

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

Policies and Procedures Under the Family Educational Rights and Privacy Act of 1974¹ (Revised November 1, 2000)

The University of North Carolina at Chapel Hill has adopted the following policies and procedures in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Sec. 1232g (as amended). It is the policy of the University that its students be accorded the full legal rights provided them under FERPA. Currently enrolled students are notified annually of these rights by means of statements that are distributed to all professional school students and published in all University catalogs and the Directory of Classes. Throughout this document the numbers in the margin refer to federal FERPA regulations (as revised 1995). These regulations contain narrow exceptions and specific rules for certain special situations that are not always spelled out in the general policy. Therefore, in dealing with specific FERPA questions, individuals should refer to the FERPA regulations appended to this policy document.

I. The Student's Right to Inspect His/Her Education Records

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| A. Any individual who is, or has been, in attendance at UNC-CH has the right to inspect and review his/her education records. "Education records" are those records directly related to a student that are maintained by an educational institution. The term does not include: | 99.10
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| 1. Records that are in the sole possession of their maker and are not revealed to anyone else except a temporary substitute; | |
| 2. Records created and maintained by the University Police for law enforcement purposes; | 99.8 |
| 3. Records relating solely to an employee of UNC-CH in his/her capacity as an employee that are not available for any other purposes (however, records relating to a UNC-CH student, who is employed as a result of his/her status as a student, are education records); | |
| 4. Student medical records created, maintained, and/or used by a medical professional or paraprofessional only in connection with provision of medical treatment to the student, that are not disclosed to anyone other than the individuals providing the treatment; ² | |

5. Records that contain only information relating to a person after s/he was no longer a student, such as alumni records.
6. Records maintained in connection with a student's application for admission to a UNC-CH School or program in which s/he is not enrolled, unless the student is accepted and attends that School or program. 99.5
- B. A student is not permitted to inspect the following records: 99.12
1. Financial records and statements of his/her parents;
 2. Confidential letters and statements of recommendation that were placed in his/her education records before January 1, 1975 if they are used only for the purposes for which they were intended; and
 3. Confidential letters and statements of recommendation concerning admission to an educational institution, an application for employment, or receipt of an honor that were placed in his/her education records after January 1, 1975 where the student has waived (in writing) his/her right to inspect those letters and statements.³
 4. If the student's education records contain information on another student, s/he may only inspect his/her own information.
- C. A student who wishes to inspect his/her education records must file a written request to inspect them with the individual who has custody of the records. In some cases the student will be able to review the records immediately while, in other cases, a certain amount of time will be needed to assemble the records for inspection, but the student will not be required to wait more than 45 days after the date of the request before being allowed to inspect his/her education records. A student who exercises the right to review his/her education records is also entitled to a response from the institution to reasonable requests for explanations and interpretations of those records. If a student has asked to inspect or review his/her education records, none of those records shall be destroyed until the student's request to inspect or review has been honored. 99.6
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D. Normally the University will provide a student with a copy of his/her education records upon request. A student will always be provided with a copy of his/her education records where failure to provide such a copy would effectively prevent exercise of the right to inspect and review education records. The office providing the copies may charge five (5) cents for each copy but will not charge a fee to search for or retrieve the records in question.

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The University may deny a request for a copy of education records if the student is easily able to come to the office that maintains the records and inspect them in person and if the records are so voluminous that copying them would be unreasonably burdensome for the University employees charged with the task.

