

DOCUMENT RESUME

ED 409 622

EA 028 477

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 TITLE Protecting the Privacy of Student Records. Guidelines for Education Agencies.  
 INSTITUTION Policy Studies Associates, Inc., Washington, DC.; Council of Chief State School Officers, Washington, D.C.  
 SPONS AGENCY National Center for Education Statistics (ED), Washington, DC.  
 REPORT NO NCES-97-527; ISBN-0-16-049118-5  
 PUB DATE Jun 97  
 NOTE 155p.; Prepared for the National Forum on Education Statistics.  
 AVAILABLE FROM U.S. Government Printing Office, Mail Stop: SSOP, Washington, DC 20402-9328.  
 PUB TYPE Guides - Non-Classroom (055)  
 EDRS PRICE MF01/PC07 Plus Postage.  
 DESCRIPTORS Compliance (Legal); \*Confidential Records; \*Confidentiality; Data Collection; Elementary Secondary Education; \*Federal Legislation; Federal Regulation; Higher Education; \*Privacy; State Regulation; \*Student Records

ABSTRACT

Education-agency and school staff are legally and ethically responsible for safeguarding student information. In addition to federal and state laws and regulations, education agencies need policies and procedures to guide their everyday information-maintenance operations. This document provides examples of policies and procedures as well as guidelines for deciding what is needed to ensure the privacy of student information. Section 1 provides an overview of the issues and discusses important concepts and terminology used throughout the document. Section 2 describes federal laws protecting the privacy of students that have implications for the maintenance and release of student data by state and local education agencies. The third section describes appropriate procedures for collecting individual information about students. Section 4 explains the management controls and policies needed to maintain and use data within the agency or school. It also addresses the issue of assessing who in an agency or school has a "legitimate educational interest" in specific information about an individual student. The fifth section describes procedures for providing access to a student's education record by the eligible student or the parent. The final section suggests procedures for handling external requests to release information from individual school records. The appendices contain the text of key federal rules and regulations. A topical index, section summary, an index of commonly asked questions, and 22 exhibits are included. Each section includes references, an overview, commonly asked questions, and guidelines. (LMI)

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ED 409 622

# PROTECTING THE PRIVACY OF STUDENT RECORDS

## *Guidelines for Education Agencies*

National  
Center for  
Education  
Statistics

National  
Forum on  
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Statistics  
1997

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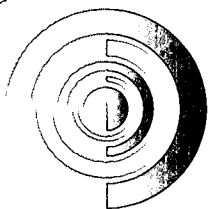
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# PROTECTING THE PRIVACY OF STUDENT RECORDS



## *Guidelines for Education Agencies*

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June 1997

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**Suggested Citation**

U.S. Department of Education. National Center for Education Statistics. *Protecting the Privacy of Student Records*, NCES 97-527, by Oona Cheung, Barbara Clements, and Ellen Pechman. Washington, DC: 1997.

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## Foreword

The Council of Chief State School Officers (CCSSO) and Policy Studies Associates of Washington, D.C., supported the Data Confidentiality Task Force of the National Forum on Education Statistics in the research and development of this document. The effort is funded by the National Center for Education Statistics (NCES) of the U.S. Department of Education. Several departments in the U.S. Department of Education and the Office of Management and Budget contributed to its development.

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Lee Hoffman of NCES has provided invaluable support and advice over the course of the document's development. Carol Sue Fromboluti served as the NCES Project Officer of this project.

The views expressed here do not necessarily reflect the position or policy of the U.S. Department of Education, and no official endorsement by the Department should be inferred.

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## Preface

The primary purpose of this document is to help state and local education agencies and schools develop adequate policies and procedures to protect information about students and their families from improper release, while satisfying the need for school officials to make sound management, instructional, and service decisions.

The National Forum on Education Statistics (NFES)<sup>1</sup> recognized the significance of such security issues and raised concerns about the privacy of student data being collected, used, and released at all levels. In 1994, the Forum completed a report, *Education Data Confidentiality: Two Studies*. The Data Confidentiality Task Force was then established to identify ways to help state education agencies, school districts, and schools ensure the privacy of education records and to clarify the laws that exist for these agencies and the general public.

This document is produced under the Task Force's direction. A companion brochure, *Protecting the Privacy of Student Education Records*, has been developed to help educators and the general public understand the Family Educational Rights and Privacy Act (FERPA). Appendix A contains a copy of the brochure.

NFES is exploring other issues closely related to the privacy of education records. One of them is the security of information technology in education agencies and schools. Guidelines focusing primarily on this area will be published in a separate document in early 1998. In addition, the Forum is examining the issues of interagency data sharing between education and other service agencies at the state and local levels. An issue paper also will be published in early 1998.

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<sup>1</sup> Authorized by the Hawkins-Stafford Education Amendments of 1988 (Public Law 100-297), NCES established a National Cooperative Education Statistics System. This System is intended to produce and maintain—with the cooperation of the states—uniform and comparable data for education policymaking at the federal, state, and local levels. The work of implementing the System is carried out by NFES, an appointed group that meets twice each year to debate and approve the findings and recommendations of its committees.

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## List of Acronyms

CCSSO	Council of Chief State School Officers
CSIS	California Student Information Services
FERPA	Family Educational Rights and Privacy Act
FOIA	Freedom of Information Act
FPCO	Family Policy Compliance Office
IASA	Improving America's Schools Act
IDEA	Individuals with Disabilities Education Act
IEP	individualized education program
NCES	National Center for Education Statistics
NII	National Information Infrastructure
NSLA	National School Lunch Act
OIRA	Office of Information and Regulatory Affairs
OMB	Office of the Management and Budget
PPRA	Protection of Pupil Rights Amendment
PTA	Parent Teacher Association
PTO	Parent Teacher Organization

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## SECTION 1: A Primer for Privacy

### SUGGESTED AUDIENCES:

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- ✓ *State education agency staff*
- ✓ *State or local policymakers*
- ✓ *School district staff*
- ✓ *School administrators or staff*
- ✓ *Program and support services staff*
- ✓ *Technical staff*
- ✓ *Teachers and other school-based support professionals*

### OVERVIEW

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Students and their parents entrust schools with their personal information with the expectation that this information will be used by the schools to serve the needs of the students effectively and efficiently. School districts maintain and use personal information for a variety of educational purposes while students are in school. To protect the privacy of the students and their families, agency and school staff are legally and ethically responsible for safeguarding student information.

Many federal and state laws and regulations, which must be followed, relate to maintaining and releasing student information. However, education agencies need additional policies and procedures to guide their everyday operations to maintain the information. Since agencies vary in how they collect and maintain information about students, the types of policies and procedures needed also will vary. This document provides examples of policies and procedures as well as guidelines for deciding what is needed to ensure the privacy of student information.

Section 1 presents an overview of the principles related to the privacy of student records, explains key concepts, defines important terms, and describes the uses and organization of this document.

### PRINCIPLES AND CONCEPTS

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#### A. Principles Underlying Privacy Protections

To protect the privacy of families whose children are in school, states and the federal government have established strong legal statutes to keep private the information in education records that schools maintain on students. These laws frame data collection procedures, restrict information disclosure, and safeguard the quality of the information that school systems routinely collect and maintain. All education records about students, whether handwritten or computerized, are protected by the same privacy regulations. Education

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**Strong federal statutes protect the privacy rights of students and their families. These statutes encompass education records kept in electronic and paper media.**

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**Agency and school personnel are legally and ethically obliged to safeguard the confidentiality of student data.**

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**To understand the concept of information privacy, you can apply a short set of principles for providing and using personal information.**

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**Federal and state privacy statutes pertaining to students build on the concepts of common law and constitutional provisions that imply privacy guarantees.**

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personnel are responsible for protecting the integrity and accuracy of the information they gather and maintain. Therefore, data managers, their staff, and other agency and school personnel, must become familiar with the laws that ensure the confidentiality of the records as well as the legal concepts underlying those laws.

Education records contain the administrative reports of students' educational progress, along with any information about past or current use of school-related services, such as special education, social work services, or other supplementary educational support. The Family Educational Rights and Privacy Act (FERPA), a federal law, limits who can see an education record without the consent of the student's parent, and it provides for a parent's right to see what is kept in the records. These two basic features have broad implications for the treatment of information about students by teachers, administrators, and researchers.

In addition, schools that participate in a federally assisted school nutrition program have personal information about students' eligibility for free and reduced-price school meals or free milk. These programs have regulations that are more restrictive than FERPA's regarding the disclosure and use of this information. In cases of emergency, school officials can obtain data in education records to help students or their families get the assistance or care they need.

In addition to the everyday use of student information by teachers and administrators, education records are a source of basic data used for administrative purposes and policymaking. Statistical information summarized from education records can be an important resource for monitoring programs and for evaluating the success or failure of education policies. Administrative use of computerized records means that education records are used increasingly farther from their point of origin. As a result, it has become more complicated but no less essential for school officials to be vigilant about protecting the confidentiality of records. Those who work with education records have legal and ethical obligations to observe rigorous procedures for protecting the privacy of the original information and the individuals whose records are involved.

The Information Infrastructure Task Force of the National Information Infrastructure (NII) recently developed a set of principles for providing and using personal information. These principles, summarized in Exhibit 1-1, provide guidance for those who are drafting laws and regulations or creating codes of fair information practices and implementation procedures. The principles apply to both the private and public sectors. The guidelines presented throughout this document are consistent with the NII principles.

## **B. Key Concepts of Privacy Laws and Confidentiality Policies**

Privacy laws lead to establishing regulations that education agencies and schools must follow so that information about children is available only to officials who are authorized to know such information. The laws were passed by the U.S. Congress to ensure parents the right of access to information about their children, while allowing education officials the flexibility they need to use the information in making decisions that serve children well.

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Federal and state privacy statutes pertaining to students in elementary and secondary schools build on concepts of common law and privacy guarantees found in the *U.S. Constitution*. Fundamental to the government's rulemaking about data collection, privacy, and appropriate use are three concepts—notification, disclosure, and informed consent.

**Notification** (according to FERPA) refers to an agency's responsibility to inform parents, guardians, or students who are over eighteen of the legal basis for compiling data and the limited circumstances under which records can be released or disclosed. When school officials collect information about families or students, they must explain the rationale—or “give public notice”—of the reasons the data are being collected.

**Disclosure** refers to access, release, or transfer of personal information about individuals. Privacy laws define appropriate or inappropriate information disclosures or releases. According to FERPA, data about students may be disclosed without parental consent only to school and other education officials who use it to provide educational services or to carry out legally specified administrative and statistical activities. Any instance in which unauthorized individuals see or use private information about students is an inappropriate and often illegal disclosure, unless the parent or the student gives consent or the law makes such access legal.

**Informed consent** involves providing a written account of why personal information is requested and how it will be used. In general, parents should have the option, without penalty, of agreeing or declining to provide the information an education agency or school requests. Certain information, however, is required by schools, and parents must provide the information in order for their children to be enrolled. Parents' agreement must be based on an understandable explanation of how the information will be used. Once a parent's informed consent is given for a particular purpose or set of purposes, the information cannot be “rediscovered”—used by a third party—except as originally indicated. FERPA regulations require that prior consent be given by parents for the disclosure of information to persons other than school officials.

## C. Important Terms

### Education Record

An *education record* is a compilation of records, files, documents, and other materials that contain information directly related to a student and maintained by education agencies or institutions, or by individuals acting on behalf of the agencies. According to FERPA, a 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. An education record, sometimes referred to as a student record, may include a variety of details about a student such as the date of birth, date of enrollment, bus route, immunization history, achievement test scores and grades, enrollment and attendance, awards, degrees achieved, and special education plans and evaluations. Personal notes by teachers or other staff that are not meant to be shared are not part of an education

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**The underlying important concepts include *notification*, *disclosure*, and *informed consent*.**

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**An *education record* is a compilation of records, files, documents, and other materials that contain information directly related to a student and maintained by education agencies or institutions, or by individuals acting on behalf of the agencies.**

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record. A record of a student may be maintained in more than one location within an agency or school (e.g., enrollment record in the school's administrative office and health information in the school health clinic).

Information included in an education record is collected primarily from the student (or family members), teachers, and other school staff. It may also be collected from other sources outside the school, such as health care providers or testing companies. Personal information about students is a vital resource for teachers and school staff in planning responsive education programs and services—designing individual education plans; scheduling students into appropriate classes; planning school bus routes; and completing reports for local, state, and federal authorities. In emergencies, the information is readily available to school officials to assist students and their families. A limited amount of this information, as defined by the school district or the state, makes up a student's permanent records or transcripts.

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**Confidentiality** refers to your obligation not to disclose or transmit information to unauthorized parties.

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**Privacy** reflects an individual's freedom from intrusion.

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**Security** refers to technical procedures that ensure only the authorized and intended parties have access to data.

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**Disclosure** includes permitting access to, revealing, releasing, transferring, disseminating, or otherwise communicating all or any part of any individual record orally, in writing, or by electronic or any other means to any person or entity.

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## Confidentiality

*Confidentiality* refers to your obligation not to disclose or transmit information to unauthorized parties. Confidentiality extends to information about either individuals or organizations. In schools, districts, or state education agencies, that usually means establishing procedures that limit access to information about students or their families. This access extends to the school officials who work directly with the students, agency representatives who serve as evaluators or auditors, or individuals who act on behalf of authorized education officials.

## Privacy

*Privacy* is a uniquely personal right that reflects an individual's freedom from intrusion. Protecting privacy means ensuring that information about individuals is not disclosed without their consent. A student's right of privacy is violated when personal information is disclosed to others without consent, or when he or she is being asked for personal information by others who have no legal basis to do so. While *confidentiality*, defined above, refers to restricting disclosure of information to authorized individuals only, *privacy* refers to protection from personal intrusion.

## Security

*Security* refers to technical procedures that ensure only the authorized and intended parties have access to data.

## Disclosure (or Release)

*Disclosure* includes permitting access to, revealing, releasing, transferring, disseminating, or otherwise communicating all or any part of any individual record orally, in writing, or by electronic or any other means to any person or entity. The terms disclosure and release are used interchangeably in this document. Throughout this document, the information being disclosed or released pertains to students and/or their families.



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## Parent or Eligible Student

FERPA grants parents the rights to review, request amendment to, and release education records. A *parent* means a natural or adoptive parent, a legal guardian, or an individual acting as a parent in the absence of the parent or guardian. These rights transfer to *eligible students* when they reach eighteen or when they attend a postsecondary education institution. However, parents can still have access if the *eligible student* is a dependent for tax purposes. When used in this document, the term parent refers to the person who is given the rights described in FERPA.

## Agency or School

Throughout this document, *agency* or *school* refers to the entity that collects, maintains, uses, and releases information from education records. This entity may be a state education agency, school district, public or private school or institution, intermediate education unit, or an institution to which funds have been available to administer an educational program for students with disabilities or school-to-work programs administered on behalf of an education agency.

## ABOUT THE DOCUMENT

We developed the guidelines presented in this document by using information obtained from a variety of sources and representing the best practices currently used in the relevant subjects. In preparing this document, we reviewed published books and reports, as well as policies and procedures adopted at the national, state, district, and institutional levels.

## Possible Users of This Document

Many members of the education community have access to confidential information. This document addresses the need for the members of the education community to understand their legal responsibilities and to develop procedures to maintain the privacy of student records. Persons who may use the information in this document include:

**State education agency staff** need to understand the legal requirements and implement proper management procedures and controls at the state level when they collect personally identifiable student information. This document can help state education agency staff to identify ways to ensure that data providers and users are informed of their rights and responsibilities when handling personally identifiable as well as aggregate data. State education agency staff also have a responsibility to advise school and school district staff on proper policies and procedures to ensure privacy.

**State or local policymakers** need to understand the legal requirements and identify the areas in which rules, regulations, policies, or guidelines are needed.

**School district staff** who maintain student records or data need to understand the legal requirements of federal and state laws and local regulations that protect the privacy of the records. They must develop proper policies that specify the roles of staff and the steps that are required to make the policies operational.

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**FERPA defines *parent* as a natural or adoptive parent, a legal guardian, or an individual acting as a parent in the absence of the parent or guardian. These rights transfer to eligible students when they reach eighteen or when they attend a postsecondary education institution.**

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**An *agency* or *school* refers to the entity that collects, maintains, uses, and releases information from education records.**

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**School administrators or staff** who maintain files about students in their schools need to know how to handle requests for information about students and how to restrict access to student records. They also need to notify parents or eligible students of their rights under FERPA.

**Program and support services staff** at the district or state level need to understand their rights to see personally identifiable information about students as well as their responsibilities to share information only with appropriate persons.

**Technical staff** need to plan for the appropriate technical configurations to manage the security of the information system effectively.

**Teachers and other school-based support professionals** who receive numerous formal or informal requests from colleagues or outsiders for information about their students need to know that policies are in place to ensure the appropriate maintenance and release of personally identifiable data.

Parents, researchers, and others outside the education community could use this document to learn more about the kinds of safeguards and restrictions that need to be implemented in schools and other places where student data are maintained. However, we have focused the information in this document on education agencies and staff.

Throughout this document, we identify the intended audiences at the beginning of each section. Readers may select the appropriate contents that address their specific interests and needs.

## **Organization and Format of the Document**

We have divided this document into six sections. Sections 2 to 6 identify the intended audience(s) and list commonly asked questions for which detailed answers may be found in the text. The text discusses general guidelines and provides examples of effective practices, sample forms, and references to other sources.

### **Section 1: A Primer for Privacy**

Section 1 provides an overview of the issues and discusses important concepts and terminology used throughout the document. The section also presents the organization and contents of the document.

### **Section 2: Summary of Key Federal Laws**

Section 2 describes federal laws protecting the privacy of students that have implications for the maintenance and release of student data by state and local education agencies. You are encouraged to identify relevant state laws and local regulations that also apply.

### **Section 3: Protecting the Privacy of Individuals during the Data Collection Process**

Section 3 describes appropriate procedures for collecting individual information about students.

### **Section 4: Securing the Privacy of Data Maintained and Used within an Agency**

Section 4 describes the management controls and policies needed to maintain and use data within the agency or school. This section addresses the issue of assessing who in an agency or school has a

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“legitimate educational interest” in specific information about an individual student.

### **Section 5: Providing Parents Access to Their Child’s Records**

Section 5 pertains to procedures for providing access to a student’s education record by the eligible student or the parent.

### **Section 6: Releasing Information Outside an Agency**

Section 6 suggests procedures for handling external requests, including the public, researchers, and other service professionals, to release information from individual student records.

The Appendices contain the text of key federal rules and regulations. The appendices, which immediately follow the text, provide the complete text of key federal rules and regulations discussed in this document. We encourage you to search for and include in this section your states’ laws or statutes that further govern the privacy of education records.

You can find other resources and tools to use and help apply this document the end. The Tools section includes resources to use and help apply this document and contains:

- An abbreviated topical index will help you locate your topics of interest.
- Highlights for each section summarize key points for easy references or for other uses such as training.
- A list of commonly asked questions will guide you to find answers in Sections 2 to 6.

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## EXHIBIT 1-1

# A Summary of *Privacy and the National Information Infrastructure: Principles for Providing and Using Personal Information*<sup>1</sup>

### **I. General Principles for All National Information Infrastructure (NII) Participants**

- A. *Information Privacy Principle*  
Personal information should be acquired, disclosed, and used only in ways that respect an individual's privacy.
- B. *Information Integrity Principle*  
Personal information should not be improperly altered or destroyed.
- C. *Information Quality Principle*  
Personal information should be accurate, timely, complete, and relevant for the purpose for which it is provided and used.

### **II. Principles for Users of Personal Information**

- A. *Acquisition Principle*  
Information users should: 1) assess the impact on privacy in deciding whether to acquire, disclose, or use personal information; and 2) acquire and keep only information reasonably expected to support current or planned activities.
- B. *Notice Principle*  
Information users who collect personal information directly from the individual should provide adequate, relevant information about: 1) why they are collecting the information; 2) what the information is expected to be used for; 3) what steps will be taken to protect its confidentiality, integrity, and quality; 4) the consequences of providing or withholding information; and 5) any rights of redress.
- C. *Protection Principle*  
Information users should use appropriate technical and managerial controls to protect the confidentiality and integrity of personal information.

### *D. Fairness Principle*

Information users should not use personal information in ways that are incompatible with the individual's understanding of how it will be used, unless there is a compelling public interest for such use.

### *E. Education Principle*

Information users should educate themselves and the public about how information privacy can be maintained.

### **III. Principles for Individuals who Provide Personal Information**

#### *A. Awareness Principle*

Individuals should obtain adequate, relevant information about: 1) why the information is being collected; 2) what the information is expected to be used for; 3) what steps will be taken to protect its confidentiality, integrity, and quality; 4) the consequences of providing or withholding information; and 5) any rights of redress.

