), all five schools "had the buses for students with disabilities leaving earlier than the general education bus routes." The narrative indicated impacted students at left five minutes early, and impacted students at the elementary schools left 15 minutes early.
- In a letter dated November 14, 2024, the District's superintendent wrote to OCR that until November 13, 2024, "special education students at all schools were being dismissed prior to the end of the school day."



It Wasn't Me!

- The District explained to OCR that principals at the schools had requested of the Transportation Department the early release “in an effort to ensure that students with disabilities would not be affected by the larger, chaotic dismissal of each larger campus.”
- The OCR noted that impacted students missed approximately 365 to 1,095 minutes of time in school as a result of the District sending them home early.
- OCR investigated whether the time students missed included time that the students would have received special education or related services, and whether this time missed otherwise interfered with their receipt of a FAPE, the District entered into an Agreement.



You Be The Judge

Question

"In my district, students with disabilities are sent home from school early - 30 minutes to an hour earlier than 'regular education' students. This doesn't seem right. When I asked about this, I was told, "All special education students are released early - that's the rule."

Is this legal?

Answer

No. When your school districts state, "All special education students are released early - that's the rule," they are discriminating against these children and violating the law.



OCR Complaint- Early Dismissal

In their complaint, parents alleged the Virginia Beach City Public Schools (VBCPS) discriminated against students with disabilities. Excerpts from the complaint read:

- Students with disabilities were routinely dismissed from school before the end of the instructional day, required to use separate bus loading and unloading areas, arrived to school late in the morning, rode segregated buses, and endured unreasonably lengthy bus rides.
- Students with disabilities who are dismissed before the end of the school day were given no meaningful opportunity to makeup the instruction or benefits they have been denied due to early dismissal.
- Consistent with School Board policy, nondisabled students receive a minimum of 6.5 hours of instructional time per day. In violation of this same School Board policy, students with disabilities are guaranteed only 5.5 hours.



OCR Investigations - FERPA

- The OCR will investigate allegations involving the lack of training of bus drivers and aides. *See, e.g., Prescott (AZ) Unified Sch. Dist.*, 29 IDELR 69 (bus drivers and aides were provided with classroom and hands-on training in the proper methods of securing wheelchairs); and *West Genesee (NY) Cent. Sch. Dist.*, 115 LRP 17584 (finding a district violated Section 504 when it failed to train a bus driver on a student's diabetes plan).
- State directors of special education must ensure that communication between districts and transportation providers exists so that the providers are well-informed and well-trained to provide safe and appropriate student transportation.
Memorandum to State Dirs. of Spec. Educ., (United States Department of Education, Office of Special Education Programs).



Administration of Medication

- The OCR has consistently ruled that school bus drivers must be aware of each student with a disability who rides his or her school bus, of provisions in the student's IEP or 504 plan relevant to transportation, of any behavior plan that may exist, and of relevant medical information, including medication a student may be taking.
- For example, drivers should receive notice that a student on the bus has diabetes, drivers should be trained to recognize symptoms of hypoglycemia and hyperglycemia, extra supplies for students may need to be available during school bus rides and field trips, and drivers need to know which students are allowed to bring food and drink on board the bus due to medical needs.





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