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A student may not receive an official copy of his/her academic transcript if there is a "hold" on that record because of an unpaid account, nor under normal circumstances may s/he receive an official or certified-true copy of a document which exists elsewhere (for example, a photocopied transcript from the student's previous educational institution when a copy of the original transcript may be obtained from that institution).⁴

E. Education records are maintained by many University offices and officials. The University offices that are most likely to maintain education records are listed below:

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1. Academic departments and schools;
2. Alumni Office;
3. Athletic Department;
4. College of Arts and Sciences;
5. Department of Housing and Residential Education;
6. Division of Continuing Education;
7. Faculty members in their roles as advisers and teachers;
8. General College;
9. Graduate School;

10. Human Resources Employee Records Department
(for students' teaching assistant, research assistant, and graduate assistant records);
11. Office of Scholarships and Student Aid
(also for work-study student records);
12. Summer School Office;
13. Office of the University Registrar;
14. Office of the Vice Chancellor for Student Affairs;
15. School of Dentistry;
16. School of Law;
17. School of Medicine;
18. Student Health Services;
19. University administrative and business offices;
20. University Career Services;
21. Office of Student Accounts and University Receivables;
22. Veterans Services.

Any University office or official may have an education record about a student, including offices not listed above. A student is in the best position to determine which offices are likely to have his/her education records. For example, if the student never enrolled in a Chemistry course, it is unlikely that the Department of Chemistry would have any of his/her education records.

A complete listing of University offices, faculty, and staff, including addresses and telephone numbers, appears in the UNC-CH Campus Directory. Requests to inspect education records should be addressed to individual faculty members, Deans of schools, Directors of University offices, or Chairs of academic departments, as appropriate.

His/Her Education Records

- A. A student who believes that information contained in his/her education records is inaccurate or misleading or violates his/her privacy rights may discuss these concerns informally with the custodian of the records in question and may request that they be amended. If the custodian of the records agrees with the request for amendment, the records will be amended. If not, the custodian will notify the student within a reasonable period of time that the records will not be amended and will inform the student of his/her right to a formal hearing. Cases involving enrolled students will be heard by the Student Grievance Committee. Cases involving former students will be heard administratively by UNC-CH officials.⁵ In lieu of requesting a formal hearing, if the student and the institution agree that an explanatory statement alone is the appropriate remedy, the student has the right to place a statement in his/her education records commenting on the information in question and/or setting forth any reasons for disagreeing with the records custodian's decision not to amend. Any such statement will be maintained as part of the student's education records as long as the record, or the contested portion of the record, is maintained by the University, and the statement will be disclosed to any party to whom the contested portion of the student's education record is disclosed thereafter.
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- B. A student request for a formal hearing must be submitted within six months after the student receives notice from the records custodian that the records will not be amended and that the student has a right to a formal hearing and must be addressed to the Associate University Counsel, CB# 9150, 03 South Building, who will promptly refer it to the appropriate person or panel for hearing. The request for hearing must be in writing and signed by the student and must contain:
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1. a statement that the student is alleging a FERPA violation;
 2. a summary of the evidence and arguments the student would present at a hearing;
 3. the date the student received the above-referenced notice from the records custodian; and
 4. information about the student's attempts to resolve the matter with the records custodian and the results of these attempts.
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- C. A hearing will be held on the matter within a reasonable time after receipt of the student's request, and s/he will be
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given reasonable advance notice of the date, place, and time of the hearing.

D. The student will be afforded a full and fair opportunity to present evidence relevant to the issues raised in the complaint and may be assisted by individuals of the student's choice at his/her own expense, including an attorney.

E. The panel's decision will be based solely on the evidence presented at the hearing and will include a summary of the evidence and the reasons for the decision. The student will be notified in writing of its findings and recommendations within a reasonable period of time after the conclusion of the hearing. If the panel decides the challenged information from the student's education records is inaccurate, misleading or otherwise in violation of the privacy rights of the student, it will recommend that the appropriate University official amend the student's education records accordingly, and that official will inform the student in writing when the amendment has been made.

F. If the panel decides that the challenged information from the student's education records is not inaccurate, misleading or otherwise in violation of the privacy rights of the student, it will inform the student that s/he has the right to place a statement in his/her education records commenting on the information and/or setting forth any reasons for disagreeing with the panel's decision. Any such statement will be maintained and disclosed as set forth in Section II.A. above.