#### *B. Empowerment Principle*

Individuals should be able to safeguard their own privacy by having: 1) a means to obtain their personal information; 2) a means to correct their personal information that lacks sufficient quality to ensure fairness in its use; 3) the opportunity to use appropriate technical controls, such as encryption, to protect the confidentiality and integrity of communications and transactions; and 4) the opportunity to remain anonymous when appropriate.

#### *C. Redress Principle*

Individuals should, as appropriate, have a means of redress if harmed by an improper disclosure or use of personal information.

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<sup>1</sup> Information Infrastructure Task Force: 1995.

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## References

Information Infrastructure Task Force. 1995. *Privacy and the national information infrastructure: principles for providing and using personal information*. [Paper on line] Available from <[http://ntiaunix.1.ntia.doc.gov:70/0/papers/documents/niiprivprin\\_final.html](http://ntiaunix.1.ntia.doc.gov:70/0/papers/documents/niiprivprin_final.html)>.

National Forum on Education Statistics. 1994. *Education data confidentiality: two studies*. Washington, DC: Government Printing Office.

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## SECTION 2: Summary of Key Federal Laws

### SUGGESTED AUDIENCES:

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- ✓ *State education agency staff*
- ✓ *State or local policymakers*
- ✓ *School district staff*
- ✓ *School administrators or staff*

### OVERVIEW

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Education agency administrators and parents share a common interest in ensuring that personal information about children in elementary and secondary schools is kept confidential. Many are unaware of the protection offered by state and federal laws. In this section, we inform administrators and parents about how federal laws protect information maintained in school and education agency records. The guidelines in this section offer practical information to education agency personnel and policymakers on developing procedures that will work for families and schools.

This material reflects only the broad outline of federal privacy policy requirements. We describe federal policy principles, many of which are supplemented by additional state statutes or local regulations. We caution that our interpretations are not legally binding, and we advise readers to direct specific questions either to local and state legal experts or to the appropriate federal government offices.

### COMMONLY ASKED QUESTIONS

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**Q.** What agencies are subject to federal laws on the privacy of education records?

**A.** *Education agencies and institutions that collect and maintain education records are subject to federal privacy laws if they receive funds from the U.S. Department of Education. If information derives from an education record or is maintained in the record, federal as well as state and local privacy rules apply. See Section 2, Guidelines A.*

**Q.** Do privacy assurances differ across federal education programs?

**A.** *Privacy components of laws are administered by federal agencies other than the U.S. Department of Education, and these may be applicable to programs directed in schools. However, the Family Educational Rights and Privacy Act (FERPA) is a comprehensive law that applies broadly to information collected in public agencies or schools that receive federal education funds. Thus, FERPA applies to information collected and maintained by most public elementary, secondary, and postsecondary education institutions and by some private institutions in this country. See Section 2, Guidelines A.*

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**Q.** Are individuals liable for penalties if they do not adhere to the requirements of FERPA?

**A.** *No, not typically. Institutions receiving funds from the U.S. Department of Education are legally responsible for complying with these laws. Individual liability would depend on state laws and local policies. See Section 2, Guidelines A1.*

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**Q.** What do state and local education agency personnel need to know about federal privacy laws pertaining to education records?

**A.** *Strong federal laws protect the privacy of education records in schools. Individuals who work with education records in agencies or schools are responsible for knowing the privacy regulations that apply to their work. Agency administrators need to understand federal and state laws, as well as local policies, that govern parent access to records and restrict inappropriate disclosure of information about students and their families. See Section 2, Guidelines A and B.*

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**Q.** About which federal student records laws do school district or state education agency administrators need to be informed?

**A.** *FERPA and the Protection of Pupil Rights Amendment (PPRA) are the two major laws governing the protection of education records and student and family privacy. The other key laws with specific federal regulatory requirements pertaining to schools are the National School Lunch Act and the Individuals with Disabilities Education Act. See Section 2, Guidelines B to E.*

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**Q.** What are the FERPA restrictions on matching data from student information files with data from other agency files?

**A.** *FERPA generally prohibits data matches without parent consent except to (1) officials in other schools or school systems where a student intends to enroll; (2) authorized state or federal education representatives; and (3) organizations that are conducting approved studies on behalf of an education agency. Under certain circumstances, school officials can make cooperative data sharing arrangements, but they cannot reveal personally identifiable information. See Section 2, Guidelines B5.*

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**Q.** What are the responsibilities of state education agencies for providing parent or eligible students access to education records?

**A.** *A state education agency must provide parents and eligible students with access to education records the agency maintains. Although these agencies are not required to establish a written policy, they are obligated to honor rights of access and to restrict disclosure of information except to authorized individuals. See Section 2, Guidelines B6.*

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## GUIDELINES

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### **A. Privacy-Related Laws That Apply to Agencies and Schools**

#### **A1. Which education agencies or institutions must adhere to federal education privacy laws?**

Education agencies and institutions that receive funds from the U.S. Department of Education must adhere to federal privacy laws pertaining to education records of students. These generally include public elementary and secondary schools, school districts, intermediate education agencies, and state education agencies or their representatives. Most private and public colleges and universities are also subject to federal privacy laws because they receive federal funds from the U.S. Department of Education. However, because few private elementary and secondary schools receive federal funds directly, they are rarely subject to these privacy restrictions.

State or local education agencies that conduct programs administered by other federal agencies—the U.S. Departments of Agriculture, Health and Human Services, or Labor, for example—may also be required to meet confidentiality provisions of applicable statutes.

#### **A2. Which federal laws directly affect data that education agencies collect and maintain?**

A number of federal laws govern data collections by schools, districts, and state education agencies, and two of those laws apply most broadly: FERPA and PPRA. Exhibits 2-1 and 2-2 contain fact sheets describing FERPA and PPRA. Together, the two laws have far-reaching legal implications for state and local policies and procedures that guide three aspects of education agencies' data collection activities:

- Rights of a parent to review and to seek to amend records administered by state or local education agencies or their representatives
- Procedures by which education records can be released and protected
- Rights of parents to review and, under some circumstances, to provide consent for their child's participation in surveys, analyses, or evaluations that are administered by state or local education agencies or their representatives

Privacy protection under FERPA is generally incorporated into laws authorizing federal education programs. Thus, FERPA and PPRA requirements apply to programs such as Title I, Migrant Education, Safe and Drug Free Schools and Communities, School-to-Work Opportunities, Education of Neglected and Delinquent Youth, Even Start, and Even Start Family Literacy. Similarly, most states include the core privacy protection of FERPA in their education legislation; in many cases they extend and strengthen this protection.

In addition to FERPA and PPRA, other federal laws affect school, district, or state education agency data collection, maintenance, and disclosure procedures. Among them are:

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**Federal privacy laws apply to education agencies, institutions, and schools that receive federal funds from the U.S. Department of Education.**

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**The Family Educational Rights and Privacy Act establishes broad privacy protections for education records.**

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**The Protection of Pupil Rights Amendment gives parents rights to review their child's records.**

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**Other federal laws, such as IDEA, affect data collection, maintenance, and disclosure procedures.**

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- The Individuals with Disabilities Education Act (IDEA), which applies to the education records covered by this law. However, IDEA release and disclosure requirements are substantially identical to those in FERPA.
- The Federal Drug and Alcohol Patient Records Confidentiality Law (42 CFR), which applies to the services and treatment of records pertaining to students who receive assistance from programs administered by the Substance Abuse and Mental Health Services Administration.
- The National School Lunch Act, which restricts the release of eligibility and services information about students and families who participate in the federal free and reduced-price lunch program.
- The Paperwork Reduction Acts of 1980 and 1995, which include rules that restrict what the federal government can ask state and local agencies to collect for the federal government.

Two other federal laws, the Freedom of Information Act (FOIA) of 1966 and the Computer Matching and Privacy Protection Act of 1988 do *not* apply to the education records maintained by schools or state education agencies because they pertain only to data the federal government collects directly from individuals. However, many states have passed FOIA or other privacy laws very much like the federal statutes that may apply to the information schools collect. When agencies or schools establish data policies and procedures, they should consult state statutes on these matters, as well as the federal requirements.

The Federal Policy for the Protection of Human Subjects, administered by sixteen federal departments and agencies, establishes procedures for protecting the rights of individuals—including students and families—who participate in federally sponsored research activities and programs. This statute establishes the preliminary rules researchers must follow when they conduct studies sponsored by federal agencies. Although these regulations may apply to data collections by schools, FERPA establishes additional basic disclosure restrictions that guide the treatment of any information collected in schools—whether the activity is sponsored by an education or other agency or individual—if the information either derives from education records or is maintained in those records for any period of time.

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**FERPA grants parents, and students over eighteen, access to education records and restricts disclosure of this information without their consent.**

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## **B. Privacy Protection under FERPA: Responsibilities of Agencies and Schools**

The U.S. Congress passed FERPA in 1974 to protect student and family privacy. Also known as the Buckley Amendment, FERPA grants parents certain rights of access to their children's education records and restricts disclosure of information from those records without their consent. It also allows parents and eligible students to amend records they believe to be inaccurate or misleading. Appendices B to D contain the original FERPA regulations, subsequent changes, and the most recently issued regulations. The original FERPA statute and its amendments are incorporated in the U.S. Code (20 USC 1232g). *The Federal Register* (34 CFR Part 99) contains regulations for administering the law.

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This section reflects the 1996 revision of FERPA regulations that resulted from modifications to FERPA made in the Improving America's Schools Act of 1994. The U.S. Department of Education published revised regulations in the *Federal Register* on November 21, 1996 (pp. 59291-59298), to ensure greater flexibility in implementing the privacy laws pertaining to student records. See Appendix D for a copy of these revised regulations.

The law regards as an education record most information that teachers, school administrators, and education officials maintain about students in a tangible format, whether in electronic, photographic, or paper files. Regardless of where the information about students originates, if it is maintained by schools or education agencies, protecting its privacy is governed by FERPA. School districts, schools or state education agencies, if asked, must comply with parents' or eligible students' requests for access and review.

FERPA requires school districts—but not state education agencies—to notify parents and eligible students annually of their rights under FERPA. Among the changes in FERPA that resulted from the 1996 regulations was the removal of requirements for districts to adopt written policies pertaining to FERPA. Although local written policies are no longer required, regulations continue to encourage districts to develop privacy policies, but they grant agencies the discretion to adopt local implementation procedures and policies. Because state or local privacy protection laws or policies may supplement or refine FERPA, many state and local education agencies establish written policies to ensure the law will be applied uniformly.

## **B1. FERPA Defines Protected Education Records**

FERPA defines education records as information:

- Directly related to a student, specifically any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche
- Maintained by education agencies or institutions, or by parties acting for the agency or institutions (e.g., special education schools and health or social services institutions)

Records pertaining to special education students are subject to the same FERPA requirements as all other student records. Education records include but are not limited to:

- Family information, such as name and address of the student, parent or guardian, emergency contact information, date of birth, number of siblings, date and place of birth
- Personal information, such as an identification code, social security number, picture, or list of personal characteristics that would make it easy to identify a student
- Grades, test scores, courses taken, academic specializations and activities, and official letters about a student's status in school
- Test records, answer sheets (including written responses to performance assessments and portfolios), and records of individualized education programs
- Special education records

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**Districts' written privacy policies ensure the uniform application of FERPA.**

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**FERPA protects most information collected by schools about students. However, teachers' informal notes, records of school-based law enforcement units, and employment records do not fall under the jurisdiction of this law.**

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- Disciplinary records established and maintained by school officials
- Medical and health records that the school collects and maintains
- Documentation of schools attended, courses taken, attendance, awards conferred, and degrees earned
- Video tape recordings of individuals or groups of students

A school district may establish policies that list the types and locations of education records with a schedule of fees (which must be reasonable) that are charged for duplicating records. Agencies may not, however, charge a fee to search or to retrieve education records.

Some information about students is not considered an education record and *is not subject to access or disclosure rules* under FERPA:

- Handwritten notes by teachers, supervisors, school counselors, and administrators, which may be used by substitute teachers or other replacement personnel
- Records created by law enforcement units of schools or education agencies that are maintained separately from education records
- Employment records about a student who is employed by a school, education agency or institution
- Information obtained about individuals after they are no longer students

Another type of information is not subject to access or disclosure rules under FERPA. FERPA allows school systems to establish a policy that designates some types of information as directory information—the portion of the education record that would not generally be considered harmful or an invasion of privacy if disclosed. Local education agency definitions of directory information may vary, but they generally include a student's name and school activities, family members' names, addresses, and telephone numbers. Some school districts also include as directory information the biographical materials found in school yearbooks, such as video tapes and pictures of students, participation in various extracurricular activities, the degrees and awards received, and the names of previous schools attended. The height and weight of athletes may also be included as directory information. Once notice of directory information is given, school officials can distribute the information to anyone who requests it inside or outside the school.

If a school district has a policy for disclosing directory information, it must give public notice of what is considered in this category and indicate that parents may refuse to allow the agency to designate any or all of their child's record as directory information. The law requires the notification to specify the period of time in which parents must inform the school or district of any directory information whose release they disallow. Such notification can occur through a school newsletter, student handbook, or some other publication that parents reasonably can be expected to receive.

## **B2. Local Education Agencies—Not State Agencies—Must Give Public Notice of Rights under FERPA**

FERPA regulations require school districts and institutions acting in their behalf to give annual notification to parents and eligible students of their rights to review education records and to request cor-

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**Directory information of individual students may be released without prior consent. However, school districts must give public notice of what is considered in this category.**

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rections of records they perceive to be inaccurate. Exhibit 2-3 presents a model privacy notification. These regulations apply to the education records maintained in any school, education agency, or institution representing an education agency. FERPA applies to all educational institutions, defined as agencies that provide:

- Educational services or instruction, or both, to students
- Administrative control or services to public elementary or secondary schools or postsecondary institutions

The U.S. Department of Education does not require local education agencies to notify parents or eligible students individually of their rights, but agencies must provide notice where it is likely to be seen. FERPA regulations regarding records access apply to state and local agencies, but only local agencies must give annual notification of rights under FERPA. The annual notification must inform parents they have the right to:

- Inspect and review their child's record
- Seek to amend the record if they believe the record to be inaccurate, misleading, or otherwise in violation of their child's rights
- Consent to disclosures of personally identifiable information in the record, with certain exceptions authorized by FERPA
- File a complaint with the U.S. Department of Education concerning the district's failures to comply with the requirements of FERPA

Parents' access to records is limited to information about their own child. In cases where an education record contains information about more than one child, the information must be separated so that parents do not have access to the records of any child other than their own.

FERPA requires local agencies to provide their annual notification in a manner that "effectively informs" those who have a disability or who speak a primary or home language other than English. Methods for notifying parents may include either providing notice in alternative formats such as audio tape, braille, computer diskette, or large print, or translating information into the native language of requesting parents.

State education agencies are not required by FERPA to have written policies about the rights afforded to the parents of eligible students; however, the law does require state education agencies to let parents and eligible students inspect and review records maintained by the state education agencies. Examples of records state education agencies may maintain are students' state test records, records of special education evaluation or treatment, or records of participation in school-to-work programs.

### **B3. Parents and Eligible Students May Inspect and Review Education Records**

FERPA also grants records inspection and review rights to eligible students who are over eighteen or who have graduated from high school and are attending a postsecondary education institution. A student under eighteen who is still in high school but is also taking college courses has access to records held by the college, but access rights to records held by the high school still belong to the parents.

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**The U.S. Department of Education does not require local education agencies to notify parents or eligible students individually of their rights, but agencies must provide notice where it is likely to be seen.**

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**Parents and eligible students may inspect, review, and request to amend education records.**

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Parents who claim students as dependents for income tax purposes may be given access to school records, even if the rights under FERPA have transferred to the student.

Parents and eligible students may request an explanation or interpretation of their education records, whether these records are held by schools, agencies, or representatives of educational institutions. The agency must respond to requests to review education records within forty-five days of the inquiry. If parents or eligible students believe a record is inaccurate or misleading, they may petition for the record to be amended or changed. The education agency must decide within a reasonable period of time if the request to change the record is consistent with the agency's own assessment of the record's accuracy. The agency cannot destroy records if there is an outstanding request to inspect or review them.

If a request to amend records is denied, the applicant can subsequently appeal the decision in a hearing conducted by the education agency. After the hearing, a parent or eligible student who continues to disagree with the contents of a record can insert an explanation of the objection into the official record, and that explanation must remain with the record as long as it is held by the agency.

FERPA gives either a parent or a legal guardian equal rights to review an education record unless there is evidence of a court order or a law revoking these rights. A *parent* refers to a natural or adoptive parent, including non-custodial or foster parents, a legal guardian, or an individual acting in the parent's absence. The law grants parent rights to foster parents acting on behalf of the child. Agencies or schools can require parents to verify their relationship with a child before providing access to records. Further specification of eligibility requirements is not stipulated in the federal law but can be detailed in state laws or local policies.

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**FERPA restricts release of information without prior consent. However, FERPA allows disclosure if officials have a legitimate educational interest in gaining access to the information.**

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#### **B4. FERPA Restricts Release of Information without Prior Consent**

Certain additional restrictions apply to records disclosure procedures. Without consent of the parent or eligible student, education records can be disclosed only to school officials designated as having a "legitimate educational interest." The law leaves to the district the authority to define the criteria for determining the legitimacy of an educational interest, which generally includes situations where officials need to review education records to fulfill their professional responsibilities. This includes access to records by teachers, counselors, and administrators who routinely work with students. The following lists some example situations in which legitimate educational interest prevails:

- To perform education- or discipline-related tasks in connection with a student
- To provide services to a student or a student's family such as emergency health care, counseling, or school or job placement
- To perform administrative or other educational responsibilities prescribed by the agency or school

If an educational agency or institution has a policy of disclosing education records to officials considered to have a legitimate educational interest, it must also give annual notification that explains the

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criteria for determining who constitutes a *school official* and what constitutes a *legitimate educational interest*. Depending on the policy defined locally, school officials might include any or all of the following:

- A school administrator, supervisor, instructor, or support staff (including health or medical staff or law enforcement unit personnel)
- A school board member with an authorized reason to review a record
- A person or company with whom the district has contracted to perform a special task (e.g., an attorney, auditor, medical consultant, or therapist)
- A parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing required tasks

Because these officials, acting on behalf of students, have a need-to-know, they can usually access information without seeking consent.

Disclosure of information to an individual or agency outside the school, school district, or state education agency—a third party—generally is not allowed without prior consent of a parent. Under certain circumstances (e.g., government-required audits, evaluations, or court orders), a district can release records without approval of the parent, but it must make clear the criteria for determining which institution or agency representatives may receive such information and under what conditions. FERPA stipulates that records disclosure without consent of the parent is permissible for the following individuals and organizations:

- Officials in another school, school system, or postsecondary education institution where the student intends to enroll. Such releases must be reported to the parent or eligible student unless the release either is initiated by one of them or is specified by local policy.
- The U.S. Secretary of Education, authorized representatives of the Comptroller General of the United States, and state and designated local education authorities.
- Institutions to which students apply to receive financial aid to determine eligibility, amount of aid, conditions of aid award, and enforcement of award terms and conditions.
- Accrediting organizations to carry out their functions. Release is allowed to accrediting organizations only if the resulting studies do not identify any particular student and if all personal identification is destroyed.
- Organizations conducting studies on behalf of education agencies or institutions, including those that develop or administer tests, administer student aid programs, or evaluate programs for improving instruction.
- Agencies in the state's juvenile justice system and in response to court orders or subpoenas, as specified in the state's laws.
- Appropriate parties in a health or safety emergency.
- State and local officials or authorities if specifically required by a state law that was adopted before November 19, 1974.

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**FERPA restricts records matching and redisclosures of private information to third parties. It also established penalties for inappropriate redisclosure.**

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**In 1996, new provisions clarified FERPA, making it easier for school officials to understand the law's central requirements.**

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When a record is disclosed in the types of situations indicated above, the originating agency must note in the record the names of the parties who received the information and an explanation of the legitimate educational interest under which the record was disclosed. FERPA requires agencies or schools to account for all instances of education records release, indicating the reasons the information was provided and who received it. These explanations must be recorded in a student's record and maintained there until the agency destroys the record.

## **B5. Records Matching and Redisclosure to Third Parties**

FERPA generally prohibits matches of computerized education records held by local or state education agencies with data from other agencies. These prohibitions apply broadly, to data sharing about special education programs, evaluating or monitoring the use of federal funds, or coordinating interagency social service assistance to students and families.

Beginning in 1994, the U.S. Congress established penalties for inappropriate release of personally identifiable information from education records by a third party. An agency or institution cannot allow that third-party access to personally identifiable information from education records for at least five years.

However, cross-agency cooperative use of information from education records is an area of developing law and interpretation that experts are continually reexamining. States and local government agencies, along with schools, are seeking means to reduce fragmentation and duplication across service systems. Occasionally, interagency partnerships can be formed to exchange information about individual students in a manner that provides useful information but retains the anonymity of an individual student. Those who have experimented with such interagency partnerships are overcoming legal obstacles to collaboration without threatening the confidentiality of students who receive services. We address this topic in greater detail in Section 6.