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III. Disclosure of Personally Identifiable Information from a Student's Education Records

A. With certain exceptions, listed in III.C. below, UNC-CH will not disclose personally identifiable⁶ information from a student's education records without the student's prior written consent. To be effective the written consent must be signed and dated by the student and must include:

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1. A specification of the records to be disclosed;
2. The purpose of the disclosure; and
3. The party or class of parties to whom the disclosure may be made.

B. When personally identifiable information is disclosed from a student's education records pursuant to his/her written consent, the student may also, upon request, obtain a copy of the information so disclosed.

C. UNC-CH may disclose personally identifiable information from a student's education records without his/her prior written consent in the following situations: 99.31

1. Disclosure to teachers, officials and employees of UNC-CH, and the Office of General Administration of The University of North Carolina who have a legitimate educational interest in the information. Such officials are deemed to have a "legitimate educational interest" in the information if it is necessary or desirable for them to obtain it in order to carry out their official duties and/or to implement the policies of The University of North Carolina, or if it is in the educational interest of the student in question for such officials to have the information; 99.31(a)(1)

2. Disclosure to officials of another school or school system in which the student seeks or intends to enroll and disclosure to officials of another school or school system in which a currently enrolled UNC-CH student is contemporaneously enrolled.⁷ Upon request the student will be provided with a copy of the education records so transferred, and may have a hearing as set out in Section II above. 99.31(a)(2)
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If the University takes disciplinary action against a student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the University community, it may disclose information about that disciplinary action to teachers and school officials in other schools who have legitimate educational interests in the student's behavior.⁸

3. Disclosure to authorized representatives of (a) the Comptroller General of the United States, (b) the Attorney General of the United States, (c) the U.S. Secretary of Education, or (d) State and local educational authorities in connection with an audit or evaluation of Federal or State supported education programs or for the enforcement of, or 99.31(a)(3)
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compliance with, federal legal requirements relating to such programs;⁹

4. Disclosure in connection with financial aid for which a student has applied or which s/he has received. Information may only be disclosed under this section to determine a student's eligibility for financial aid, to determine the amount of the aid, to determine the conditions for the aid, or to enforce the terms and conditions of the financial aid; 99.31(a)(4)
5. Disclosure to State and local officials to whom information is specifically allowed to be disclosed pursuant to State statute adopted 99.31(a)(5)
 - (a) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and that system's ability to serve effectively the student whose records are released, or
 - (b) after November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and that system's ability to serve effectively, prior to adjudication, the student whose records are released, and if the officials to whom the information is disclosed certify in writing to the University that the information will not be disclosed to any other party without the student's written consent, except as provided under State law;
6. Disclosure to organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction;¹⁰ 99.31(a)(6)
7. Disclosure to accrediting organizations in order to carry out their accrediting functions; 99.31(a)(7)
8. Disclosure to a student's parents, if s/he is their dependent for federal income tax purposes; 99.31(a)(8)
9. Disclosure pursuant to a judicial order or lawfully issued subpoena. UNC-CH will make a reasonable effort to notify the student of the order or subpoena before complying therewith¹¹; 99.31(a)(9)
10. If the University initiates legal action against a student or a student's parent, the University will 99.31(a)(9)

disclose to the court the student's relevant education records in connection with the legal action without a court order or subpoena. If the student or his/her parent initiates legal action against the University, UNC-CH will disclose to the court, without a court order or subpoena, relevant education records in order to defend itself.