## **B6. Implications of Other 1996 FERPA Regulations**

In addition to reducing the requirements for local education agencies to have written FERPA policies, the 1996 regulations implementing the 1994 Improving America's Schools Act (IASA) clarified several other components of FERPA. The regulations:

- Remove certain requirements about the annual notification of privacy rights, simplifying and making it easier to understand the central requirements of FERPA.
- Establish a standard for giving annual notification to parents and eligible students that strikes a balance between placing a minimal requirement on education agencies and institutions and ensuring that parents and eligible students are effectively informed of their rights under FERPA.
- Maintain the previously established forty-five day period for responding to requests to inspect records.
- Require state education agencies to comply with the access provisions of FERPA, but not with the notification provisions. State education agencies are not required to give notice about their

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policies because the statute authorizing FERPA did not grant the U.S. Department of Education authority to establish regulations for states.

- Clarify that nothing in FERPA, under certain circumstances, prevents schools from maintaining and disclosing specific information regarding disciplinary actions taken against students for conduct that poses a risk to the safety of the student, other students, or other members of the school community.
- Give schools and education agencies the discretion to determine the circumstances under which it is appropriate to disclose information and what information will be released about disciplinary actions taken against students whose behavior posed risks.
- Grant schools and education agencies the flexibility to determine whether an education record of a juvenile may be released to authorities in the juvenile justice system without the prior written consent of the parent.
- Allow officials to withhold information from parents if a court order or subpoena related to law enforcement specifically states that its existence should not be revealed to a parent or student.

These and other new provisions of the law should be closely reviewed by privacy experts within school districts and state education agencies for their specific applicability to individual cases.

## **C. U.S. Department of Education-Funded Surveys and Studies**

PPRA, amended in 1994 by the Goals 2000: Educate America Act, specifies that information collected from students through surveys, research, analyses, or evaluations funded by the U.S. Department of Education must be available for parents to review. If parents ask, the surveys or evaluation materials must be made available for review. Surveys administered under the auspices of federally sponsored programs that are conducted in elementary or secondary schools fall within this law.

Like FERPA, PPRA applies to programs administered by the U.S. Department of Education. PPRA grants parents access to information that local or state education agencies collect from students under the auspices of federally funded activities. Agencies that collect information from students must explain to parents the rights that PPRA affords them. Information to parents must be readily understood by parents with disabilities or whose home language is not English.

PPRA protects the rights of students and their parents in two ways. First, it requires that parents have the opportunity to review certain federal surveys or instructional materials used in conjunction with surveys and to provide consent for their child's participation in them. Second, PPRA requires that state or local education agencies, and their contractors or representatives, obtain prior consent from the parent if they plan to collect information from students concerning:

- Political affiliation
- Mental and psychological problems
- Sexual behavior and attitudes
- Illegal or self-incriminating behavior

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**PPRA applies to programs that receive funding from the U.S. Department of Education. This law requires that schools and contractors obtain written consent from the parents before minor students are required to participate in a survey, analysis, or evaluation that reveals certain information.**

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- Critical assessments of other individuals or family members
- Privileged information given to lawyers, physicians, or ministers
- Income (other than what is required by law for program eligibility)

Although PPRA stipulates that education agencies must give parents the right to review and consent before their children participate in surveys, research, or evaluations, the law does not require that parents be given copies of the surveys or data collection documents. However, they must be able to inspect the actual survey and related instructional materials within forty-five days of requesting a review. Should there be an outstanding request for review, the school or agency may not destroy any materials used in connection with a survey. Also, agencies must make available copies of such surveys for inspection even if a student is not required to participate in them.

Parents may register complaints, if they believe their privacy rights under PPRA have been violated, by submitting their complaints directly to the appropriate local or state officials. Federal officials will review unresolved complaints and document local attempts to resolve the complaints.

The Family Policy Compliance Office (FPCO) of the U.S. Department of Education interprets FERPA and PPRA. The office also responds to complaints about interpreting or applying the laws. Any conflicts between PPRA and state laws or local policies should be forwarded for adjudication to the FPCO within forty-five days after the conflict was observed.

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**PPRA requires education agencies to establish procedures for parents to follow if they believe their rights are violated under PPRA.**

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**The privacy of special education records is protected by FERPA and by the Individuals with Disabilities Education Act.**

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**Any participating agency or institution that collects, maintains, or uses personally identifiable information about students with disabilities must protect the privacy of these special education records.**

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## **D. FERPA and Special Education Records**

The Individuals with Disabilities Education Act (IDEA), Part B, provides grants to states to support the education of children with disabilities ages three to twenty-one; Part H supports state-sponsored early intervention programs for children from birth through age two. Confidentiality provisions in IDEA incorporate the provisions in FERPA and describe specific applications of the law to records of students with disabilities. The confidentiality regulations under IDEA that go beyond FERPA apply only to the records of children with disabilities who are eligible for special education services under IDEA. Parents of children with disabilities must have the opportunity to inspect all education records associated with the special services their children receive. In particular, they must have access to state or local records pertaining to the identification, evaluation, and education placement of their child and services their child receives.

IDEA confidentiality regulations apply to “participating agencies,” defined by the law as any agency or institution that collects, maintains, or uses personally identifiable information. Records of teachers, counselors, and medical or psychological and counseling practitioners within participating agencies who work directly with children in schools fall within IDEA confidentiality provisions. Similarly, IDEA applies to the records of agencies and individuals who are contracted to assess students or render services on behalf of state or local education agencies. Thus, state or local records about the identification, evaluation, and educational placement of their children and the provision of free and appropriate education services

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may be reviewed by parents and eligible students. This includes cumulative files with any medical or psychological assessment records that are created by specialists outside the school but kept within the school files.

The rules governing the treatment of records of students with disabilities must be well understood both by educators who work directly with families and by administrators who collect, maintain, and analyze those records. IDEA requires participating agencies to fully inform personnel who collect or use personally identifiable information about their responsibilities for implementing confidentiality provisions. Participating agencies must protect the confidentiality of information at collection, disclosure, and records destruction stages. To accomplish this oversight, one official at each participating agency must assume responsibility for ensuring the confidentiality of information.

The definition of *parent* under IDEA parallels the FERPA definition and also includes surrogate parents whom the state designates for students without parents. IDEA broadens slightly the definition of parent from FERPA, giving access rights to individuals acting in the place of a parent or legal guardian, such as a grandmother or stepparent with whom a child lives, a surrogate parent the state appoints, or others who might be legally responsible for a child's welfare.

As under FERPA, agencies must also afford privacy rights to eligible students who are over eighteen or attend postsecondary school, even if they are identified for special education services. If necessary, records must be interpreted for those who speak a language other than English or who have disabilities. The law obligates state and local education agencies to comply with requests for access to records within forty-five days after requests are received. In addition, parents have access to records before individualized education program (IEP) meetings or hearings are conducted.

Several other features of IDEA pertain to the confidentiality of records on children with disabilities and exceed FERPA's requirements:

- Parents must be informed when records are no longer needed, and information must be destroyed at the parents' request.
- Without parent consent, agencies or schools may maintain permanent records of limited identifying information, such as a student's name, address, and telephone number, his or her grades, attendance record, classes attended, grade level completed, and year completed.
- State education agencies must establish policies and procedures, including sanctions, to ensure that IDEA requirements are met.

Exhibits 2-4 and 2-5 summarize the FERPA and IDEA requirements that apply to the education records of students with disabilities.

## **E. Other Federal Laws Affecting Information Privacy in Schools**

Student records may be protected simultaneously by laws administered by the U.S. Department of Education as well as by other state and federal agencies. FERPA establishes a high level of privacy pro-

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**Records pertaining to the identification, evaluation, and educational placement of children with disabilities and the free and appropriate public education must be available for inspection by parents.**

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**Agencies must maintain, for public inspection, a list of employees who have access to personally identifiable information.**

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**State and local education agencies must designate a person who is trained in privacy protection policies and procedures to serve as the custodian of the special education records of children with disabilities.**

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**Education records may be protected by laws administered simultaneously by other state and federal agencies, as well as by the U.S. Department of Education.**

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tection, but statutes administered by agencies within the U.S. Departments of Agriculture, Health and Human Services, and Justice also protect records privacy and may apply to the records of students in schools. Professional standards of ethical practice, under which school doctors and nurses, psychologists, and other professionals operate, may also establish privacy restrictions. Following are some examples:

- Records of drug and alcohol prevention and treatment services for students are covered by confidentiality restrictions administered by the U.S. Department of Health and Human Services.
- Some laws establish minors' rights to seek treatment for certain health and mental health conditions, including sexually transmitted diseases, HIV testing and treatment, pregnancy, and mental health counseling.
- State laws protecting records pertaining to HIV confidentiality, medical records, child abuse, privileged communications, and state-specific records retention and destruction regulations.
- Ethical standards of practice and licensure dictate the conduct of health and education professionals.

Confidentiality issues may arise in schools in cases where FERPA is not the broadest protection, or where the application of FERPA may be unclear. As a result, school personnel must develop an understanding of the principles underlying legal statutes and regulations and make every effort to maintain the privacy of any information they receive in the course of providing services. School officials increasingly have access to sensitive health and family information.

When uncertainty occurs about when and with whom information should be shared, individuals in schools should act with caution and understand that their fundamental obligation is to maintain confidentiality. School personnel should never share with another individual—even a professional—more than is necessary to benefit the student. Legal counsel and school officials are available to interpret matters where privacy issues are involved. Teachers, paraprofessionals, and principals should not hesitate to consult these individuals when they are uncertain about their obligations or their responsibilities. The references at the end of this section contain additional guidance related to the information presented here.

Individual student records held by schools or education agencies are primarily education records and are therefore subject to FERPA regulations, even when other statutes also may apply. If officials perceive a conflict between FERPA and any state or other federal statutes or regulations, they should seek counsel from appropriate legal authorities to identify the issues involved and to establish policies that accurately reflect applicable legal statutes.

### **E1. National School Lunch Program**

The National School Lunch Act (NSLA), administered by the U.S. Department of Agriculture, provides free or reduced-price meals for eligible students. The NSLA governs the National School Lunch Program, the School Breakfast Program, and the Special Milk Program. It strictly limits how school districts may use individual student and household information obtained as part of the eligibility process or once students are identified to receive program services.

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The act ensures that neither eligibility nor program identification information may be incorporated into student's education record. Furthermore, the statute establishes criminal penalties for unauthorized disclosures and improper uses of individual school lunch eligibility or enrollment information.

Although the use of information collected under the auspices of the NSLA about individuals is restricted, in 1994 a modification of the law relaxed certain restrictions on how state and local education agencies may use information from NSLA records for legally specified program evaluations and audits. The amendment allowed limited disclosure of information to individuals or agencies that are "directly connected with the administration or enforcement" of the NSLA, as amended in Public Law 104-149, Section 9 (iii). Specifically, education agencies are now permitted to use data about free and reduced-price meal eligibility status for limited federal and state education purposes related to the implementation and evaluation of Title I programs under the Improving America's Schools Act.

In general, state and local education agencies can expect to continue restricting information about students receiving NSLA benefits. The key determinant for allowing disclosure will be a need-to-know, the conditions of which will be defined through future regulations. If an agency's database includes personally identifiable information about students, except where allowable by memoranda of agreement, database managers must impose controls on the disclosure of that information. Before these data can be released, agencies must require potential information users to specify the conditions of confidentiality under which such information will be disclosed. Information provided for one purpose may not be used for another purpose unless the reasons for releasing it again have been defined and approved according to the law.

Regulations restricting the use of information collected under the auspices of the NSLA were not available at the time these guidelines were published. However, a memorandum from the U.S. Department of Education dated March 18, 1996 confirmed that education agencies may use free and reduced-price meal eligibility data for allocating services and for evaluating and reporting of aggregate achievement data pertaining to Title I. See Exhibit 2-6 for a copy of the memorandum.

## **E2. Confidentiality of Drug Prevention and Treatment Records**

Federal confidentiality laws and regulations prohibit the disclosure of information about students who apply for or receive alcohol or drug abuse treatment services. The Federal Drug and Alcohol Patient Records Confidentiality Law (42 CFR) is administered by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services. The Department of Health and Human Services confidentiality regulations apply to records of any patient, even a minor student in school, who receives treatment from a federally assisted program. Under the law, patients include students who receive counseling because they are children of alcoholics or drug abusers.

The confidentiality rules, known as 42 CFR, apply to assessment, diagnosis, counseling, group counseling, treatment, or referral for

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**The National School Lunch Act of 1994 protects the privacy of information that agencies collect from families of children who are eligible to receive free or reduced-price meals.**

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**Confidentiality regulations apply to records of students who receive assistance or treatment under laws administered by the federal Substance Abuse and Mental Health Services Administration.**

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**The federal Office of Management and Budget reviews and approves federally administered questionnaires, surveys, or forms before they are to be used by state and local education agencies and programs that receive federal funds.**

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treatment in most programs in which students participate, including programs sponsored by public and many private schools. They forbid the release of any information without a patient's consent, even when the patient is a student in school and under eighteen years of age.

The 42 CFR restrictions may conflict with the obligations of school-based programs to provide parent access to education records of their student. However, the U.S. Department of Education and the Substance Abuse and Mental Health Services Administration issued a joint opinion in 1990 that suggests potential solutions to this conflict. One solution requires students to consent to parent access to records as a condition of receiving diagnostic, treatment, or referral services; a second solution limits the information kept in school records, recognizing that parents may have access to them. Both solutions are imperfect, however, and school officials are advised to seek information and advice about potential confidentiality conflicts from their state attorney general or from the Family Compliance Office in the U.S. Department of Education. Exhibit 2-7 includes examples of forms pertaining to releasing confidential information and informing patients of their rights under FERPA.

### **E3. Forms Clearance Requirements of the Paperwork Reduction Acts of 1980 and 1995**

The federal government monitors the paperwork burden of federal legislation through the Paper Reduction Acts of 1980 and 1995, which authorize the Office of the Management and Budget (OMB) in the Executive Office of the President to restrict the information that agencies may collect from the public. Federal agencies and non-education agencies receiving federal funds must obtain OMB clearance authorizing each approved data collection instrument or form. An approved information collection form is assigned a clearance number and an expiration date to confirm that it is authorized. Approved federal data collections must explain the data collection purpose prominently on the form, whether the data collection is mandated or voluntary, and the benefit(s) to be obtained from the data collection.

The clearance process also requires that plans for data collection stipulate how the data are to be used, along with provisions for ensuring confidentiality of any personal data collected. OMB clearance is not required for the clearance of state or local forms, however. OMB clearance ensures that requests for information from student records meet the requirements of FERPA. It is unlikely than any records requiring release of personally identifiable information would be requested in OMB-approved data collections.

### **E4. Using Social Security Numbers as Student Identification Codes**

Section 7(a) of the Privacy Act of 1974 addresses the use of social security numbers by federal, state, or local governments. It states that it is

...unlawful for any federal, state, or local government agency to deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security account number

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When government agencies collect social security numbers for reasons other than those allowed in the original law, they must specify how the numbers will be used and the limits of their use. Requests for social security numbers must be accompanied by the following notice:

Any federal, state, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

State and local education agencies can minimize challenges to their use of social security numbers for student records identification by creating alternative identification numbers for students whose parents object to using social security numbers for identification.

## **F. Resources for Interpreting Federal Laws That Protect the Privacy of Education Records**

A number of private and public agencies monitor federal activity on privacy and confidentiality issues. In the federal government, the Office of Information and Regulatory Affairs (OIRA) in OMB of the Executive Office of the President, oversees the implementation of major privacy laws. For each law, specific agency offices respond to questions and complaints from citizens. As new issues arise and the U.S. Congress passes new laws, these agencies develop regulations that define the regulations for applying the laws.

Two federal offices can respond to questions. First, the U.S. Department of Education can assist in interpreting FERPA and PPRA and respond to complaints about the interpretation or application of these laws through:

- Family Policy Compliance Office  
U.S. Department of Education  
600 Independence Avenue, SW  
Washington, DC 20202  
(202) 260-3887

Second, the Information Resources Group can provide additional information about broad issues administered by OMB:

- Information Resources Group  
Office of Information and Regulatory Affairs  
725 17th Street, NW  
Washington, DC 20503  
(202) 395-7316

The Council of Chief State School Officers (CCSSO), working with representatives of state education agencies, is also monitoring the evolution of privacy laws. As the need arises, CCSSO will develop public information to clarify the legal responsibilities and obligations of state and local school officials and concerned parents. Additional information can be obtained by contacting:

- Council of Chief State School Officers  
One Massachusetts Avenue, NW  
Suite 700  
Washington, DC 20001  
(202) 408-5505

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**The Privacy Act of 1974 stipulates allowable uses of social security numbers by government agencies and gives individuals the right to refuse to disclose or use their social security numbers except for the purposes defined by the social security law.**

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**Experts in government offices and education organizations can assist education agencies in protecting the privacy of education records.**

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Other national groups have organized to monitor and interpret privacy implications of federal laws about the education, health, and social services for children. Among them are the following organizations that provide information and respond to questions:

- Center for Law and Social Policy  
1616 P Street, NW, Suite 150  
Washington, DC 20036  
(202) 328-5140
- Education Commission of the States  
707 Seventeenth Street, Suite 2700  
Denver, CO 80202-3427  
(303) 299-3600
- National Association of State  
Directors for Special Education  
1800 Diagonal Road, Suite 320  
Alexandria, VA 22314  
(703) 519-3800
- Youth Law Center  
111 Sansome Street, Suite 950  
San Francisco, CA 94104  
(415) 543-3379

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**EXHIBIT 2 - 1**  
**FACT SHEET:**

## **Family Educational Rights and Privacy Act of 1974<sup>1</sup>**

The Family Educational and Privacy Act (FERPA) is a Federal law designed to protect the privacy of a student's education records. The law applies to all schools which receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student, or former student, who has reached the age of eighteen or is attending any school beyond the high school level. Students and former students to whom the rights have transferred are called eligible students.

- ✓ Parents or eligible students have the right to inspect and review all of the student's education records maintained by the school. Schools are not required to provide copies of materials in education records unless, for reasons such as great distance, it is impossible for parents and eligible students to inspect the records. Schools may charge a fee for copies.
- ✓ Parents and eligible students have the right to request that a school correct records believed to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record commenting on the contested information in the record.
- ✓ Generally, the school must have written permission from the parent or eligible student before releasing any information from a student's record. However, the law allows schools to disclose records, without consent, to the following parties:
  - School employees who have a need-to-know
  - Other schools to which a student is transferring;

- Certain government officials in order to carry out lawful functions;
- Appropriate parties in connection with financial aid to a student;
- Organizations doing certain studies for the school;
- Accrediting organizations;
- Individuals who have obtained court orders or subpoenas;
- Persons who need to know in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific state laws.

Schools may also disclose, without consent, "directory" type information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendances. However, schools must tell parents and eligible students about directory information and allow parents or eligible students a reasonable amount of time to request the school not disclose directory information about them.

Schools must notify parents and eligible students of their rights under this law. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

For additional information or technical assistance, you may call (202) 260-3887 or TDD (202) 260-8956 or contact:

Family Policy Compliance Office  
U.S. Department of Education  
600 Independence Avenue, SW  
Washington, D.C. 20202-4605

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<sup>1</sup> Developed by the Family Policy Compliance Office of the U.S. Department of Education.



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**EXHIBIT 2-2**  
**FACT SHEET:**  
**Protection of Pupil Rights Amendment<sup>1</sup>**

The protection of Pupil Rights Amendment (PPRA), 20 U.S.C. 1232h, applies to programs that receive funding from the U.S. Department of Education. The law was amended under the "Goals 2000: Educate America Act" on March 31, 1994. The Department issued a Notice of Proposed Rulemaking on August 28, 1995, to reflect changes in the law. Final regulations are expected in early 1997.

PPRA is intended to protect the rights of parents and students in two ways:

- It seeks to ensure that schools and contractors make instructional materials available for inspection by parents if those materials will be used in connection with a Department of Education-funded survey, analysis, or evaluation in which their children participate; and
- It seeks to ensure that schools and contractors obtain written parental consent before minor students are required to participate in any Department of Education-funded survey, analysis, or evaluation that reveals information concerning:
  1. Political affiliation;
  2. Mental and psychological problems potentially embarrassing to the student and his/her family;
  3. Sex behavior and attitudes;

4. Illegal, anti-social, self-incriminating and demeaning behavior;
5. Critical appraisals of other individuals with whom respondents have close family relationships;
6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; or
7. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

Parents or students who believe their rights under PPRA may have been violated may file a complaint with the Department of Education by writing the Family Policy Compliance Office. Complaints must contain specific allegations of fact giving reasonable cause to believe that a violation of PPRA occurred.