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| 11. Disclosure to appropriate parties in a health or safety emergency if the information is necessary to protect the health or safety of the student or others; | 99.31(a)(10)
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| 12. Disclosure to the student him/herself. | 99.31(a)(12) |
| 13. Disclosure of "directory information", which the University defines as: the student's name; address (local and grade/billing address); student e-mail address; telephone listing (local and grade/billing telephone numbers); date and place of birth; major field of study; class (freshman, senior, etc.); enrollment status (full-time, half-time, part-time); person ID number (PID); anticipated graduation date; participation in officially recognized activities and sports; weight and height of members of athletic teams; dates of attendance; degrees and awards received; the most recent previous educational agency or institution attended by the student; and the county, state and/or U.S. territory from which the student entered the University. | 99.31(a)(11)
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Students who do not wish to have some or all directory information made public without their prior consent must notify the Office of the University Registrar (CB #2100, 105 Hanes Hall, The University of North Carolina at Chapel Hill, Chapel Hill, N.C. 27599-2100) of this fact in a signed and dated statement specifying items that are not to be published. This notice must be received by the Office of the University Registrar by the end of the registration period for the semester or session of first enrollment or, after an absence, of re-enrollment. The Office of the University Registrar will honor such notices whenever it receives them, but if a student's notice is not received by the deadline set forth above, it may be impossible to prevent the student's being listed in the Campus Directory. A student's request that any or all of his/her directory information not be disclosed without his/her prior consent will be honored until the student graduates, ceases to attend, or withdraws from the University unless the student notifies the Office of the University Registrar to the contrary in writing.

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14. Disclosure, on request, of the final results¹² of a disciplinary proceeding where a student has allegedly perpetrated a crime of violence or non-forcible sex offense¹³ and, has been found, by that conduct, to have violated University rules or policies. In such a case, the following information will be disclosed: the student's name; the rule or policy that was violated; any essential findings supporting the conclusion that the violation was committed; the disciplinary sanction imposed; the date the sanction was imposed; and the duration of the¹⁴ sanction. The names of victims, witnesses, or other students will not be disclosed without their prior written consent. 99.31(a)(14)

15. Disclosure, on request, to the victim of an alleged crime of violence or non-forcible sex offense¹³ of the final results¹² of the campus disciplinary proceeding against the alleged perpetrator, whether or not the alleged perpetrator was found to have committed the violation charged. The following information will be disclosed: the name of the alleged perpetrator; the rule of policy violated, if any; essential findings supporting the conclusion that the violation was committed; the disciplinary sanction imposed, if any; the date any sanction was imposed and its duration. 99.31(a)(13)

16. When a student under age 21 is found to have violated laws or University policies concerning use or possession of alcohol or a controlled substance, the University reserves the right to disclose this information to the student's parent or guardian.¹⁵ 99.31(a)(15)

D. When personally identifiable information from education records is disclosed to another party, that party may not further disclose the information without the student's prior written consent, UNLESS 99.33

1. (a) The initial disclosure is made with the understanding that the party receiving the information may redisclose it to specified individuals or organizations who meet the requirements of III.C. above, and 99.31

(b) The record of disclosures (see III.E. below) includes the names of the additional parties to 99.32

whom the information may be disclosed and the legitimate interests that each additional party has in obtaining the information.

When the University discloses information to another party (except for disclosures under III.C.8,9,10,12,13,14, and 16) it will inform that party of the requirements set out in this section.

If the Department of Education determines that a party to whom such information was released permitted access to the information in violation of this section, that party may be denied access to information from UNC-CH education records for five years. 99.33

E. Custodians of education records will maintain a record of disclosures of personally identifiable information from each education record. The record of disclosures will be kept with the student's education records and will include names of parties who have requested or obtained personally identifiable information therefrom and the legitimate interest those parties had in obtaining the information. 99.32

The record of disclosures will not include:
(1) disclosures to the student, (2) disclosures to school officials with legitimate educational interests, (3) disclosures pursuant to the student's written consent, (4) disclosures of "directory information" as defined in III.C.13 above or (5) disclosures pursuant to a Federal grand jury's subpoena or other law enforcement subpoenas where the court or other agency issuing the subpoena has ordered the University not to disclose the existence or contents of the subpoena or the information disclosed in response to it.

The record of disclosures may be inspected only by the student, the records custodian and his/her assistants, and school or Federal officials auditing the recordkeeping procedures of UNC-CH.

IV. Limit to FERPA Protection of Education Records

FERPA's protection of personally-identifiable information in a student's education records ends at the time of a student's death.¹⁶ Unless it has information to

⁹ Unless the collection of personally identifiable information is specifically authorized by Federal law, or the student has consented to it in writing, recipients of personally identifiable information under this section must protect it in such a way that students and their families cannot be identified, by anyone except the listed officials, and personally identifiable data must be destroyed when it is no longer needed.

¹⁰ The recipients of personally identifiable information under this section must handle it in such a way that students and their parents cannot be identified therefrom by individuals outside the recipients' organizations, and personally identifiable data must be destroyed when it is no longer needed. If the recipients fail to comply with these requirements, the U.S. Department of Education will order the University to deny them access to information from UNC-CH education records for five years.

¹¹ In the case of a federal grand jury subpoena or any other subpoena issued for a law enforcement purpose, if the court or other issuing agency so orders, the University will not disclose to the student or anyone else the existence or contents of the subpoena or any information furnished in response to the subpoena.

¹² "Final results" is defined as the decision of the initial hearing official or body, regardless of whether the student has filed an appeal of that decision. This provision only applies to final results determined on or after October 7, 1998.

¹³ "Crime of violence" is defined as:

- Arson or attempted arson
- Simple assault
- Aggravated assault
- Intimidation (placing another in reasonable fear of bodily harm through the use of threatening words or other conduct without displaying a weapon or committing a physical attack)
- Burglary
- Negligent manslaughter
- Nonnegligent manslaughter
- Murder
- Destruction/damage/vandalism of property
- Kidnapping/abduction
- Robbery or attempted robbery
- Forcible sex offense

"Non-forcible sex offense" is defined as incest or statutory rape.

¹⁴ Disclosures may only be made if the student is under 21 at the time of disclosure and if the finding of violation occurred on or after October 7, 1998.

¹⁵ Disclosures may only be made if the student is under 21 at the time of disclosure and if the finding of violation occurred on or after October 7, 1998.

¹⁶ As a courtesy to the families of recently-deceased students who were enrolled at the time of death, the University generally will not release information from their education records for one year without the consent of the deceased student's next-of-kin.

**CODE OF FEDERAL REGULATIONS
TITLE 34--EDUCATION
SUBTITLE A--OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION
PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY
SUBPART A--GENERAL**

Current through September 29, 2000; 65 FR 58633

§ 99.1 To which educational agencies or institutions do these regulations apply?

(a) Except as otherwise noted in § 99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if--

(1) The educational institution provides educational services or instruction, or both, to students; or

(2) The educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.

(b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(c) The Secretary considers funds to be made available to an educational agency or institution of funds under one or more of the programs referenced in paragraph (a) of this section--

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(d) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

[61 FR 59295, Nov. 21, 1996; 65 FR 41852, July 6, 2000]

§ 99.2 What is the purpose of these regulations?

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.

(Authority: 20 U.S.C. 1232g)

Note: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.

[61 FR 59295, Nov. 21, 1996]

§ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

Act means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

Attendance includes, but is not limited to:

- (a) Attendance in person or by correspondence; and
- (b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

Dates of attendance.

(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.

(b) The term does not include specific daily records of a student's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

Disciplinary action or proceeding means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

Educational agency or institution means any public or private agency or institution to which this part applies under § 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

Education records.

(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.

(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;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

Eligible student means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

Institution of postsecondary education means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

Parent 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.

(Authority: 20 U.S.C. 1232g)

Party means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

Personally identifiable information includes, but is not limited to:

- (a) The student's name;
- (b) The name of the student's parent or other family member;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number or student number;
- (e) A list of personal characteristics that would make the student's identity easily traceable; or
- (f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

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.

(Authority: 20 U.S.C. 1232g)

Secretary means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

Student, 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.