For additional information or technical assistance, you may call (202) 260-3887 or TDD (202) 260-8956 or contact:

Family Policy Compliance Office  
U.S. Department of Education  
600 Independence Avenue, SW  
Washington, D.C. 20202-4605

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<sup>1</sup> Developed by the Family Policy Compliance Office of the U.S. Department of Education.

## EXHIBIT 2-3

# Model Notification of Rights under FERPA for Elementary and Secondary Institutions<sup>1</sup>

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. They are:

- (1) The right to inspect and review the student's education records within 45 days of the day the District receives a request for access.

Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

- (2) The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate or misleading.

Parents or eligible students may ask Alpha School District to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the District decides not to amend the record as requested by the parent or eligible student, the District will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

- (3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the District as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the District has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the District discloses education records without consent to officials of another school district in which a student seeks or intends to enroll. [NOTE: FERPA requires a school district to make a reasonable attempt to notify the student of the records request unless it states in its annual notification that it intends to forward records on request.]

- (4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the District to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office  
U.S. Department of Education  
600 Independence Avenue, SW  
Washington, DC 20202-4605

[NOTE: In addition, a school may want to include its directory information public notice, as required by §99.37 of the regulations, with its annual notification of rights under FERPA.]

<sup>1</sup> Developed by the Family Policy Compliance Office of the U.S. Department of Education.

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**EXHIBIT 2 - 4**

**Requirements under FERPA  
Applicable to General Education and  
Special Education Records<sup>1</sup>**

1. Publicly list the items of personally identifiable information the school designates as directory information.
2. Establish the procedures the education agency or school will follow when a parent or eligible student requests the opportunity to inspect the student's education records.
3. Publicly list the types and location of education records the school maintains, giving the titles and addresses of the records custodian.
4. Establish that the school will not disclose information in a student's record without the prior written consent of the parent or eligible student, except as permitted by law.
5. Set the criteria the education agency will use to determine which school officials have a "legitimate educational interest" in accessing information from a student's record.
6. Define procedures for notifying parents and eligible students of their rights under FERPA; notices must be made annually and in a language that can be understood.
7. Define procedures for a parent or eligible student to file a complaint concerning an alleged failure of the school, district, or state agency to comply with FERPA.
8. Publish a schedule of fees the agency intends to charge for copies of education records.
9. Annually notify parents or eligible students of their rights to seek correction of records, including the right to place a written rebuttal in the record. The notification must be available in a language the parent or eligible student understands.

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<sup>1</sup> Adapted from *Resource Handbook For School Administrators: Confidentiality Requirements of General Education And Handicapped Student Education Records*. Oakland (Michigan) Schools Department of Pupil Services, Waterford, Michigan, 1992.

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## EXHIBIT 2-5

# Privacy Requirements Applicable Only to the Education Records of Students with Disabilities<sup>1</sup>

In addition to FERPA requirements that apply to all student education records, education agencies must establish the following procedures for ensuring the privacy of the records of students who receive services under the IDEA:

1. Permit a representative of parents to inspect the student's education record.
2. Designate an official at each participating agency who is personally responsible for safeguarding the confidentiality of identifiable information about students with disabilities during collection, storage, disclosure, and destruction stages.
3. Obtain parent permission prior to any disclosure of records, unless it is authorized by FERPA without such permission.
4. Inform parents when information is no longer needed to provide education services and destroy records at the request of parents.
5. The state education agency must describe in a state plan the policies and procedures, including sanctions, used to ensure it meets IDEA requirements and regulations.

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<sup>1</sup> Adapted from *Resource Handbook For School Administrators: Confidentiality Requirements of General Education And Handicapped Student Education Records*. Oakland (Michigan) Schools Department of Pupil Services, Waterford, Michigan, 1992.

**EXHIBIT 2-6**  
**Memorandum Regarding the Use  
of Free and Reduced-Price Lunch Data  
for Title I Purposes**



**UNITED STATES DEPARTMENT OF EDUCATION**

WASHINGTON, D.C. 20202-6132

March 18, 1996

MEMORANDUM TO CHIEF STATE SCHOOL OFFICERS

SUBJECT: Use of Free and Reduced Price Lunch Data for Title I Purposes

As many of you are aware, we have been working with officials at the U.S. Department of Agriculture (USDA) regarding the use of free and reduced price lunch data for Title I purposes.

Section 108 of Public Law 103-448, the Health Meals for Healthy Americans Act of 1994, authorizes the release of student free and reduced school meal eligibility status for Federal and State education programs. Because of the sensitivity of this information and the intent to publish regulations implementing this section, USDA issued a memorandum several months ago stating that the use of such information for Federal and State education programs would not be permissible until such regulations were published. However, since that memorandum was issued, our Department has worked closely with USDA to explain the need for such information for the Title I program. As a result of our discussions, USDA issued the enclosed memorandum that authorizes the release of free and reduced school eligibility information for Title I purposes.

Please feel free to contact me should you have any further questions on this matter.

A handwritten signature in cursive script, reading "Mary Jean LeTendre".

Mary Jean LeTendre  
Director  
Compensatory Education Programs

Enclosure

cc: State Title I Coordinators

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SUBJECT: Cooperation with Education Officials — Title I

To: Regional Directors  
Special Nutrition Programs  
All Regions

Section 108 of Public Law 103-448 authorizes the release of student free and reduced price school meal eligibility status for Federal and State education programs. Although we intend to promulgate regulations on the provision, we have not been able to publish the provision on a timely basis. Consequently, we are authorizing school officials, through this memorandum to cooperate with education officials collecting data for Title I purposes.

Under current policy, school food service officials may release aggregate information about the number of children eligible for free and reduced price meals. Additionally, we are now authorizing school food service officials to disclose the names of individual children who are eligible for free or reduced price meals, to officials collecting data for Title I allocation and evaluation purposes. While we are authorizing the release of this information, the final decision rests with local officials.

For allocation of funds under Title I, public schools are usually annually ranked according to the number of children eligible for free and reduced private school meals as an annual indicator of the socioeconomic status of the school's attendance area. While Title I funds are not dispersed to private schools, children from the attendance area who attend private schools may still be included in the total count of needy children living in the attendance area. Therefore, private schools that participate in the school nutrition programs may release the addresses, grade levels and eligibility status of children determined eligible for free and reduced price school meals to Title I officials. It should be noted that private schools would not need to release the names of free and reduced price eligible students, since addresses are sufficient to determine attendance areas.

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While in some instances aggregate release of free and reduced price school meal information is sufficient, food service officials may be asked to provide the names and eligibility status of individual children for Title I evaluation purposes. Consequently, school food service officials may cooperate with education officials for evaluation of Title I services. The Department of Education has been advised of this policy in the attached letter to Mary Jean LeTendre, Director of Compensatory Education Programs for that Department.

Please provide your States with copies of this memorandum and attached letter. You may contact Charles Heise or Barbara Semper at (703) 305-2968 with any questions.

SIGNED

Alberta C. Frost  
Director  
Child Nutrition Division

Attachment

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**EXHIBIT 2-7**  
**Examples of Forms Pertaining to**  
**Releasing Confidential Information**  
**That Informs Patients of Their Rights**  
**under 42 CFR**

**CONFIDENTIALITY OF**  
**ALCOHOL AND DRUG ABUSE PATIENT RECORDS**

The confidentiality of alcohol and drug abuse patient records maintained by this program is protected by Federal law and regulations. Generally, the program may not say to a person outside the program that a patient attends the program, or disclose any information identifying a patient as an alcohol or drug abuser unless:

- (1) The patient consents in writing; OR
- (2) The disclosure is allowed by a court order; OR
- (3) The disclosure is made to medical personnel in a medical emergency or to a qualified personnel for research, audit, or program evaluation; OR
- (4) The patient commits or threatens to commit a crime either at the program or against any person who works for the program.

Violation of the Federal law and regulations by a program is a crime. Suspected violations may be reported to the United States Attorney in the district where the violation occurs.

Federal law and regulations do not protect any information about suspect child abuse or neglect from being reported under state law to appropriate state or local authorities.

(See 42 U.S.C. § 290dd-2 for Federal law and 42 CFR Part 2 for Federal regulations.)

Legal Action Center. (1996) *Handbook on legal issues for school-based programs (Revised)*. pp. 71, 72, & 74. New York: Author.



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**PROHIBITION ON REDISCLOSURE  
OF INFORMATION CONCERNING CLIENT  
IN ALCOHOL OR DRUG ABUSE TREATMENT**

This notice accompanies a disclosure of information concerning a client in alcohol/drug abuse treatment, made to you with the consent of such client. This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

**CONSENT FOR RELEASE  
OF CONFIDENTIAL INFORMATION**

I, \_\_\_\_\_ authorize  
(Name of patient)

\_\_\_\_\_  
(Name of general designation of program making disclosure)

to disclose to \_\_\_\_\_  
(Name of person or organization to which  
disclosure is to be made)

following information: \_\_\_\_\_  
(Nature of the information, as limited as possible)

\_\_\_\_\_  
The purpose of the disclosure authorized herein is to: \_\_\_\_\_

\_\_\_\_\_  
(Purpose of disclosure, as specific as possible)

I understand that my records are protected under federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically as follows:

\_\_\_\_\_  
(Specification of the date, event, or condition upon which this consent expires)

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of participant

\_\_\_\_\_  
Signature of parent, guardian  
or authorized representative  
when required

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## References

- American Association of Collegiate Registrars and Admission Officers. 1995. *Guidelines for postsecondary institutions for implementation of the Family Educational Rights and Privacy Act of 1974 as amended*. Washington, DC: American Association of Collegiate Registrars and Admission Officers.
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## SECTION 3:

# Protecting the Privacy of Individuals during the Data Collection Process

### SUGGESTED AUDIENCES:

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- ✓ *State education agency staff*
- ✓ *School district staff*
- ✓ *Program and support services staff*
- ✓ *Technical staff*

### OVERVIEW

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When you are asked to answer questions about your child or your family, do you wonder how the person asking the questions will use the information and what would happen if you gave the wrong answers? Everyone is concerned about releasing personal information to a stranger, and everyone wonders just how many people will see the responses.

School systems must have information about their students if they are to make appropriate decisions about educational and support programs. From the time a child enters school, records begin to follow the new student. Besides the information provided by the student or parent, such as basic enrollment and immunization status, school staff create a paper trail to describe the student's educational program, extracurricular activities, and other relevant experiences. Deciding what data to gather along the paper trail requires careful consideration of what information is needed by the school system and how best to collect it. In addition, however, the school system should take into consideration the concerns of students and their families. The principles in this section should be considered no matter who collects the data or how and why the data are collected about students.

### COMMONLY ASKED QUESTIONS

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**Q.** How do I decide what information to collect about a student?

**A.** *You can check state and local laws and regulations as well as school board policies for the types of information you are required to collect. Other than these requirements, agency or school staff should carefully consider the needs for the information against the costs and burden of collecting it. See Section 3, Guidelines A and B.*

**Q.** Must I have permission from the parents to give an achievement test to a student?

**A.** *Permission from parents is not usually needed for achievement testing unless state or local policies related to obtaining parental permission already exist. In general, you should inform parents of the purposes and uses of testing and whether it is mandatory. See Section 3, Guidelines B; also see discussion of the Protection of Pupil Rights Amendment (PPRA) in Section 2, Guidelines C.*

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**Q.** How responsible am I for the accuracy of the student data I receive?

**A.** *In general, data collectors are more ethically than legally responsible. You can promote the accuracy and integrity of the data in several ways. See Section 3, Guidelines D.*

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**Q.** When can I destroy student records? When not?

**A.** *Agencies or schools may establish their own policies, based on federal and state legal requirements, to determine the length of time records or portions of records are kept. See Section 3, Guidelines E. However, you may not destroy a record if there is a pending request to review it. See Section 5.*

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**Q.** Can I use social security numbers to identify or match education records?

**A.** *Yes, you may use social security numbers if your state has no prohibition against using them. However, you may not require students to provide them. It is important for you to inform students or parents if agencies or schools intend to use these numbers. See Section 3, Guidelines F.*

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## GUIDELINES

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### **A. Determining the Agency's Student Data Needs and Uses**

Usually, data are collected because they are:

- Required by laws or regulations
- Used to promote the efficiency and effectiveness of the agency
- Used to aid in the placement of students
- Needed for accountability and funding decisions
- Used to determine student progress and student needs

Schools or agencies can use data for administrative purposes in five major ways:

- Operations
- Instruction
- Management
- Research and evaluation
- Accountability

When schools, school districts, and state education agencies decide to collect and maintain personally identifiable data about students, the intended uses of the data must be identified. Some data about students are collected because they are required by law or regulation to protect civil rights or assess accountability. The law or regulation in these cases provides the justification for the collection of the information. Other types of data are collected to promote the efficiency and effectiveness of the agency and are justified under school board or state board of education policy. Still other data about individual students are collected to determine their progress, place them

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**Data collectors must justify the need for every item of information included in an individual education record.**

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into appropriate learning experiences, and otherwise assist the school in meeting the needs of the students.

When data about students are aggregated, information may be used for program accountability and funding decisions. Each piece of information included in an education record should represent a clear and important need for obtaining and recording that information. Schools, school districts, and state education agencies may need student data for the following major administrative purposes:

- **Operations**—Schools and districts need data to ensure the efficiency of their day-to-day functioning. For example, schools must maintain attendance records, handle students' health problems, and operate transportation and food service programs. Personally identifiable data are needed for such operations.
- **Instruction**—Teachers and other staff members also need student-level information to ensure that students receive appropriate instruction and services. For example, teachers need to know how to contact parents, and they need information about a student's previous educational experiences and special needs to help plan instruction. Counselors need to know what courses students have taken in order to plan their educational programs. Personally identifiable data, thus, are needed for instructional decisions.
- **Management**—Schools, districts, and state education agencies use data about students to assist in the planning and scheduling of educational programs and the distribution of resources (e.g., fiscal, staffing, and materials). Management functions generally do not require personally identifiable information. However, data should be maintained at a specific-enough level that required distinctions (e.g., how many children qualify for certain programs) can be made.
- **Research and Evaluation**—Schools, school districts, and state education agencies conduct analyses of program effectiveness, the success of subgroups of students, and changes in achievement over time to identify effective instructional strategies and to promote school improvement activities. These data may or may not be personally identifiable.
- **Accountability**—Answering the questions of parents, policymakers, and other participants in the education enterprise about students' accomplishments and the effectiveness of schools has become an important function of data collected by schools. Reporting functions generally do not require personally identifiable data. However, some personally identifiable data are needed in order to carry out longitudinal analyses that may be crucial in assessing a program's effectiveness.

Efficient maintenance of data about individual students allows data needed for one purpose to be used for other appropriate purposes. However, the uses must be justified under existing policies, and data providers should be informed of these uses. For example, information about a student's home language collected for required aggregate federal reporting could also be used in the evaluation of a school's language programs. In these instances, personally identifiable information that is used for the analyses cannot be publicly released without written approval from the parents.

**Maintaining data efficiently allows data to be used for multiple purposes. However, you must justify all uses under existing policies and inform data providers of these uses.**

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**You should consult state and local laws, policies of school boards, and professional ethics in deciding what information to collect and maintain about students.**

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**Data providers should be informed about why the information is collected and if providing such information is mandatory.**

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**Data collectors should demonstrate that the data produced will be of sufficient value, applicability, and usefulness to justify the cost and burden of collecting them.**

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**Written policies help to classify the data into directory information, transcript information, or supplemental information, and to determine how you should maintain and release each piece of information.**

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## **B. What Information Can Be Requested about Students?**

In general, schools and education agencies are not restricted in what they may request about students; this is determined by state laws and regulations, the policies of the school, district or state education agency, and the professional ethics of staff. However, federal law (i.e., PPRA) does specify several types of questions that cannot be asked without prior consent of the parents. See Section 2, Guidelines C for a detailed discussion. A good practice is to collect and maintain in the education records only those data for which a clear and specific purpose has been identified.

In deciding what data can be requested from individuals, you must consider several important and practical factors. Data collection can be a burden on the data providers if too many questions are asked or the completion of the form is too time consuming. If the way in which questions are asked makes it unclear what information is requested, the accuracy of the data may be undermined. An important rule of thumb in data collection is that the data need should outweigh data burden and collection problems. Justification for data collection should state what methods will be used to guard against non-response, inaccuracy, and privacy intrusion. A good resource to use in deciding what information to collect is the *Standards for Education Data Collection and Reporting*, published by the U.S. Department of Education's National Center for Education Statistics in 1991.

## **C. Classifying Data Elements or Record Sensitivity**

It is good practice for you to have a written policy describing what parts of education records are sensitive and exactly which data elements may be released as directory information and which ones may be released to different types of staff members. The California Department of Education has produced several sets of internal policies and guidelines regarding classifying data sensitivity and access. Exhibit 3-1 summarizes these policies and guidelines. You could cover some of the following areas in creating your written policy.

Each data element to be maintained about an individual student should be classified as to whether it is a part of the *directory information* (subject to public release), a part of the *transcript information* (will be released in a student's transcript if he or she transfers to another district or applies to a postsecondary education institution), or is *supplemental* (all the other information collected, e.g., bus route and class schedule). This can be noted for each data element in a data dictionary for an automated student information system. For paper records, there may be a notation accompanying the item on the collection form.

Within the agency, certain staff members may be allowed access to information on individual students based on a legitimate educational interest, or the staff's need-to-know. It is a good idea to classify each data element according to the type of staff member who may have access. Most persons with a need-to-know must have the information to make instructional or other support decisions. Some other persons will be involved in the collection or the maintenance of data, and will therefore have access to the information contained within

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the record (e.g., the school secretary). In Section 4, we discuss the federal requirement to establish guidelines for determining who has a legitimate educational interest. You can design maintenance procedures, which we also discuss in Section 4, to limit access according to this policy.

The written policy may include a description of how parents and students (over age eighteen) are to be informed about what types of data are kept in the education records. The policy may also specify whether data are considered a part of directory information, the education record or transcript information, or the supplemental record for use only within the school or agency. The written policy may also note that certain types of data are not considered a part of the education record and are not subject to inspection by the student or parents (e.g., personal notes maintained by a teacher or a substitute in a location separate from the official education records, or personal notes written by a school counselor that are not shared with anyone else). Exhibit 3-2 contains an example of a school district's notification policy. This brochure not only notifies parents of their rights, but also disseminates information about how the school district maintains records.

#### **D. Ensuring Data Integrity and Accuracy**

Data collectors may promote data integrity and accuracy through two efforts:

- Making sure data providers understand the importance of the data
- Designing the data collection activity and training survey staff to respect the dignity of the respondents

An important consideration in choosing data elements and the procedures to collect data is the quality of the data that will be received. *Data integrity* means that the information provided is complete and unchanging; *data accuracy* means that the information is correct.

Two issues are important in ensuring data integrity and accuracy. The first is the degree to which the data provider (usually the student or parent) supports the data collection. It is important for students and their parents to know if the data being requested are required by law or for the purposes of ensuring that certain services can be received by the child. They need to understand when failure to provide accurate and complete data may result in the denial of benefits (e.g., immunization records required to enroll a child in school). For most data elements or data collection forms, you should inform students or their parents about why the data are important and how they will and will not be used. Written assurances of data confidentiality often alleviate concerns and elicit more cooperation, but not in all cases. You should be prepared to respond openly and thoroughly to hard questions raised by parents and privacy advocates.

A second issue that can affect data integrity and accuracy is the design of the data collection activity and the training provided to data collectors. Training is important for all staff who might be involved in collecting student information, regardless of the purposes. Such staff may include teachers, school secretaries, school nurses, guidance counselors, principals, and evaluators. Areas that should be included in staff training are:

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**When you choose data elements and the procedures to collect them, you should consider the quality of the data.**

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- The distinction between collecting data that are mandatory and those that are voluntary; and the options of the student or parent regarding provision of the data (e.g., what services might be missed, such as free meals)
- The ethical and legal responsibilities of staff to prevent unauthorized use or disclosure of data
- The ways staff can obtain explanations or other help while collecting the data

The training should focus on how the questions or requests for information may be stated by the staff person to ensure that the request is clear and the data can be collected consistently from all individuals. For instance, it is important for data collection procedures to ensure that parents and students have the opportunity to provide accurate answers regardless of their language, cultural, or educational backgrounds. Staff should be sensitive to and respectful of respondents' privacy and their possible reluctance to answer a question. The information belongs to the individual; you are just "borrowing" it.

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**You can derive unique identification codes by a variety of methods (e.g., assigning sequential numbers or adopting algorithms to generate codes using selected characteristics).**

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## **E. Assigning and Using Unique Identification Codes**

Using unique identification codes would:

- Allow the records to follow the correct students when they move within the state
- Provide the flexibility of merging data from different files to promote efficiency without threatening privacy

In schools that keep all the data about an individual student in an education record on paper in a file folder, a unique identification code may not be necessary. Many large schools and school districts maintain data about their students in computerized or automated records. Having unique identification codes provides the flexibility to merge data from different computer files for use in making effective program decisions about children. If a student moves frequently, the unique identification code may help to ensure that information will follow the correct student. School districts and state education agencies increasingly use unique identification codes to help locate students who have moved within the education system.