(Authority: 20 U.S.C. 1232g(a)(6))

[60 FR 3468, Jan. 17, 1995; 60 FR 8563, Feb. 15, 1995; 61 FR 59295, Nov. 21, 1996; 65 FR 41852, July 6, 2000]

§ 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

§ 99.5 What are the rights of students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) An individual who is or has been a student at an educational institution and who applies for admission at another component of that institution does not have rights under this part with respect to records maintained by that other component, including records maintained in connection with the student's application for admission, unless the student is accepted and attends that other component of the institution.

(Authority: 20 U.S.C. 1232g(d))

§ 99.6 [Reserved]

[61 FR 59295, Nov. 21, 1996]

§ 99.7 What must an educational agency or institution include in its annual notification?

(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 and this part.

(2) The notice must inform parents or eligible students that they have the right to--

(i) Inspect and review the student's education records;

(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;

(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

(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 and this part.

(3) The notice must include all of the following:

(i) The procedure for exercising the right to inspect and review education records.

(ii) The procedure for requesting amendment of records under § 99.20.

(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.

(b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

(2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

(Approved by the Office of Management and Budget under control number 1880- 0508)

(Authority: 20 U.S.C. 1232g(e) and (f)).

[53 FR 19368, May 27, 1988; 61 FR 59295, Nov. 21, 1996]

§ 99.8 What provisions apply to records of a law enforcement unit?

(a)(1) 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 non-commissioned security guards, that is officially authorized or designated by that agency or institution to--

(i) 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

(ii) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(b)(1) Records of a law enforcement unit means those records, files, documents, and other materials that are--

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean--

(i) 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

(ii) 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.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of § 99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

(Authority: 20 U.S.C. 1232g(a)(4)(B)(ii))

[60 FR 3469, Jan. 17, 1995; 60 FR 8563, Feb. 15, 1995]

§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(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--

(1) Any educational agency or institution; and

(2) Any State educational agency (SEA) and its components.

(i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.

(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.

(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.

(c) The educational agency or institution, or SEA or its component shall respond to reasonable requests for explanations and interpretations of the records.

(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--

(1) Provide the parent or eligible student with a copy of the records requested; or

(2) Make other arrangements for the parent or eligible student to inspect and review the requested records.

(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.

(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.

(Authority: 20 U.S.C. 1232g(a)(1)(A) and (B))

[61 FR 59296, Nov. 21, 1996]

§ 99.11 May an educational agency or institution charge a fee for copies of education records?

(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.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

§ 99.12 What limitations exist on the right to inspect and review records?

(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.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are:

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if:

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's:

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if:

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall:

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1)(A), (B), (C), and (D))

[61 FR 59296, Nov. 21, 1996]

§ 99.20 How can a parent or eligible student request amendment of the student's education records?

(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 ask the educational agency or institution to amend the record.

(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.

(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.

(Authority: 20 U.S.C. 1232g(a)(2))

[53 FR 19368, May 27, 1988; 61 FR 59296, Nov. 21, 1996]

§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(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.

(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:

- (i) Amend the record accordingly; and
- (ii) Inform the parent or eligible student of the amendment in writing.

(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.

(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:

- (1) Maintain the statement with the contested part of the record for as long as the record is maintained; and
- (2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

[61 FR 59296, Nov. 21, 1996]

§ 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by § 99.21 must meet, at a minimum, the following requirements:

- (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.
- (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.
- (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.
- (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.
- (e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.
- (f) 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.

(Authority: 20 U.S.C. 1232g(a)(2))

§ 99.30 Under what conditions is prior consent required to disclose information?

- (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.

(b) The written consent must:

- (1) Specify the records that may be disclosed;
- (2) State the purpose of the disclosure; and
- (3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section:

- (1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and
- (2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provided the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

[58 FR 3189, Jan. 7, 1993; 58 FR 36871, July 9, 1993]

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of § 99.35, to authorized representatives of--

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The Secretary; or

(iv) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an

individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically--

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of § 99.38.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if:

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(iv) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents, as defined in § 99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with--

(A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(iii)(A) If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

(B) If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in § 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in § 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(13) The disclosure, subject to the requirements in § 99.39, is to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense. The disclosure may only include the final results of the disciplinary proceeding conducted by the institution of postsecondary education with respect to that alleged crime or offense. The institution may disclose the final results of the disciplinary proceeding, regardless of whether the institution concluded a violation was committed.