Many schools and school districts assign a unique sequential identification number or code to each student when he or she enrolls in school. Unique identification codes help to distinguish between students with similar or identical names and other characteristics.

However, the uses of the code are often determined by its source. Some state education agencies assign a set of sequential identification numbers for schools or school districts to use so that the identification number of a student is unique within the state. Other schools, school districts, and state education agencies adopt an algorithm for assigning unique identification codes. These algorithms generally include some combination of letters and numbers taken from the student's last name, first name, date of birth, and place of birth. The code may also incorporate a number for the agency or school. Such an identification code may be sufficient if students stay within the school or agency for their entire school career. If the student moves,

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however, the receiving school may assign a new identification code rather than track down the student's previous code.

Social security numbers are used in many cases as an identifier. The social security number has the advantage of being unique to students and does not change when they move to another city or state. While federal law restricts the use and release of social security numbers, it does not prohibit schools from asking for the number. Specifically, schools can ask for a child's social security number but cannot require it, and schools must inform parents that they do not have to provide the social security number. Schools also cannot deny any right, privilege, or benefit to students or their parents who refuse to disclose a social security number. Schools that use social security numbers should be prepared to issue an alternative code in case of such refusal.

Schools, school districts, and state education agencies cannot release the social security numbers of students because this is considered personal information. A more thorough discussion of the use of social security numbers is included in *Education Data Confidentiality: Two Studies*, a report of the National Forum on Education Statistics, National Center for Education Statistics of the U.S. Department of Education in 1994.

You should consider several things about using social security numbers. The social security number is unique to individuals no matter where they live. It is useful across schools, districts, and states. Using the social security number thus can make it easier for schools to locate the appropriate transcript or student information when they receive a request. On the other hand, parents may not recall the social security number for their children, or may give a wrong number, such as their own. It is difficult and time consuming to check the accuracy of a social security number.

Since social security numbers are used to maintain confidential information by other agencies outside the education system, it is crucial to ensure that no one gets illegal access to the numbers. Security is far more important with social security numbers than locally assigned identifiers. Even if the social security number is used to maintain education records internally, agencies may want to assign another number for the identification card of a student or for school use, and restrict the use of the social security number to very limited purposes.

## **F. How Long Should Data Be Maintained?**

Many states have legal requirements defining how long education records must or may be kept. There may also be federal requirements for how long some data should be maintained. School districts should have more specific policies noting exactly which data to store and how long data should be maintained. For instance, transcript information for high school completers is often kept active for a fixed length of time, such as five to ten years. In the past, such deadlines were helpful because there was limited space to save paper files. With computer files, space is no longer as significant a problem, and student transcripts may be kept active even longer. Two recommended components to include in a school or district data policy are a listing of what data elements are included in the high school transcript

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**Many agencies and schools use social security numbers as the identification codes. Schools may ask for social security numbers but cannot require them.**

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**Using social security numbers may be helpful to agencies or schools in maintaining appropriate and accurate information about the students. However, school officials must protect the numbers from illegal access and unauthorized release.**

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**In addition to federal and state requirements, agencies or schools should establish policies to determine the length of time each type of data is maintained and how data will be expunged or replaced.**

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or education record (sent with students when they move) and a time period for how long these records will be maintained.

Other types of data (e.g., after-school care arrangements or extracurricular activities) may not be needed after a certain period of time (e.g., one year or after a student has left the school.) It is a good idea to include in a written data policy an indication of which data elements will be expunged from education records and when they will be deleted.

Finally, there are some data that a school or agency may want to expunge to protect the student. Disciplinary actions are an example; state law or local policy usually governs these cases.

**EXHIBIT 3 - 1**  
**An Example of Classifying and Categorizing**  
**Education Record Contents**  
**by a State Education Agency<sup>1</sup>**

**Table 1. Pupil Records Contents**

<b>Mandatory Permanent (minimum)</b>	<b>Mandatory Interim</b>	<b>Permitted (for educational purposes)</b>
A. Legal name	A. Access log	A. Objective staff ratings
B. Date of birth	B. Health records	B. Standardized tests more than 3 years old
C. Birth date verification	C. Special Ed Programs <ol style="list-style-type: none"> <li>1. Tests</li> <li>2. Forms</li> <li>3. Case studies</li> <li>4. Authorizations</li> </ol>	C. Routine Disciplinary
D. Sex	D. Language training	D. Behavior observations
E. Place of birth	E. Progress reports	E. Disciplinary notices
F. Parent name/address <ol style="list-style-type: none"> <li>1. Pupil residence</li> <li>2. Annual verification</li> </ol>	F. Directory information	F. Attendance records not otherwise needed
G. Dates of enrollment	G. Record rejoinders	
H. Subjects taken	H. Standardized tests less than 3 years old	
I. Grades and credits		
J. Immunizations or exceptions		
K. Date of HS graduation		

**Access** to pupil records is guaranteed only to a legal guardian of a currently enrolled or former student. Access privilege is also extended to any student who has completed tenth grade, or is 16 or older.<sup>2</sup> Finally, access is also granted to any person or group given written parental consent.

**Access** without parental consent is provided to school and district employees and trained volunteers, but is restricted to records for which a legitimate educational interest exists. This access privilege also extends to members of a school attendance review board, and officials and employees of a public school into which a student intends to enroll. However, not all categories of pupil records must be forwarded when a student transfers across schools. Table 2 documents the categories of information which must be provided when a student moves between school districts.

<sup>1</sup> Information is taken from "Privacy of Student Records" produced by the California Student Information Services (CSIS) Project, Far West Laboratory, San Francisco, CA, 1993.

<sup>2</sup> In the state of California.

**Table 2. Pupil Record Transfer**

<b>Mandatory Permanent</b>	<b>Mandatory Interim</b>	<b>Permitted</b>
Mandatory to: California public schools Private schools Out-of-state public schools	Mandatory to: California public schools  Optional to: Private schools Out-of-state public schools	Option to: California public schools Private schools

Under certain circumstances, access to pupil records is also granted to county, state, and federal education officials. Unless state or federal law specifically dictates the collection of personally identifiable information, all data collected by these officials must be protected so that personal identification of students or parents is impossible. Finally, record access is granted to any probation officer, district attorney, or prosecuting agency investigating truancy or a criminal matter.

In some instances, personally identifiable information from pupil records can be released directly to outside agencies without parental consent. One obvious example is an emergency, when student information must be released to protect the health or safety of a student or other person. Agencies processing student financial aid applications, or schools involved in school accreditation, are also eligible to receive pupil records. Finally, organizations conducting studies for, or on behalf of, educational agencies may obtain copies of pupil records. In each case, however, these records are considered privileged information, and may not be shared with any person, agency or organization other than the one to whom they were originally released.

Any time a personally identifiable portion of a pupil record is shared with an outside source, a log of persons and organizations requesting or receiving information must be maintained. This log is available to inspection only by a parent, school official responsible for pupil records, or state or federal authority. School districts are not obligated to maintain a log of releases of non-personally identifiable pupil information. This allows school districts to release statistical data to any public agency, private non-profit college, university, or educational research organization without making an official record of this transaction.

**The following is extracted from Office of Information Technology-Security and Risk Management Guidelines, Section 6, produced by the Department of Finance, Office of Information Technology, State of California, 1992.**

**Guidelines**

**6.0 General Comments**

State policy requires that each agency identify the automated files and data bases for which it has responsibility. The designated owner of the automated file or data base is responsible for classifying that information. Each agency is also responsible for identifying those applications of information technology that are critical to agency operations.

Classifying of information is a statutory obligation. All State information falls into one of two categories with respect to its disclosure. As defined by the California Public Records Act (Government Code Chapter 3.5, Sections 6250 through 6265) information either "open to the public" or public information, and information which is "not open to the public" or confidential information. For purposes of these guidelines the terms "public" and "confidential" information will be used.

Classifying information into the categories of public or confidential serves to properly indicate, if and when and under what conditions, information is to be disclosed. The Public Records Act does not specify what security measures or controls are to be used in protecting the information.

In order to provide the proper degree of protection it is necessary to further classify information. To resolve this problem a third classification called sensitive information has been established which relates to the security measures and controls necessary to protect either public or confidential information from unintentional or unauthorized disclosure, modification, destruction and/or denial of use.

## 6.1 Public Information

Public information is all information held by the State on which no legal restrictions have been placed regarding its disclosure. Public information may be further classified as sensitive with regards to the security measures established for its protection and preservation.

## 6.2 Confidential Information

Confidential information requires special precautions to protect it from unauthorized or accidental access, disclosure, or dissemination. Automated information systems which process confidential data require adequate controls to safeguard against accidental or unauthorized disclosure. Confidential information is defined as follow:

- Information maintained by State agencies that is exempt from disclosure under the provisions of the California Public Records Act (Government Code Section 6250-6265).
- Information classified as personal by the California Information Practices Act of 1977.
- Information that is exempt from disclosure by other applicable State or Federal laws.
- Information, the disclosure of which is limited by contractual obligations, including proprietary computer software, proprietary information, and trade secrets.

## 6.3 Sensitive Information

Both confidential or public information can be categorized as sensitive information. Sensitive information may require special precautions to protect it from unauthorized disclosure, accidental or intentional modification, destruction or denial of use. Assigning information to sensitivity category helps in defining the security measure that is appropriate for its protection.

There are four levels of sensitivity. The sensitivity levels, S1 through S4, refer to the level of protection that are warranted for a specific file of information or data. It is the department's responsibility to review its electronic information with respect to the Public Records Act, the Information Practices Act, and other State or Federal statutory or regulatory requirements which may apply in determining the sensitivity category and the security measures reasonable and prudent with respect to the protection of that information.

S4 Information which if accidentally or intentionally disclosed, modified or destroyed would constitute an invasion of privacy or result in harm to the individual. Information typical of this category may consist of medical, financial, welfare information, or records pertaining to pending litigation. Operational information or data, such as, personal identification numbers, codes or passwords, etc.

S3 Information which if disclosed, modified or destroyed would have a serious negative impact on the State operations. Included in this category would be financial or investment information. Information or data supplied to the State in confidence, such as, geological or geophysical data, plant production or market or crop reports, etc.

S2 Information which if disclosed, modified or destroyed may have an adverse impact on a department's activities. Information typical of this category are civil service examinations, scoring keys, or competitive bids, etc.

S1 Information needed for the day-to-day operation of government. Information in this category should not contain data which can be related to the identity of an individual, result in a negative fiscal impact to the State, or adversely impact State operations. Information typical of this category is accounting information, statistical information, procedures, policies, published regulations, operational directives, etc.

Sensitivity categories have been established to insure adequate levels of protection for the State's informational assets. Sensitivity categories also provide a convenient means of determining how the information is to be handled once it has been printed or distributed. For suggest security measures see Table 6.1.

## 6.4 Displaying Sensitivity Category

To insure that the proper degree of protection is applied to information that has been printed all reports should display the sensitivity category on the job separator pages and report heading located at the top of each page.

## 6.5 Protective Cover

Reports that are designated sensitive category three and four (S3 and S4) are to be placed in a protective cover for transport to the proper recipient. Depending on the size of the report the protective cover can consist of an envelop, box, or cabinet. It is not necessary to use a protective cover if report(s) are printed in a controlled environment at the recipients facility.

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## EXHIBIT 3-2

# An Example of a School District's Brochure About Record Maintenance and Policies<sup>1</sup>

## STUDENT RECORDS AND YOUR RIGHTS

### WHAT STUDENT INFORMATION IS COLLECTED BY SCHOOLS?

By state law, the Saint Paul Public Schools must collect school census information on all students in public or private schools if the parents reside in Saint Paul. Census information includes student and parent names, address, telephone, schools attended, grade, school transportation information and special education program assignments. Other information typically collected for public schools students includes district-wide testing data, subject marks, attendance, and in some instances, with approval, special tests or evaluations by professional staff.

The Minnesota Department of Education also requires the school district to ask for each student's Social Security Number for state-wide record keeping purposes. There are no consequences if a student refuses to provide the Social Security Number.

Financial aid to the school district is based on census and other information sent to the Minnesota Department of Education.

### WHERE IS STUDENT RECORD INFORMATION KEPT?

While a student is enrolled in a Saint Paul Public School, official school records are kept at the home school in the student's Cumulative Record Folder. This folder holds the official student records and other data school officials believe is needed to provide the best instructional services for each student.

Census and related administrative information is kept in a computerized form at the district's Data Processing Department for the Student Data Management Department.

### WHO MAY SEE STUDENT RECORDS?

Access is limited to the following:

- Parents or legal guardians who present proper identification.
- Students age 18 and over who present proper identification.
- Staff members of the Saint Paul Public Schools, such as the principal, teachers, counselors, school social workers, nurses and other authorized professional personnel.
- Other schools, upon request, when a student graduates, transfer, or withdraws, unless otherwise restricted.
- Other third parties (employers, social agencies, law enforcement, etc.) May have access to records only with written permission of adult students, parents, or legal guardians.

### EXCEPTION

Directory information (name, address, school, birthdate, dates of attendance, awards, extra-curricular information) is public information and may be released. Forms for restricting this information may be obtained by calling the Student Data Management Department.

### HOW LONG ARE RECORDS KEPT?

Most records are destroyed when they no longer are needed by professional personnel to plan the most appropriate instructional programs for students. Many evaluative records are destroyed after one year. Contents of the Cumulative Record Folder (less the permanent records) usually are destroyed within five years of the time a student leaves the school system. However, a summary of student information along with certain grade reporting and attendance data is converted to a permanent microfilm record when students leave the school system, as required by law. These permanent files are kept to fill requests for information from former students who later need to verify school-related information from their own records.

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<sup>1</sup> Extracted from a brochure developed by Saint Paul Public Schools, District 625—360 Colborne Street, Saint Paul, Minnesota 55102-3299.

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### **WHAT HAPPENS TO THE RECORDS WHEN A STUDENT LEAVES A SAINT PAUL PUBLIC SCHOOL?**

When a student leaves the school system (graduates, moves away, withdraws), contents of the Cumulative Record Folder are sent to other school systems, colleges, vocational schools, at student request unless the parent (or adult student) signs a form specifically directing the Saint Paul Public Schools not to release information to other schools. This form may be obtained from the school at the time the student leaves. After the student leaves, the academic and health records are forwarded to the school district's Student Data Management Department, where these records are microfilmed and preserved.

### **WHAT ARE YOUR RIGHTS REGARDING STUDENT RECORD INFORMATION?**

- State and federal laws governing school records allow parents, legal guardians, and adult students (age 18 and over) to examine and/or obtain copies of their records or those of their children upon proper identification.
- The law requires release of student information to a non-custodial parent. Exceptional circumstances should be referred to the Student Data Management Department.
- You may challenge the accuracy of the record. You may request that school officials change it. After consultation, school officials may decide whether to alter the record. If you disagree, you have the right to a hearing.

### **WHOM SHOULD YOU CONTACT REGARDING QUESTIONS ON RECORD PROCEDURE?**

The Assistant Administrator of the Student Data Management Department is the person authorized by the district to receive concerns about student records and may be contacted at 360 Colborne Street, Saint Paul, Minnesota 55102. Telephone (612) 293-5131.

Establishing safeguards to protect the right to privacy may cause some delay in getting information to the source requesting it. However, the school district has an obligation to protect the right to privacy for all individuals.

The Saint Paul Public Schools ask your support and cooperation with these procedures. If you have questions or comments on any of these matters, please call 293-5120.



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## SECTION 4:

# Securing the Privacy of Data Maintained and Used within an Agency

### SUGGESTED AUDIENCES:

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- ✓ *State education agency staff*
- ✓ *School district staff*
- ✓ *School administrators or staff*
- ✓ *Program and support services staff*
- ✓ *Technical staff*
- ✓ *Teachers and other school-based support professionals*

### OVERVIEW

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Many school administrators have nightmares about break-downs in the security of their records systems. One administrator might agonize about the file cabinet key stolen from the school secretary's desk when he or she is at lunch. Another might worry about students breaking into the automated management information system to change their grades. Still another might cringe at the thought of certain student information being released to the media.

Maintaining the privacy of personally identifiable data about students requires clear policies to restrict who has access to data and how the data are used. This section describes some of the considerations in deciding who can review and use student data, what are legitimate uses of data, and what security will be needed to protect against inappropriate access.

### COMMONLY ASKED QUESTIONS

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**Q.** If a student's record is corrected at the district level, must the district inform other holders of that record?

**A.** *Yes. This is a major part of the importance of a written policy regarding what data are maintained and where they are kept. Also see Section 5 for changes made to education records as requested by parents.*

**Q.** What should I do when elected officials or others with authority over me want to see individual education records?

**A.** *Unless authorized by law, the same rules of access apply to elected officials as to anyone else outside an agency. When you establish policies and procedures on access, the records manager or designated official would have the authority to deny unauthorized access. You can instruct all other staff members to refer requests to the designated official or records manager. See Section 4, Guidelines A, B, and E.*

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**Q.** If some student data are protected and others are not, must I keep separate sets of records on students?

**A.** *No, you are not required to keep separate sets. However, it is a good practice and would facilitate monitoring access to the records.*

**Q.** Does everyone in an agency have access rights to student records?

**A.** *No. See Section 4, Guidelines B for specific guidance.*

**Q.** Do contractors or vendors for an agency have access rights to student records?

**A.** *Contractors or vendors acting on behalf of the agency or school to perform specified duties may be allowed access to those records they need to perform such duties. You should consider this kind of access case-by-case. Staff from organizations who have access to individual data should be trained in their responsibilities to keep the data confidential. See Section 4, Guidelines B and E.*

**Q.** Who can do filing, typing, and data entry of education records?

**A.** *Agencies or schools may assign these duties to qualified staff members. However, it is important to provide training as soon as you hire both permanent and temporary staff. The training should include the access rights as well as the responsibilities for safeguarding the confidentiality of data to which they have access. See Section 4, Guidelines C.*

**Q.** What policies should a school district, regional office, and state education agency have in effect?

**A.** *In addition to the policies required by federal or state laws, you should also establish policies that cover how and what data to collect; how, where, and how long data are maintained; on what criteria individuals within and outside the agency may be given access to these data; and how students and parents may review and request amendment to the education records. See Sections 3 to 6.*

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## GUIDELINES

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**An official designated as the records manager should be responsible for keeping individual records safe and intact from accidents, unauthorized access, theft, changes, or unintentional release.**

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### **A. Management Responsibilities**

Staff responsible for student data must protect the privacy of the data by ensuring that procedures for maintaining the data are secure enough to prohibit access to anyone other than the appropriate persons (those with a need-to-know) and that these procedures are followed. Responsible staff may be the principal of a school, a school secretary, computer technicians, a guidance counselor, a school or district registrar, the superintendent, or other appointed staff members. These staff members should ensure that education records are kept in a locked, fire-proof (preferably), and secure location where they cannot be inappropriately read, stolen, or changed. Schools, districts, or state education agencies with individual education records maintained in computer files may have a data division with a manager and staff who are responsible for maintaining the security and privacy of education records.

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No matter what the position, a person with responsibility for the confidentiality of education records (e.g., the records manager) has serious responsibilities for ensuring that all who work with the data will help him or her in guarding the privacy of education records. In addition, the records manager should ensure that the equipment and procedures used will protect the security of the records. You should develop a written policy that describes what data are maintained and what procedures are in place to ensure that access to personally identifiable data is restricted only to those persons with a legitimate educational interest as defined by the system.

To carry out these management responsibilities, the records manager must know who is authorized to see personally identifiable student data. A written policy can define the appropriate school officials and what constitutes a legitimate educational interest. This policy should state who is allowed to change data and what procedures are needed to ensure that all records are updated when changes are made.

Management has a responsibility to inform staff members of their rights and responsibilities with regard to student data. One commonly used procedure is to have persons granted access to personally identifiable data sign an oath of non-disclosure. This agreement should list all types of information that must be kept confidential and forbid staff from discussing security aspects of the data system, whether a locked filing cabinet or a computer, with unauthorized individuals. Specific penalties required by law or regulations should be included in this oath. While this may seem extreme, it can help to ensure that staff know exactly what the requirements and their responsibilities are.

The selection of equipment and the location for the equipment used to maintain student records are important management responsibilities. Lockable filing cabinets are important for paper documents, but maintaining these documents in a safe and monitorable location is also essential. You should develop procedures for having the files unlocked and available when needed by staff, as well as for securing them when not needed.

For computerized student data, select equipment that has the appropriate mechanical configuration, provides access to authorized users, and has software that allows the restriction of access to authorized persons only. Among the procedures used to ensure the privacy and security of computer records are password applications that restrict access to data elements and files only to those with authorization, frequent password changes to guard against break-ins, and the use of encryption. Monitoring access to the secured files is also desirable. Computers can record which users enter into secured files.

The location of computer equipment should guard against threats from intruders as well as physical disasters and other unforeseen problems. Computer equipment should be kept in lockable rooms with appropriate electrical connections and sufficient space to maintain it. In addition, the equipment should not be located near water pipes or other sources of potential disasters. Exhibit 4-1 contains additional information about securing automated records.

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**It is more practical to establish criteria for determining broad categories of positions than to list exactly who or what individual positions are considered "school officials."**

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**While agencies or schools may establish a policy to determine what constitutes "legitimate educational interest," the decision also may be made case-by-case.**

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## **B. Defining "Legitimate Educational Interests"**

The Family Educational Rights and Privacy Act (FERPA) makes it clear that "school officials with legitimate educational interests" may be given access to personally identifiable information about students. However the law does not say who those persons are, nor does it stipulate how to determine the limits of a legitimate educational interest. Agencies or schools maintaining personally identifiable data about students should have written criteria for determining which school officials have a legitimate educational interest in specific education records because this must be included in the annual notification to parents, as specified in FERPA. The intent to follow this practice should be stated in the school's or agency's written policy.

In determining the school officials who might need access to education records, it may be more practical to establish broad position criteria than to list exactly who, or what individual positions, qualify. General criteria such as these might be useful:

- A person employed by the agency or school in an administrative, counseling, supervisory, academic, student support services, or research position, or a support person to these positions
- A person employed by or under contract to the agency or school to perform a special task

Identifying a person as a school official does not automatically grant him or her unlimited access to education records. The existence of a legitimate educational interest may need to be determined case-by-case. A sample policy statement of what constitutes legitimate educational interest might include wording such as the following:

A school official is determined to have legitimate educational interest if the information requested is (1) necessary for that official to perform appropriate tasks that are specified in his or her position description or by a contract agreement; (2) used within the context of official agency or school business and not for purposes extraneous to the official's areas of responsibility or to the agency or school; (3) relevant to the accomplishment of some task or to a determination about the student; and (4) consistent with the purposes for which the data are maintained.

School officials should be informed that having access to education records or the information within the records does not constitute authority to share this information with anyone not given access through the written policy. This is particularly critical if the data are to be used away from the agency or school by contractors or consultants. See Section 6 for more information on releasing information outside an agency.

After the policy defines school officials with a legitimate educational interest, a list of authorized positions or persons and records or specific data elements to which they may have access should be created. This is particularly important if the system is automated. Section 3 describes some of the staff members who might have a legitimate educational interest.

If you have any questions about whether a requestor has a legitimate educational interest, ask the records manager not to disclose the information without prior approval from the parents or other appropriate officials.

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The records manager must decide the legitimacy of each request for information. If there is any doubt or question regarding the request or the legitimate educational interest, the records manager should not disclose the information without the approval or concurrence of appropriate agency or school officials or written permission from the student or parent.

### **C. Training Agency Staff**

Training all agency staff, even those who do not have access to individual education records, is important to ensure that education records are handled correctly. Staff members should be informed about what is considered appropriate and inappropriate access to the data and use of the information within the records. For instance, a staff member may have a legitimate access right to a student's education record for making placement decisions. That same staff member may not have a right to view the records of other students for whom he or she does not have responsibilities. Persons who are not authorized to see personally identifiable data should be informed why they are denied access if they are in positions where they must work with students.

Plan to train new staff members as soon as possible after they are hired. Training should cover the requirements and restrictions under FERPA and other relevant federal and state laws regarding confidential information (e.g., public health code), and relevant professional standards of practice.

Training should cover any special requirements related to specific data collection documents or procedures. Staff should be trained how to ask questions, what to do if the person being asked cannot understand English, how to handle problems when there are misunderstandings, exactly what is expected in each data collection document, and any other important procedural details. Training should cover the responsibility to protect information while it is being collected or used. For instance, staff should not leave education record files opened on their desks or showing on their computers when they step away from their desks.

### **D. Professional Ethical Standards**

The use and misuse of student data are covered to some extent by professional ethical standards. Several documents should be reviewed and considered in this area. Two particularly relevant sets of ethical standards are the Ethical Standards for School Counselors and Ethics and Law for School Psychologists. Another document is the Standards for Educational and Psychological Tests, produced jointly by the American Educational Research Association, American Psychological Association, and National Council on Measurement in Education. This document specifically addresses the use of test results. Also, a good resource is The Program Evaluation Standards, published by The Joint Committee on Standards for Educational Evaluation. These standards describe ethics related to respecting and protecting the rights and welfare of human subjects. See the references at the end of this section.

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**All staff should be trained in information security as soon as they are hired. You should inform staff of what is considered appropriate and inappropriate access to data and use of the information within the records.**

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**Existing professional standards are invaluable resources to support policymaking and training.**

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**It is important to determine each time whether the staff assigned to conduct the research are trained and authorized to access the data. An alternative approach is to sidestep the question of security by creating a research file deleting the students' identifying information.**

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## **E. Research Use within an Agency**

Sometimes the records manager will receive requests for research using education records, such as comparisons of the test scores of students in different programs. District policy or procedures should specify the steps in making and acting on such requests. The records manager may elect to have staff complete the analysis or contract with consultants to do the analysis. If a staff member conducts the analysis, it is important to determine if he or she is authorized to have access to personally identifiable student data. If not, the records manager may create a file containing the needed data without the students' identifying information. This is a good way to protect confidentiality while allowing data to be used by contractors or outside researchers as well. We describe the release of student data in more detail in Section 6.

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## EXHIBIT 4-1

# Some Ways to Promote Secure Maintenance of Automated Student Records

- ✓ Document the date and reason for collecting information for each form and each data element, so that files may be kept current and not used for unintended or inappropriate purposes.
- ✓ Identify education record files and data elements within the files as restricted (confidential) or unrestricted (e.g., directory information).
- ✓ Develop a filing system for records, so that they can be retrieved easily and accurately when needed. The practice will minimize the possibility of misplacing confidential information and thereby allowing unauthorized access. This is true for either automated or paper-record systems.
- ✓ Maintain complete and well-documented records on all changes and additions to files. Computer programs can be used to keep a list of changes and additions, note who made them, and note when they were made.
- ✓ Passwords can be used to limit access to parts of student files or to specific data elements. Systems operators should monitor access closely through a record keeping system. In addition, they should require users to change their passwords frequently, at a minimum of every three months.
- ✓ Where possible, a warning statement should appear on the computer screen before access is permitted. This statement should stay on the screen for at least ten seconds to ensure that it is readable. It should be worded to convey the following message:  
"Unauthorized access to personally identifiable information is a violation of Federal (and/or state) law and will result in \_\_\_\_ (prosecution or a maximum fine of \$ \_\_\_\_ and/or imprisonment of up to \_\_\_\_ years, where applicable)." Users should be prompted to select whether to proceed. If it is not feasible for this statement to appear on the screen of the computer, it should be typed and attached to the monitor in a prominent location.
- ✓ When data are maintained on magnetic media storage devices, such as tapes, floppy diskettes, removable and fixed hard disks, they should be secured in the same manner as if they were printed materials (e.g., locked in a secure cabinet when not in use, and only necessary copies made). This may require extensive physical security for computers with hard disks.
- ✓ When encryption and decryption are used to ensure security of data, the algorithm required to encrypt and decrypt must receive the same protection as the data. When not in use, it must be secured at all times.
- ✓ To secure data against unauthorized access via electronic communication, modems should be disconnected while restricted data are being stored or processed on microcomputers or minicomputers. Extreme care should be exercised to ensure that the data are not inadvertently made available through use of networking technology. For example, password protection of access to the data file should be required in addition to access to the computer.
- ✓ Ensure that people involved in coding, entering, and processing the information have the necessary training and background to perform their tasks accurately and maintain strict confidentiality; and ensure they understand the criteria, context, penalties and other considerations.
- ✓ Avoid making excessive copies of back-up records. If back-up copies are made, label documents as "original" or "copy."



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## SECTION 5: Providing Parents Access to Their Child's Records

### SUGGESTED AUDIENCES:

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- ✓ *State education agency staff*
  - ✓ *School district staff*
  - ✓ *School administrators or staff*
  - ✓ *Program and support services staff*
- Teachers and other school-based support professionals*

### OVERVIEW

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Sometimes parents worry about what information is kept about their children, and whether the information is correct. To protect the privacy of students and their families, the Family Educational Rights and Privacy Act (FERPA) grants parents the right to review, amend, and challenge the contents of their child's education record. Section 2 includes a discussion of FERPA's requirements; Section 5 provides additional suggestions to implement and facilitate the process.

### COMMONLY ASKED QUESTIONS

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**Q.** Can students review their own records?

**A.** *Yes, students can review their own records but only under certain circumstances. Under FERPA, the right to review records transfers from the parents to the students once students turn eighteen years old or attend a postsecondary institution. Postsecondary students under eighteen may not, however, demand access to their elementary or secondary school records. As long as students are legally dependent for tax purposes, parents retain access rights to records.*

**Q.** How do I respond speedily to requests for reviewing student records?

**A.** *If you establish written procedures and provide appropriate forms, you can facilitate the reviewing process and forestall frustrating delays. See Section 5, Guidelines B.*

**Q.** Should I authenticate requests for student information? How far do my responsibilities extend?

**A.** *The agencies or schools releasing information are responsible for verifying the authenticity of a request. However, you will need to make a judgment call as to what precautions are sufficient. You can reduce ambiguity by creating a written policy with verification procedures. See Section 5, Guidelines C and D for suggestions.*

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**Q.** Can I discuss the education record of a student in front of someone the parent has brought along, such as a language interpreter or a friend who sits in when I let the parent review the record?

**A.** Yes, you may discuss the record if the parent signs a consent form. See Section 5, Guidelines D.

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**Q.** Do I have to provide copies of an education record when the parents request to see it?

**A.** The agency or school may choose to provide copies, although this is required only when it is not feasible for the parent to review the record because of distance, illnesses, disabilities, or a lack of building accessibility. See Section 5, Guidelines E.

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**Q.** Must I allow a parent to make a copy of an education record?

**A.** No, you do not have to allow a parent to make a copy unless the agency or school allows copying. The agency or school can charge for the copies. See Section 5, Guidelines E.

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**Q.** Do non-custodial parents have access rights to student records?

**A.** Parents, custodial and non-custodial, as well as legal guardians have access to student information unless the agency or school has evidence of a court order or state law revoking these rights. Parent rights extend to surrogate parents of children with disabilities. See Exhibit 5-1 for the pamphlet, *Rights of Non-Custodial Parents*, developed by the Family Policy Compliance Office of the U.S. Department of Education.

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**Q.** What do I do if a non-custodial parent requests to amend an education record?

**A.** You would follow the same procedures as you would for amending records for custodial parents. See Exhibit 5-1.

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**Q.** Must I give my notes on a student to his or her parent?

**A.** If teachers' or counselors' notes are not maintained in the education record of the student and are not shared with anyone else, it is not considered part of the education record by FERPA. Teachers may choose not to give their notes to parents. See Section 2 for the definition of an education record.

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**Q.** What are the access rights of emancipated minors?

**A.** If a person is granted the legal status of an emancipated minor, that individual has access to his or her own record. Most states define an emancipated minor as a minor who has the power and capacity of an adult.

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Parents should be informed of their rights under FERPA, although the actual means of notification is the decision of the agency or school.

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## GUIDELINES

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### A. Notifying Parents of Their Rights

Schools, or districts are required to make public notification of parents' rights under this law. See Exhibit 2-3 in Section 2 for a model notification. The actual means of notification (e.g., a special

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letter, a newsletter article, a PTA or PTO bulletin, or inclusion in a student handbook) is the decision of each school or district. In addition, the district must attempt to notify parents who have a primary or home language other than English. For instance, the notification may be translated into different languages, or interpreters may provide the information to parents when they are registering their child at the school.

## **B. Providing Access to Individual Records**

FERPA provides that parents may *inspect* and *review* their own child's education record. Exhibit 2-1 includes a Fact Sheet of FERPA describing the federal requirements in this aspect. This right of review also is granted to non-custodial parents. See Exhibit 5-1. Some states established laws with provisions applied to access of education records. It is also advisable to check for possible state laws that define parents.

An agency or school may choose to promptly honor a parent's standing request for access. While prompt responses are best, agency or school staff should not omit the procedure of verifying the authenticity of the request. Hence, it is important that agencies or schools establish internal management procedures related to handling requests from parents to review their child's record. These procedures should describe clearly all steps and the necessary forms, and designate the official who handles all requests. This will not only avoid confusion among staff at agency or school offices, but also facilitate the responding process.

## **C. Handling a Parent's Request**

Procedures for responding to requests to review individual records should be established as part of a district's student records policy. Parents may be asked to submit a written request to review their child's education record. The district may design a sample request form or letter. See Exhibit 5-2 for a sample form. The form could explain the relevant federal and state laws, describe the access procedures, and identify the official designated by the agency or school to handle the request. This form should be available at school offices, although requests may be directed to the district office.

Since teachers and other school-based professionals have the most frequent contacts with parents, these professionals often receive informal requests for information about a student. If the scope of these requests is beyond the day-to-day communication about a student and the information can be found only in the education record, teachers should refer requesters to the appropriate school or district office. This will ensure that all requests are handled appropriately.

When you receive a written request, verify the requester's identification as soon as possible. Staff could check the education record and determine if there is no apparent reason, such as a legally binding document, to believe the requester may not have access to the student's record. Additional procedures may be added to verify the authenticity of the request. For instance, staff may call the parents using the telephone number listed in the school's records to verify if they have actually made the request.

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**It is important for an agency or school to prepare written procedures for handling record requests.**

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**The agency or school should verify the authenticity of requests and comply within forty-five days.**

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Since, according to FERPA, an agency or school must comply with requests to review a record within forty-five days or less from the date of receipt of the request, you should make arrangements for access as promptly as possible. FERPA specifies that a school or district may not destroy the record for a student if a request for access to that record is pending. It is also advisable to determine if your state laws require a quicker response (i.e., fewer than forty-five days).

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**A designated official should manage the review process. This official can verify the identification of the parents, explain the laws, help parents understand the record, and refer parents to appropriate resources.**

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## **D. Managing the Review**

After verifying the legitimacy of a request, the school or agency should notify the parent of the time and place to inspect the record. See the sample notice in Exhibit 5-3. A school or district staff member may be designated for managing the review. The role of this staff member might include:

- Explaining the laws and regulations that safeguard the confidentiality of the information
- Verifying the identification of the requester (through the use of an identification with the bearer's photograph)
- Staying with the parent during the review to make sure the parent understands the contents of the record
- Making sure the complete record is returned after the review
- Answering questions about the policies and procedures regarding the review
- Referring the parent to the appropriate resources if a parent has further questions about the contents of the record

At the end of the review, the parents may be asked to sign a form, such as the one in Exhibit 5-3, indicating that they have reviewed the record.

Parents may bring another person (e.g., an interpreter, a trusted friend, or an attorney) to review the record. The staff member managing the review should:

- Explain the laws and regulations that safeguard the confidentiality of the education records, and the penalties to the agency or school of unauthorized disclosure.
- Ask the parent to sign a consent form, such as the one in Exhibit 5-4, to allow the accompanying person access to the record.
- Ask the accompanying person to sign an affidavit of non-disclosure, such as the one in Exhibit 5-4.

## **E. Providing Copies or Charging a Fee**

FERPA does not require agencies or schools to provide copies of education records unless there are reasons (e.g., great distance, illnesses, disabilities, or a lack of building accessibility) it is impossible for parents or eligible students to inspect the records in person. A school district may establish in its policy whether it will provide copies of education records; such policy should specify the circumstances in which copies will not be provided.

As established in FERPA, the agency or school may not charge for search and retrieval of the records. However, it may charge for copies, copying time, and postage. Fees for copies of records, including tran-

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**Agencies or schools may, but are not required to, provide copies of the records.**

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scripts, should be established in the school or district policy and publicized as needed. However, the fee imposed should not serve to deter parents from reviewing their child's record.

The agency or school also may allow the parent who is reviewing the records to make copies of parts of the records. If so, it is permissible to charge the parent for photocopying costs.

## **F. Handling Challenges to Record Contents**

FERPA also provides parents, custodial or non-custodial, and eligible students the right to request that a school *correct* or *amend* records believed to be inaccurate, misleading, or in violation of a student's right. If the school decides not to amend the record, the parent or eligible student has the right to place a statement with the record commenting on the contested information.

A school district should develop a written description of the procedures to notify parents and eligible students of their rights to challenge record contents and guide them through the process. Parents may challenge the contents of the education record and ask that a change be made if they believe that the record is inaccurate, misleading, or in violation of the privacy rights of the student. In doing this, the parents must identify the part of the record they want to change, and specify why they believe it to be inaccurate, misleading, or in violation of the student's rights. The parents should make a written request to amend the record. The school or district may provide a form for this purpose, such as the one in Exhibit 5-5.

The school or district may decide whether the request is valid. If the school or district can verify that the contents in question are in error, the record should be amended as soon as possible and the parent notified in writing of the changes. Exhibit 5-6 contains a sample form for this process.

## **G. Managing the Hearing Procedures**

A school or district may decide not to make the requested correction. If so, you should notify the parents of the decision. The parents should be advised of their right to a hearing to challenge the information believed to be inaccurate, misleading, or in violation of the student's rights. Exhibit 5-7 contains a sample form for this process. The parents should be asked to inform the school or district if they would like to schedule a hearing to challenge the record.

The school or district should notify the parents, as soon as feasible and reasonably in advance, of the date, location, and time of the hearing. The hearing must be presided over by someone who is considered a disinterested third party; this person may be a school or district employee. The parents must be allowed to present evidence relevant to the issues raised in the original request to amend the record. The parents may be assisted by other individuals such as an attorney.

When a decision is made about challenged content, the school or district should document the evidence presented in the hearing and reasons for the decision. The decision should be based solely on the evidence presented in the hearing.

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**If it is not feasible for the parents to review the records because of distance, you should provide a copy of the record.**

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**While agencies or schools are not allowed to charge for the search and retrieval of records, they may charge for copying time and postage.**

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**Written procedures can guide parents through the process of challenging their child's record. The school or district may provide a form to streamline the process.**

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**Parents should be notified as soon as a hearing is scheduled. The hearing may be presided over by an agency or school official, if this person is considered a third party.**

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**Evidence presented in the hearing should be documented. The decision should be based solely on the evidence presented at the hearing.**

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**It is important to follow through on the decision of the hearing.**

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If the decision of the hearing is that the challenged information is not inaccurate, not misleading, or not in violation of the student's rights, the school or district must notify the parent. This notification must inform the parents that they have a right to place in the record a statement commenting on the challenged information or a statement setting forth reasons for disagreeing with the decision that the record will not be changed. This statement must accompany the record when it is transferred to another entity in the future.

If the decision is that the challenged information is inaccurate, misleading, or in violation of the student's rights, the record must be appropriately amended and the school or district must notify the parent, in writing, that the record has been amended. If the information is maintained in portions of the record located in more than one place in the school or district, then information in all locations should be corrected.

## EXHIBIT 5-1

# Rights of Non-Custodial Parents in the Family Educational Rights and Privacy Act of 1974<sup>1</sup>

The Family Educational Rights and Privacy Act (FERPA) sets out requirements designed to protect the privacy of parents and students. In brief, the law requires a school district to: 1) provide a parent access to the records that are directly related to the student; 2) provide a parent an opportunity to seek correction of the record he or she believes to be inaccurate or misleading; and 3) with some exceptions, obtain the written permission of a parent before disclosing information contained in the student's education record.

The definition of parent is found in the FERPA implementing regulation under 34 CFR 99.3.

*"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.*

Section 99.4 gives an example of 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.*

This means that, in the case of divorce or separation, a school district must provide access to both natural parents, custodial and non-custodial, unless there is a legally binding document that specifically removes that parent's FERPA rights. In this context, a legally binding document is a court order or other legal paper that prohibits access to education record, or removes the parent's rights to have knowledge about his or her child's education.

Custody or other residential arrangements for a child do not, by themselves, affect the FERPA rights of the child's parents. One can best understand the FERPA position on parents' rights by separating the concept of custody from the concept of rights that FERPA gives

parents. Custody, as a legal concept, establishes where a child will live, and often, the duties of the person(s) with whom the child lives. The FERPA, on the other hand, simply establishes the parents' right of access to and control of education record related to the child.

Here are the answers to questions frequently asked about the rights of non-custodial parents.

**1. Does the FERPA require a school to keep a parent informed of the child's progress even though the parent is divorced and living some distance from the child?**

No. The FERPA does not require schools to inform parents of student progress whether the parents are divorced or not.