(14)(i) The disclosure, subject to the requirements in § 99.39, is in connection with a disciplinary proceeding at an institution of postsecondary education. The institution must not disclose the final results of the disciplinary proceeding unless it determines that--

(A) The student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and

(B) With respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies.

(ii) The institution may not disclose the name of any other student, including a victim or witness, without the prior written consent of the other student.

(iii) This section applies only to disciplinary proceedings in which the final results were reached on or after October 7, 1998.

(15)(i) The disclosure is 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 if--

(A) The institution determines that the student has committed a disciplinary violation with respect to that use or possession; and

(B) The student is under the age of 21 at the time of the disclosure to the parent.

(ii) Paragraph (a)(15) of this section does not supersede any provision of State law that prohibits an institution of postsecondary education from disclosing information.

(b) Paragraph (a) of this section does not forbid an educational agency or institution from disclosing, nor

does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11), (13), (14), and (15) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2)(B), (b)(6), (h), and (i))

[53 FR 19368, May 27, 1988; 58 FR 3189, Jan. 7, 1993; 58 FR 36871, July 9, 1993; 61 FR 59296, Nov. 21, 1996; 65 FR 41853, July 6, 2000]

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(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 received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under § 99.33(b), the record of the disclosure required under this section must include:

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under § 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(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.

(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 the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of

the subpoena or the information furnished in response to the subpoena not be disclosed.

(Approved by the Office of Management and Budget under control number 1880- 0508)

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(4)(A))

[61 FR 59296, Nov. 21, 1996]

§ 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

(1) The disclosures meet the requirements of § 99.31; and

(2) The educational agency or institution has complied with the requirements of § 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures made to parents of dependent students under § 99.31(a)(8), to disclosures made pursuant to court orders, lawfully issued subpoenas, or litigation under § 99.31(a)(9), to disclosures of directory information under § 99.31(a)(11), to disclosures made to a parent or student under § 99.31(a)(12), to disclosures made in connection with a disciplinary proceeding under § 99.31(a)(14), or to disclosures made to parents under § 99.31(a)(15).

(d) Except for disclosures under § 99.31(a)(9), (11), and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(e) If this Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of § 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

[61 FR 59297, Nov. 21, 1996; 65 FR 41853, July 6, 2000]

§ 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The annual notification of the agency or institution under § 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

- (2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and
- (3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if--

- (1) The student is enrolled in or receives services from the other agency or institution; and
- (2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

[61 FR 59297, Nov. 21, 1996]

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in § 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must:

- (1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and
- (2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if:

- (1) The parent or eligible student has given written consent for the disclosure under § 99.30; or
- (2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record 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.

(b) Nothing in this Act or this part shall prevent an educational agency or institution from--

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section will be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(1)(l) and (h))

[53 FR 19368, May 27, 1988; 61 FR 59297, Nov. 21, 1996]

§ 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))

§ 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under § 99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the 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.

(Authority: 20 U.S.C. 1232g(b)(1)(J))

[61 FR 59297, Nov. 21, 1996]

§ 99.39 What definitions apply to the nonconsensual disclosure of records by postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or non-forcible sex offenses?

As used in this part:

Alleged perpetrator of a crime of violence is a student who is alleged to have committed acts that would, if proven, constitute any of the following offenses or attempts to commit the following offenses that are defined in appendix A to this part:

Arson

Assault offenses

Burglary

Criminal homicide--manslaughter by negligence

Criminal homicide--murder and nonnegligent manslaughter

Destruction/damage/vandalism of property

Kidnapping/abduction

Robbery

Forcible sex offenses.

Alleged perpetrator of a nonforcible sex offense means a student who is alleged to have committed acts that, if proven, would constitute statutory rape or incest. These offenses are defined in appendix A to this part.