**2. Does the FERPA require a school to provide a parent copies of the record?**

Generally, a school is not required to provide parents copies of the record. However, if the distance is great enough to make it impractical for the parent to visit the school to review the record, the school must make copies of the record and send them to the parent when that parent requests access to the record.

**3. May a school charge for copies of records?**

Yes. A school may charge a reasonable fee for copying.

**4. Does the non-custodial parent have the right to be informed of and to attend teacher conferences?**

The FERPA does not address conferences for the purpose of discussing student performance. Thus, a school has no obligation under this law to arrange a conference to accommodate the non-custodial parent. However, if records of conferences are maintained, the non-custodial parent has the right to see those records.

**5. Must the school notify the non-custodial parent of his/her FERPA rights?**

No. The school would be considered in compliance with the law if it notifies only the parent who has custody of the child.

<sup>1</sup> The pamphlet was developed by the Family Policy Compliance Office of the U.S. Department of Education.



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**6. Must the school provide the non-custodial parent the same general notices it provides the custodial parent?**

No. General notices, lunch menus, PTA information, announcement of teacher conferences, school pictures, and other similar information, are not "education records" as defined by the FERPA. Therefore, schools are not legally required to provide them.

**7. Is the school required to honor a parent's "standing request" for access or copies?**

No. The FERPA does not require a school to honor a standing request, but the school may do so if it wishes. If parents wish to obtain information from their child's record on a regular basis, they should submit requests periodically. The school must respond to each request within 45 days.

**8. How can a non-custodial parent get access to record?**

Any parent may ask the school for the opportunity to review the record, either by going to where the record are kept or by requesting copies. The school may ask the parent for some identification.

**9. Can the parent with custody prevent the non-custodial parent from exercising his or her FERPA rights?**

No. FERPA rights are given to both parents. The school may assume that a parent has these rights unless it has evidence to the contrary. The school does not need the permission of the custodial parent to give access to the non-custodial parent.

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**EXHIBIT 5 - 2**  
**Sample Request to Review  
an Education Record**

Date: \_\_\_\_\_

To: [Name of Designated Official]

From: [Name of Parent(s)]

[Address and Phone Number]

Under the provisions of the Family Educational Rights and Privacy Act of 1974 and [insert applicable state/local laws and regulation], I wish to inspect the following education record:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

of [Name of Student]: \_\_\_\_\_

School At Which Student is Attending: \_\_\_\_\_

Requester(s)' Relationship to Student: \_\_\_\_\_

I do\_\_\_/do not\_\_\_ desire a copy of such records. I understand that a reasonable fee will be charged for the copies.

Signature: \_\_\_\_\_  
.....

**For official use only**

Date Received: \_\_\_\_\_ Date Request Verified: \_\_\_\_\_

Approved:\_\_\_ Disapproved:\_\_\_ Reason(s) for disapproval: \_\_\_\_\_

Signature of Official Approving/Disapproving Request: \_\_\_\_\_

Date: \_\_\_\_\_ Date Notification Sent: \_\_\_\_\_

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**EXHIBIT 5 - 3**  
**Sample Notification to Review  
an Education Record**

Date: \_\_\_\_\_

To: [Name of Parent(s)]

From: [Name of Designated Official]

Your request for review of your/your child's record was received on [date]. The request was approved.

\_\_\_\_\_ The record will be available at the following office for review on [date]:

[Name and address of office, including room number and contact person]

\_\_\_\_\_ As you requested, copies of the record will be mailed to you upon receipt of the copying fee: \_\_\_\_\_.

Please forward your check, made payable to [appropriate agency], to [address of agency].

Please contact [name] of [office] at [telephone number] should you have questions regarding this notice.

Signature of Designated Official: \_\_\_\_\_

***For use on date of review:***

\_\_\_\_\_ I have reviewed and/or have been informed of the contents of the requested education record on [date] and am satisfied with its accuracy and completeness.

\_\_\_\_\_ I have reviewed and/or have been informed of the contents of the requested education record on [date]. I am aware that I have the right to request an amendment of all or part of the record if I am not satisfied with its accuracy and completeness. I also have received a request form for this purpose.

Signature of Parent(s): \_\_\_\_\_

Signature of Staff Managing the Review: \_\_\_\_\_

***For use in copying/ mailing of record:***

Date fee received: \_\_\_\_\_ Check No: \_\_\_\_\_ Staff initials: \_\_\_\_\_

Date copies mailed: \_\_\_\_\_ Staff initials: \_\_\_\_\_

Amount received: \_\_\_\_\_

EXHIBIT 5-4

**Sample Consent Form to Allow  
Accompanying Person to Review Record**

***For Use by Parent or Eligible Student to Grant Consent***

I hereby grant the permission for [name of person] \_\_\_\_\_ to accompany me today during my review of my/my child's education records. I understand that in doing so, the information maintained in the education records, otherwise protected by [Federal and state laws], may be disclosed with my consent to the above named.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

***For Use by Accompanying Person as Affidavit of Non-Disclosure***

In accompanying the above signed parent/guardian on this date during his/her review of the education records of [name of student], I will be given access to confidential information maintained in the education records of the named student. I understand that this information is protected under [FERPA and state laws, where applicable]. I hereby acknowledge that I fully understand that the intentional release by me of this information to any unauthorized person could subject me to [penalties where applicable] imposed by [Federal and state laws].

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

***For official use only***

Staff initials: \_\_\_\_\_ Date: \_\_\_\_\_

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**EXHIBIT 5 - 5**  
**Sample Request to Amend**  
**an Education Record**

To: [Name of Designated Official]

From: [Name of Parent(s)]

I have reviewed my child's education record and believe it contains information that is inaccurate, misleading, or in violation of my child's rights. Please amend the record as follows:

Current record:

To be changed to:

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Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone number: \_\_\_\_\_  
.....

**For official use only:**

Date Received: \_\_\_\_\_ Request approved: \_\_\_\_\_ Denied: \_\_\_\_\_

Reason(s) for denial: \_\_\_\_\_

Date of hearing scheduled: \_\_\_\_\_ Location: \_\_\_\_\_

Date of notification sent: \_\_\_\_\_

Signature of official approving/denying request: \_\_\_\_\_

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EXHIBIT 5-6

**Sample Notification for Approval/  
Disapproval of Request for Amendment**

Date: \_\_\_\_\_

From: [Name of Designated Official]

To: [Name of Parent(s)]

Your request for amendment of the education record of your child, [student's name] was received and reviewed.

\_\_\_\_\_ The request was approved and necessary changes are made to the specified record as requested.

\_\_\_\_\_ The request was denied because \_\_\_\_\_

However, you are entitled to a hearing concerning your request. If you decide to request a hearing, please notify the following office within [number of days as specified by state or local policies]:

[Name of the contact person]

[Address and telephone number]

Signature: \_\_\_\_\_

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**EXHIBIT 5-7**  
**Sample Notification for a Hearing  
of Request for Amendment**

To: [Name of Parent(s)]

From: [Name of Designated Official]

Date: [Date]

We have received your request to schedule a hearing for the purpose of challenging the contents of the education records of your child, [name of student]. A hearing is hereby scheduled as below.

\_\_\_\_\_ The hearing is scheduled at:

[Date]

[Time]

[Location/Office]

[Address]

If you cannot be present on the above date, please contact my office as soon as possible to establish a mutually convenient date.

\_\_\_\_\_ The hearing is rescheduled at:

[Date]

[Time]

[Location/Office]

[Address]

You shall have a full and fair opportunity to present evidence relevant to the issues you have raised regarding to your child's education records. You also may be assisted or represented by individuals of your choice, including an attorney. The decision will be based exclusively on the evidence presented at the hearing.

Please do not hesitate to contact me if you have any question.

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[Name], [Title]

[Office]

[Address]

[Phone number]

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## SECTION 6: Releasing Information Outside an Agency

### SUGGESTED AUDIENCES:

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- ✓ *State education agency staff*
- ✓ *State or local policymakers*
- ✓ *School district staff*
- ✓ *School administrators or staff*

### OVERVIEW

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Managers of education records at the state, local, or school level receive numerous requests for information. Every day, they make decisions about releasing information. Requests come from the news media, businesses, relatives, agency staff, law enforcement units, attorneys, private investigators, the governors' or legislators' offices, or researchers.

This section supplements Section 2 of this document, which discusses the federal laws that govern the release of education records. Many states have laws or statutes that further restrict the release of these records. School, district, or state education agency staff should contact their agencies' legal counsel or counsel assigned to their agency by the state attorney general's office for legal opinions about confidentiality requirements and recommended procedures. This section outlines some general guidelines for deciding whether to release information.

### COMMONLY ASKED QUESTIONS

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**Q.** Who (other than parents) must a school official allow to see an education record of a student?

**A.** *School officials are not required to allow anyone other than the parents to see the education records of a student; the exceptions are circumstances stipulated by federal or state laws such as government-required audits, evaluations, or court orders. See Section 6, Guidelines D; see a detailed discussion of the federal statutes in Section 2, Guidelines B.*

**Q.** Which public officials have access to education records without consent of a parent?

**A.** *School officials and other identified categories of people with a "legitimate educational interest" in the information have access to education records without specific consent of parents or eligible students. Policies defining officials who may receive information without prior consent must be accessible to parents for review. Among those officials are teachers and school officials associated with school entrance or transfer; state and local education officials*



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*who conduct audits or review records in compliance with federal laws; and court officials.*

*In some cases, which must be defined by local policy, third parties acting on behalf of schools may also have access to education records. Third parties generally include officials in state, local, and intermediate administrative units, researchers, psychologists, lawyers, or medical practitioners who work for or are under contract to schools.*

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**Q.** *If a parent makes information about a student public, must school officials keep that piece of information confidential?*

**A.** *Yes, school officials should still keep the information private. See Section 6, Guidelines C.*

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**Q.** *Must a school official release a student's record to a family lawyer?*

**A.** *A school official does not have to release a record of a student to his or her family lawyer unless there is a prior written consent from the parent. See Section 6, Guidelines D.*

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**Q.** *What penalties apply to the misuse or improper disclosure of confidential information?*

**A.** *The penalty for non-compliance with the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA) can be withdrawal of U.S. Department of Education funds from the institution or agency that has violated the law. This applies to schools, school districts, and state education agencies. The Family Policy Compliance Office of the U.S. Department of Education, charged with reviewing and investigating complaints, seeks to promote voluntary compliance with the law. To date, findings of non-compliance have not resulted in such action.*

*A third party who improperly discloses personally identifiable information from student records can be prohibited from receiving access to records at the education agency or institution for at least five years. State laws on privacy may also apply penalties.*

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**Q.** *What are the liabilities of a third party's misuses of education records?*

**A.** *School officials are not liable for misuses of data by a third party. However, it is important to implement and follow proper procedures in good faith to protect the agency or school as well as the students and their families. See Section 6, Guidelines G.*

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**Q.** *Can student records be transmitted electronically, via the Internet and facsimile?*

**A.** *The law requires agencies to prevent the unauthorized release of personally identifiable information from education records. Thus, when student records are transmitted electronically, confidentiality must be protected both by the sender and receiver of information. Agencies must establish procedures for releasing information, and they must continually train officials and clerical staff about their obligation to treat personally identifiable information confidentially.*

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*Various experts in the application of FERPA and the uses of electronic data exchange consider facsimile machines to be less secure than the electronic transmission of records. If facsimile machines are to be used, the institutions involved with the exchange of student information must establish security procedures that meet the privacy obligations set out in FERPA. See Section 6, Guidelines I.*

## GUIDELINES

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### A. Types of Information Release

When a district or school staff member receives an information request, the first question he or she needs to consider is what type of information is being requested. Generally, information requests about one or more individuals can be categorized as *non-personally identifiable* information or *personally identifiable* information.

*Non-personally identifiable* data do not reveal specific information about a particular individual. They usually describe a group of persons (e.g., the aggregate number of students participating in extracurricular activities) without identifying any one student. Or, they consist of individual records stripped of any information that would make it possible to identify the person described.

Release of non-personally identifiable data is generally allowed. A district or school may determine how this type of information is released. However, it is advisable to designate appropriate officials within the agency to review the compiled data, making sure that no single individual can be identified by a combination of several pieces of non-personally identifiable information.

For instance, in reporting test scores for certain racial or ethnic groups in a school, if a school has only one student in a particular racial or ethnic group at a certain grade level, then that student's score could be made public by combining two separate pieces of information. It is important to be aware of the possibility of inadvertently disclosing personally identifiable information even when there is more than a single record in a category.

In planning and producing analyses and tabulations, the general rule is that there should be no cell (or category) published in which there are fewer than three respondents, or in which personal information could be obtained by subtraction or other simple mathematical manipulations. However, this should be adjusted based on the factors unique to the district or school, such as the size of the school or community population. You must also be careful not to allow information to be disclosed through subsequent cross tabulation of the same data with other variables.

*Personally identifiable* data may or may not identify a person directly, but contain information that would make students' identities and any related information about them easily recognized. This information is more sensitive than grouped information or summarized data and therefore requires more attention and care before release. Personally identifiable information, including the identifying data listed below, must be maintained in education records that are protected with appropriate security. It is important that state or local

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**Non-personally identifiable data do not reveal specific information about an individual. Release of this type of data is generally allowed.**

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**Personally identifiable data are those that contain information that would make the student's identity and any related information about him or her easily recognized. Release of this type of data is subject to established policy in the school district, as well as state and federal laws.**

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education agencies establish policies that define personally identifiable information and list specific examples. This will avoid confusion when actual information requests are handled.

Personally identifiable data include *identifying* data that directly associate with a person, such as the following:

- A person's name
- The name of the student's parent or other family members
- The address of the student's parent or other family members
- The telephone number of a person
- A photograph of a person
- An identifier, such as a person's social security number or an identification number assigned by the school
- A list of personal characteristics (e.g., apparent disability, a birthmark, or race and ethnicity) that would make the person's identity easily traceable
- Other information that would make the person's identity easily traceable

Some types of identifying data may be defined as part of the directory information in a district's education records policy. Staff should check with the policy for the proper release of this type of information. Section 6, Guidelines B discusses directory information and its proper release.

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**State and local laws may specify what types of information are considered directory information, which may be released without prior consent. However, parents must be informed of what is considered directory information and given the opportunity to withhold its release.**

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## **B. Release of Directory Information**

If information requests are related to personally identifiable student information to be obtained from the education records, the first question you should ask is whether the request is for directory information as defined in the district's education records policies. Section 2 of this document contains definitions of *education records* and *directory information*, as well as federal regulations that relate to the release of this information.

Agency or school staff should refer to federal, state, and local laws and regulations about the types of data that may be released without consent of the parents. State and local laws may specify data items considered directory information. Section 2, Guidelines B includes the types of items that are *typically* considered directory information by local policies.

As required by FERPA, annual notification should be given to allow parents to request that all or portions of directory information not be released. Exhibit 6-1 contains a sample notification form. Upon receipt of an information request, district or school staff need to verify that there is an appropriate, prior consent to release that piece of information about the student(s).

## **C. Release with Prior Consent**

When requested by a third party (e.g., from a relative, family lawyer, or a news reporter) for individual information not authorized by FERPA or other federal laws such as the National School Lunch Act (NSLA), the requester should be required to present written consent from the parent. If information requested from the record is not

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considered directory information but is personally identifiable, it can be released if the parent provides a *written, signed, and dated* consent document. The document must:

- Specify the information that may be released
- State the purpose of the release
- Identify the individuals or entities to whom the release may be made

Staff processing the request should make sure that the consent is genuine and should be ready to contact the parent for verification if there is any question or doubt about its authenticity.

Unless otherwise allowed by federal or state law, or local policies, agency or school staff should not assume that if parents openly discuss information included in their child's education records, the parents are giving "implied" consent for staff to release that information. Written consent for agency or school release from the parent is required by FERPA.

#### **D. Release without Prior Consent**

Without prior written consent from the parent, personally identifiable information *may* be released to particular individuals or entities outside the agency or school. Such release must be allowed by an established policy. Agency or school staff should be familiar with federal and state laws as well as local policies established in this regard, and understand that they are *not required* to release information unless otherwise specified by these laws or policies, but are given the option to do so. Section 2 lists these outside individuals or entities to whom student records may be released. Examples of these individuals include designated, authorized representatives from state and local education agencies, the juvenile justice system, and health or safety personnel in case of an emergency. Exhibit 6-2 includes a form that an agency or school could use to monitor this type of release.

Within the agency or school, education records may be released and used by personnel who are considered to have a legitimate educational interest or need-to-know without prior written consent of the parent. Section 4 contains guidelines regarding this type of release. Examples of personnel who may have authorized access to the student records include research and evaluation directors and service providers or coordinators of special programs in which the students participate.

The NSLA allows the release of free and reduced-price school meal eligibility without consent of the parent for certain purposes. We discuss this issue in Section 2. Agencies or schools should establish written guidelines to permit such release.

#### **E. Release to Researchers**

In some cases, researchers who are not employed by the agency or school may be authorized to conduct data processing or research and evaluation studies through contractual arrangements. If these efforts are initiated by and performed on behalf of the agency or school, researchers may be considered school officials who have a legitimate educational interest. We discuss these situations in Section

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**Non-directory information can be released with written consent from the parent. The consent should specify the information that may be released, the purpose of the release, and the recipient.**

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**Personally identifiable information may be released as authorized in established policies and federal or state law or regulations.**

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**Examples of those to whom information from education records may be released without seeking consent from parents include authorized representatives from state and local education agencies, the juvenile justice system, and health or safety personnel in case of an emergency.**

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**Information about a student's eligibility for free and reduced-price school meals may be released only as authorized under the NSLA and its regulations.**

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**Requests from researchers should be handled case-by-case. You should establish a set of criteria, application procedures, and written guidelines for making the decision.**

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4. However, researchers outside the agency or school often request individual information for their own research agendas. More often than not, the requested information includes more than one data item from the education records or student database. These requests should be handled case-by-case. Agency or school officials should establish criteria for considering such requests. These criteria may take into consideration the perceived benefits of the research, the potential invasion of students' privacy, the reputation of the requestor, or the availability of staff to monitor the process of the release and the research activities.

In general, the release of data to researchers outside the agency should be considered as a loan of data (i.e., recipients do not have ownership of the data). Agencies or schools could request that these data be returned or copies destroyed when the researchers complete their work.

Before considering these data requests, agencies should establish written guidelines and procedures to allow the on-site access or off-site loan of personally identifiable data by appropriate individuals or organizations. In 1993, the National Center for Education Statistics (NCES) of the U.S. Department of Education published a manual, called *Field Restricted Use Data Procedures*, to ensure the implementation of proper procedures before releasing any of its data sets. The following items, adapted from the NCES manual, could be included in an agency's policies and procedures regarding the loan of data:

- Description of all the federal and state laws and regulations governing the access to the data and penalties for violation
- Procedures to request access to or loan of data and name of the official designated to handle the request
- Criteria for accepting or denying requests
- Minimum expected security requirements
- Allowance for unannounced, unscheduled inspections of the data user's site
- Other relevant requirements

Organizations that intend to obtain access to personally identifiable data could be required to submit a formal, written application on the organization letterhead including:

- Type of data (with specific items listed) requested
- Reasons for requesting the data
- A description of how the data will be used and analyzed
- A description of how analyses will be presented and reported
- Name and titles of (1) the official(s) with the authority to bind the requesting organization to the agreement; (2) the official(s) in charge of the day-to-day operations involving the use of the data; and (3) the professional and support staff who conduct the research and analysis as well as those who may have access to the data
- Estimated amount of time the data are needed
- Desired medium of release (e.g., paper or media format)

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In addition, the organizations requesting access or loan of data should submit a security plan addressing all applicable security procedures. These procedures may include:

- **Computer security**—use and update passwords; implement log-on procedures with automatic security data access shut-down function; assign access security levels; integrate warning statements; prevent external access to any modems connected to the system while processing data on a computer; and use additional procedures to safeguard the data in networked environments. If a one-time complete backup copy of the data will be needed, the applicant should also explain the security procedures surrounding the backup copy of the data, including those backup copies that are created automatically while downloading.
- **Physical handling and storage of data**—catalogue and storage with lock and key; minimal allowance and secured storage of printed copies; and additional restrictions on copying of data.
- **Transportation of data**—ideally by a bonded courier and notice of confidentiality and restricted use.

Agencies must proceed with caution before releasing portions of databases containing individual education records. Under most cases, the release of database information with personally identifiable information is restricted by law. If a request is approved, agency or school staff should extract only the data approved for release and make sure they are non-personally identifiable. However, as mentioned earlier in this section, non-personally identifiable data may become *potentially* personally identifiable.

Before a data set is released across agencies or to researchers or research institutions, appropriate agreements must be signed to ensure that all records will remain private, the conditions of release and re-release are well defined and limited, and penalties for inappropriate records use or release of records are stated clearly. Individuals employed by the agencies who are authorized and who will have access to the individually identifiable information also could be required to sign an affidavit of non-release. Exhibit 6-3 contains a sample form.