Final results means a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution. The disclosure of final results must include only the name of the student, the violation committed, and any sanction imposed by the institution against the student.

Sanction imposed means a description of the disciplinary action taken by the institution, the date of its imposition, and its duration.

Violation committed means the institutional rules or code sections that were violated and any essential findings supporting the institution's conclusion that the violation was committed.

(Authority: 20 U.S.C. 1232g(b)(6))

[65 FR 41853, July 6, 2000]

§ 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

§ 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g (f) and (g))

§ 99.63 Where are complaints filed?

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: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-4605.

(Authority: 20 U.S.C. 1232g(g))

[58 FR 3189, Jan. 7, 1993; 58 FR 36871, July 9, 1993; 61 FR 59297, Nov. 21, 1996; 65 FR 41854, July 6, 2000]

§ 99.64 What is the complaint procedure?

(a) A complaint filed under § 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(c) A timely complaint is defined as an allegation of a violation of the Act 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.

(Authority: 20 U.S.C. 1232g(f))

[58 FR 3189, Jan. 7, 1993; 58 FR 36871, July 9, 1993; 65 FR 41854, July 6, 2000]

§ 99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under § 99.64(b). The notice to the educational agency or institution--

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of § 99.64.

(Authority: 20 U.S.C. 1232g(g))

[58 FR 3189, Jan. 7, 1993; 58 FR 36871, July 9, 1993]

§ 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section:

- (1) Includes a statement of the specific steps that the agency or institution must take to comply; and
- (2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

§ 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under § 99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act--

- (1) Withhold further payments under any applicable program;
- (2) Issue a complaint to compel compliance through a cease-and-desist order; or
- (3) Terminate eligibility to receive funding under any applicable program.

(b) If, after an investigation under § 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 CFR Part 78 contains the regulations of the Education Appeal Board.)

(Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)

[53 FR 19368, May 27, 1988; 58 FR 3189, Jan. 7, 1993; 58 FR 36871, July 9, 1993]

Appendix A to Part 99--Crimes of Violence Definitions

Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Assault Offenses

An unlawful attack by one person upon another.

Note: By definition there can be no "attempted" assaults, only "completed" assaults.

(a) Aggravated Assault. An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious injury if the crime were successfully completed.)

(b) Simple Assault. An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

(c) Intimidation. To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words or other conduct, or both, but without displaying a weapon or subjecting the victim to actual physical attack.

Note: This offense includes stalking.

Burglary

The unlawful entry into a building or other structure with the intent to commit a felony or a theft.

Criminal Homicide--Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide--Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

Destruction/Damage/Vandalism of Property

To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

Kidnapping/Abduction

The unlawful seizure, transportation, or detention of a person, or any combination of these actions, against his or her will, or of a minor without the consent of his or her custodial parent(s) or legal guardian.

Note: Kidnapping/Abduction includes hostage taking.

Robbery

The taking of, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of a person or persons by force or threat of force or violence or by putting the victim in fear.

Note: Carjackings are robbery offenses where a motor vehicle is taken through force or threat of force.

Sex Offenses, Forcible

Any sexual act directed against another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent.

(a) Forcible Rape (Except "Statutory Rape"). The carnal knowledge of a person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity (or because of his or her youth).

(b) Forcible Sodomy. Oral or anal sexual intercourse with another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

(c) Sexual Assault With An Object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

Note: An "object" or "instrument" is anything used by the offender other than the offender's genitalia. Examples are a finger, bottle, handgun, stick, etc.

(d) Forcible Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

Note: Forcible Fondling includes "Indecent Liberties" and "Child Molesting."

Nonforcible Sex Offenses (Except "Prostitution Offenses")

Unlawful, nonforcible sexual intercourse.

(a) Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(b) Statutory Rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(Authority: 20 U.S.C. 1232g(b)(6) and 18 U.S.C. 16)

[65 FR 41854, July 6, 2000]