In most cases, information indicating that an education record has been released must be documented in the record and retained there until the education record is destroyed.

## **F. Release to Other Service Agencies**

There are increasing needs for education and other service agencies to develop coordinated data systems that enable them to more effectively and efficiently serve children and their families. Many agencies, such as education, health, social service, and labor agencies, are seeking means to facilitate the automatic accessibility of information from student records mainly for these purposes:

- To facilitate agency program planning and evaluations of education programs
- To protect the health and safety of students in schools
- To increase the efficiency of services, especially supportive services for children and youth

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**Agencies are developing strategies which establish the kinds of privacy standards and procedures that would ensure the confidentiality of information while allowing restricted use of information for specific and pre-approved purposes.**

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- To conduct evaluations of education programs and studies of workforce preparedness, and school-to-work links

Institutional sharing of information requires that agencies establish memoranda of understanding or legal agreements among agencies to confirm what and how data will be exchanged and used, and that they maintain records of what information has been shared and the authorization for sharing it. In addition, agencies must adequately train the staff who use the information and specify how they secure both electronic and paper files. The following examples are strategies for protecting the confidentiality of information used across agencies:

- Agencies that collaborate for in-take procedures, direct service, or research explicitly spell out procedures for obtaining informed consent *and define in advance* what data will be shared, how they are used, and the means of ensuring privacy if they are released from the originating agency.
- When research studies are to be conducted, information from several agencies can be analyzed *within the education agency*, following adequate privacy safeguards, so that no identifiable information is available to individual researchers or analysts.
- Data are matched electronically so that personally identifiable information from several data sources is connected within the computer and not actually seen. In these cases, personal information is only used to produce aggregate results for groups and programs.

Cross-agency partnerships have been developing during the past decade. Although they are limited by some practical, political, technical, and regulatory barriers, service providers and policy analysts agree that the following benefits and efficiencies can be gained from sharing data for at least these three well-defined purposes:

- **Providing children with supportive services**—Counselors and health services providers may need information about an individual's social, educational, and health status to diagnose a problem and develop and implement a treatment plan. Records kept in schools (e.g., attendance information, family background, and reports of academic and behavioral achievements or problems) can contribute critical information for case planning and management. Some information may help law enforcement officials locate youth involved in the juvenile justice system who may need assistance or who may be a danger to themselves or those around them.
- **Increasing access to social and educational service**—Sometimes agencies need to seek or verify eligible program participants. Often there are children in schools whose families may not realize they are eligible for certain assistance (e.g., free or reduced-price lunch, health, or welfare services) that is available through school or community agencies. Records of several service agencies may need to be cross-checked to increase the efficiency of deciding what services are available and to ensure those services reach the individuals who need them.

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- **Conducting policy planning and evaluation studies**—Student records that are part of education agencies' administrative structures can inform statistical studies for improving management of services and evaluating outcomes. A start toward using integrated electronic records systems for management and outcomes evaluation is occurring in several states. In each instance, the states' legislatures have encouraged the development of integrated data systems to strengthen, evaluate, or manage integrated public services or to improve access to evaluation and planning information to support workforce development programs. The systems are emerging very slowly, typically following an investment in consensus-building procedures that include members of all contributing agencies in planning. No exchange of information occurs until appropriate memoranda of agreement are in place, along with procedures for obtaining the consent of participating individuals or verifying that such consents are unnecessary because no confidential or personally identifiable information is used at the individual case level.

Education agencies are finding new ways to support services integration for students while they meet their legal and ethical obligations to restrict the release of information from student records. One way this occurs is for agencies to guide data sharing with well-defined policies for gaining consent to use records across agencies at the time that records are initially established. In general, information about students can be released only with the signed consent of parents or eligible students who have been told, in language they understand, what information is to be used across agencies, why, and how that sharing will occur.

In any instance of data sharing, agencies must be especially careful to maintain a clear distinction between the data collected for research, evaluation, and regulatory purposes, and data collected for clinical uses. The protection of privacy and data accuracy are essential to any data coordination efforts. However, these protections do not have to be absolute barriers to data coordination. A first step to cross-agency coordination of services and policy analysis is to establish well-defined procedures that maintain distinctions between different types of data and their uses and ensure that education agency managers and staff who work with student records understand confidentiality restrictions and procedures for handling private, personally identifiable information. A thorough knowledge of the rationale behind federal, state, and local privacy laws and an understanding of what the laws allow and disallow, are the building blocks of widely sought interagency data coordination.

As cross-agency partnerships become established, many issues other than confidentiality requirements need to be addressed. As of the date of this publication, such efforts are either at the planning or early implementation stages. It is therefore premature to include best-practice guidelines consistent with the purposes of this document. The National Forum on Education Statistics will continue to work with state and local education agencies, exploring the issues and identifying effective practices of interagency data sharing in 1997. Results of this effort will be published in a separate document.

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**Interagency sharing of information from students' education records generally requires a signed release by parents or eligible students, regardless of whether the records originate in schools, health centers, and employment or social service agencies.**

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**As a final security control, a designated official could review the compiled data and verify that local procedures have been followed, before approving the release.**

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**Recipients should be required to sign an affidavit that they will not release any personally identifiable information received.**

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**It is important for you to document data releases whether or not prior consent was required. This information should remain in the record as long as you maintain the record.**

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## **G. Review Prior to Release**

As a final control, an appropriate official could review the compiled information or data for accuracy and to ensure they are within the scope approved for release. This official also may review the procedures to ensure compliance with all federal, state, and local statutes, rules, and regulations that apply to the release. Signatures of the appropriate and authorized persons should be required for every release.

## **H. Avoid Misuse of Information by Non-Intended or Secondary Users**

Any organization creating, maintaining, using, or disseminating education records with personally identifiable data must assess the reliability of the information for its intended use and must take precautions to prevent misuse of the data. When data are released to individuals or groups outside the agency, the recipients should be required to sign an affidavit stating that they will use the data in a way consistent with that described in their requests, and not to transfer or re-release the data to another individual or organization. Exhibit 6-4 contains a sample statement. Although school officials are not liable for a third party's misuses of data, it is important to implement and follow proper procedures in good faith to protect the students and their families as well as the agency or school.

## **I. Document the Release**

Agencies or schools should maintain records of access, retrieval, or release of records, including the names of persons retrieving records and the purposes for each release, and should maintain a list of personnel authorized to have access to the file. They should also maintain a record of user requests for data that have been denied or only partially fulfilled. Such information can be used for periodic reviews of agency confidentiality and data release policies.

Information about releases with or without prior consent of the parent should remain with the education record as long as the record is maintained. It is a good practice to document all access and release. However, it is not required if the request was made by, or release was made to:

- The parent or eligible student
- A school official who has been determined to have a legitimate educational interest
- A requester with written consent from the parent or student
- A requester seeking directory information only

## **J. Ensure the Security of Data in Electronic Transmission**

Particular attention should be given to confidentiality when data are released through electronic means because of the increased potential for unauthorized access. For example, you cannot visually check the photo identification of a facsimile or electronic mail recipient.

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You must establish policies and procedures to address the issue of data forwarding via electronic means.

You should routinely embed various levels of encrypted codes into computerized databases. This will protect the confidentiality of the data as well as ensure the integrity and authenticity of the information. You should establish clear rules and procedures about who can send and who can receive and use data. In addition, you could specify the penalties for abuse or misuse of systems.

It is important for the electronic system to log the transfer of personally identifiable data in a security audit trail to account for releases of data by and to appropriate individuals. The use of electronic authentication programs can reassure the sending agency or school that the information has reached the appropriate recipient and that no changes to the contents have been made.

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**You should establish policies to cover instances in which information may be released through electronic means. You can use a variety of methods to safeguard the data, including encryption and passwords, and careful logging of a transfer.**

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**EXHIBIT 6-1**  
**Sample Request to Withhold Release  
of Directory Information<sup>1</sup>**

To: All parents School Year \_\_\_\_\_

The items listed below are designated as "directory information" of [name of agency or school] and may be released for any purpose at the discretion of [name of agency or school]. [Cite state laws and regulations or local policies where applicable.] Under the provisions of the Family Educational Rights and Privacy Act of 1974, as amended, you have the right to withhold the release of any or all of the information listed below.

[Listed below are example of Directory Information]

- Name of student
- Address of student
- Telephone number of student
- Earned awards and degrees of student
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Degrees and awards received
- Photograph
- Others: \_\_\_\_\_

Please consider very carefully your decision to withhold any item of "directory information." Should you decide to inform [name of agency or school] not to release any or all of the items listed below, any future requests for such information from individuals or entities not affiliated with the [name of agency or school] will be refused. Please indicate here your request to withhold any or all of the above items: \_\_\_\_\_

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If this form is not received in [name of office] prior to [date], it will be assumed that the above information may be released for the remainder of the current school year. A new form for non-release must be completed each [term/semester/year].

Parent's Name: \_\_\_\_\_ Student's Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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<sup>1</sup> Adopted from American Association of Collegiate Registrars and Admissions Officers, *Guidelines for Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act of 1974 as Amended*, Revised Edition, 1995.

**EXHIBIT 6-2**

**Sample Request of Non-Parent  
for Access to Education Record**

To: [Name of designated official]

From: \_\_\_\_\_  
[Name, title, organization]

I hereby request permission to examine the following part(s): \_\_\_\_\_

\_\_\_\_\_ of the official education records of: \_\_\_\_\_ [name(s) of student], student(s) at:

\_\_\_\_\_ [name of agency or school]. I certify that I am (check one as appropriate):

- An authorized official of another school system in which the student intends to enroll.
- An authorized representative of the Comptroller General of the United States.
- An authorized official of the financial institution to which the student applied to receive financial aid. The purpose of this request is to determine eligibility, amount of aid, conditions of aid award, and enforcement of award terms and conditions.
- An authorized official of an accrediting organization. I understand that release is allowed on the conditions only appropriate members of my organization view the records, and resulting studies do not identify any particular student.
- An authorized representative of the Secretary of the U.S. Department of Education.

[Add other categories as allowed in state or local laws and regulations.]

I agree that no unauthorized person or organization will have access to any records or information obtained through this request without the written permission of the parents of the student or the student. I understand the maximum penalties for re-disclosure of the record will be [as set forth by federal and state laws and regulations].

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**For official use only:**

Request approved/denied by: \_\_\_\_\_ Date: \_\_\_\_\_

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**EXHIBIT 6 - 3**  
**Sample Affidavit of Non-Release**  
**by Researchers**

I, [name of individual], do solemnly [swear or affirm] that when given access to the [title of data to be provided] provided by [name of the agency or school], I shall not:

1. Use or reveal any personally identifiable information furnished, acquired, retrieved, or assembled by me or others, under the provisions of [citation of applicable laws] for any purpose other than statistical purposes specified in the [name of agreement];
2. Make any release or publication whereby an individual could be identified or the data furnished by or related to any particular person can be identified; or
3. Permit anyone other than the individuals authorized by [name of the agency or school] to examine the individual reports.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Date: \_\_\_\_\_

The penalty for unlawful release is [maximum penalties as specified by the applicable laws and provide citations].

Notary Public and Seal: \_\_\_\_\_

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**EXHIBIT 6-4**

**Sample Statement of Non-Disclosure  
of Released Information**

I understand that upon receipt of the information provided by [name of agency or school] regarding [type of information] about [name of student(s)], the re-release of which is prohibited by the Family Educational Rights and Privacy Act of 1974 [and cite state or local laws, where applicable]. I acknowledge that I fully understand that the intentional release by me of this information to any unauthorized person could subject me to [criminal and civil penalties, where applicable] imposed by law.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Date: \_\_\_\_\_

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## References

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## APPENDIX A

### A Brochure:

# Protecting the Privacy of Student Education Records<sup>1</sup>

Student education records are official and confidential documents protected by one of the nation's strongest privacy protection laws, the Family Educational Rights and Privacy Act (FERPA). FERPA, also known as the Buckley Amendment, defines education records as all records that schools or education agencies maintain about students.

FERPA gives parents (as well as students in postsecondary schools) the right to review and confirm the accuracy of education records. This and other United States "privacy" laws ensure that information about citizens collected by schools and government agencies can be released only for specific and legally defined purposes. Since enacting FERPA in 1974, Congress has strengthened privacy safeguards of education records through this law, refining and clarifying family rights and agency responsibilities to protect those rights.

FERPA's legal statute citation can be found in the U.S. Code (20 USC 1232g), which incorporates all amendments to FERPA. FERPA regulations are found in the Federal Register (34 CFR Part 99). FERPA's 1994 amendments are found in Public Law (P.L.) 103-382.

### FERPA Protects Privacy

FERPA applies to public schools and state or local education agencies that receive Federal education funds, and it protects both paper and computerized records. In addition to the Federal

laws that restrict disclosure of information from student records, most states also have privacy protection laws that reinforce FERPA. State laws can supplement FERPA, but compliance with FERPA is necessary if schools are to continue to be eligible to receive Federal education funds.

FERPA requires schools and local education agencies to annually notify parents of their rights under FERPA. The notice must effectively inform parents with disabilities or who have a primary home language other than English. The annual notice pertaining to FERPA rights must explain that parents may inspect and review records and, if they believe the records to be inaccurate, they may seek to amend them. Parents also have the right to consent to disclosures of personally identifiable information in the record, except under authorized circumstances.

FERPA gives both parents, custodial and noncustodial, equal access to student information unless the school has evidence of a court order or state law revoking these rights. When students reach the age of 18, or when they become students at postsecondary education institutions, they become "eligible students" and rights under FERPA transfer to them. However, parents retain access to student records of children who are their dependents for tax purposes.

### FERPA Defines an Education Record

*Education records* include a range of information about a student that is maintained in schools in any recorded way, such as handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche. Examples are:

- Date and place of birth, parent(s) and/or guardian addresses, and where parents can be contacted in emergencies;
- Grades, test scores, courses taken, academic specializations and activities, and official letters regarding a student's status in school;
- Special education records;

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<sup>1</sup> This document was prepared by Policy Studies Associates, Inc. under contract to the Council of Chief State School Officers. The document was printed by the National Center for Education Statistics for the National Forum on Education Statistics. The Forum represents the education agencies of the 50 states, the District of Columbia, and five outlying areas as well as professional associations and federal agencies that are users or providers of education data. The views expressed here do not necessarily reflect the policy of the U.S. Department of Education, and no official endorsement should be inferred. The document has been revised in accordance with the final regulations implementing Section 249 of the Improving America Schools Act, *Federal Register*, Vol. 61 (226), Thursday, November 21, 1996, pp. 59291-59298.



- Disciplinary records;
- Medical and health records that the school creates or collects and maintains;
- Documentation of attendance, schools attended, courses taken, awards conferred, and degrees earned;
- Personal information such as a student's identification code, social security number, picture, or other information that would make it easy to identify or locate a student.

Personal notes made by teachers and other school officials that are not shared with others are not considered education records. Additionally, law enforcement records created and maintained by a school or district's law enforcement unit are not education records.

Part of the education record, known as *directory information*, includes personal information about a student that can be made public according to a school system's student records policy. Directory information may include a student's name, address, and telephone number, and other information typically found in school yearbooks or athletic programs. Other examples are names and pictures of participants in various extracurricular activities or recipients of awards, pictures of students, and height and weight of athletes.

Each year schools must give parents public notice of the types of information designated as directory information. By a specified time after parents are notified of their review rights, parents may ask to remove all or part of the information on their child that they do not wish to be available to the public without their consent.

### **FERPA Guarantees Parent Review and Appeal**

If, upon review, parents find an education record is inaccurate or misleading, they may request changes or corrections, and schools and education agencies must respond promptly to these requests.

Requests should be made in writing, according to an agency's annual notice of procedures for exercising rights to amend records. Within a reasonable time period, the school or agency must decide if the request to change a record is consistent with its own assessment of the accuracy of the record. If a parent's request is denied, he or she must be offered the opportunity for a hearing. If the disagreement with the record continues after the hearing, the parent

may insert an explanation of the objection in the record. FERPA's provisions do not apply to grades and educational decisions about children that school personnel make.

While parents have a right to review records, schools are not required by Federal law to provide copies of information, unless providing copies would be the only way of giving parents access. Schools may charge a reasonable fee for obtaining records, and they may not destroy records if a request for access is pending.

### **FERPA Restricts Disclosure of Student Records**

Local education agencies and schools may release information from students' education records with the prior written consent of parents, under limited conditions specified by law, or as stated in local agencies' student records policies. The same rules restricting disclosures apply to records maintained by third parties acting on behalf of schools, such as state and local education agencies, intermediate administrative units, researchers, psychologists, or medical practitioners who work for or are under contract to schools.

If an education agency or a school district has a policy of disclosing records, it must specify the criteria for determining school officials within an agency, including teachers, who have a legitimate educational interest. Generally, school officials have legitimate educational interest if they need to review an education record to fulfill their professional responsibilities.

Teachers and school officials who work with the students and schools to which students apply for entrance may also have access to education records without prior consent of the parent. In addition, information from students' records may be released to state and local education officials to conduct audits or to review records in compliance with Federal laws. Schools may also disclose information from education records without the consent of parents in response to subpoenas or court orders. A school official must make a reasonable effort to notify the parent before complying with the subpoena unless the subpoena is issued to enforce a law and specifies not to notify the parent. In emergencies, school officials can provide information from education records to protect the health or safety of the student or others.

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There are cases when schools or school systems decide it is in the public interest to participate in policy evaluations or research studies. If student records are to be released for these purposes, the school or school system must obtain prior consent of the parent. Signed and dated written consent must:

- Specify the records that will be released;
- State the reason for releasing the records;
- Identify the groups or individuals who will receive the records.

In general, information about each request for records access and each disclosure of information from an education record must be maintained as part of the record until the school or agency destroys the education record. Outside parties receiving records must receive a written explanation of the restrictions on the re-release of information.

### **Additional FERPA Provisions**

In 1994, the Improving America's Schools Act amended several components of FERPA, tightening privacy assurances for students and families. The amendments apply to the following key areas:

- Parents have the right to review the education records of their children maintained by state education agencies;
- Any third party that inappropriately re-releases personally identifiable information from an education record cannot have access to education records for five years;
- Information about disciplinary actions taken against students may be shared, without prior consent of the parent, with officials in other education institutions;
- Schools may release records in compliance with certain law enforcement judicial orders and subpoenas without notifying parents.

### **Questions? Call the Local School System, State Education Agency, or the Federal Family Policy Compliance Office.**

School districts, state education agencies, and the U.S. Department of Education all offer assistance about FERPA. Before contacting Federal officials, however, you can offer get a direct and immediate response from your local or state education officials.

The *Family Policy Compliance Office* can be reached at the following address:

U.S. Department of Education  
600 Independent Avenue, SW  
Washington, DC 20202-4605  
(202) 260-3887

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**APPENDIX B**  
**Final Regulations**  
**on Family Educational Rights and Privacy Act**  
***Federal Register*, April 11, 1988**

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**Monday**  
**April 11, 1988**

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**Part II**

**Department of**  
**Education**

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**34 CFR Part 99**  
**Family Educational Rights and Privacy;**  
**Final Regulations**

107

**Federal Register**

## DEPARTMENT OF EDUCATION

## 34 CFR Part 99

## Family Educational Rights and Privacy

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary revises and renames the Department of Education regulations formerly titled the Privacy Rights of Parents and Students. These regulations are retitled Family Educational Rights and Privacy and eliminate some of the regulatory requirements placed on educational agencies and institutions. The regulations have also been rewritten for clarity.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Ellen Campbell or Connie Moore, Family Policy and Regulations Office, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3021, Federal Office Building No. 6), Washington, DC 20202. Telephone: (202) 732-2057.

**SUPPLEMENTARY INFORMATION:** Under Executive Order 12291, the Department of Education regularly reviews its regulations to determine whether the Department can decrease burdens on the public and otherwise simplify and clarify existing regulations. As part of this process, the Department has reviewed the regulations implementing the Family Educational Rights and Privacy Act (FERPA).

The FERPA regulations of the former Department of Health, Education, and Welfare (HEW) (45 CFR Part 99) were transferred to the Department of Education (ED) and recodified in Part 99 of Title 34 of the Code of Federal Regulations on May 9, 1980 (45 FR 30802). These regulations implement FERPA, which was enacted as section 438 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232g).

The FERPA sets out requirements designed to afford parents and students privacy and other rights with respect to education records. The statute applies to educational agencies and institutions that receive funds under an applicable program administered by ED. For purposes of FERPA an applicable program is a program that was either formerly administered by the

Commissioner of Education prior to the establishment of ED on May 4, 1980 or any program that came into existence after ED was established, unless the law creating the new program has the effect of making FERPA inapplicable. Educational agencies and institutions to which FERPA applies must maintain education records consistent with the requirements of FERPA. In brief, FERPA requires those agencies or institutions to provide parents and eligible students access to records directly related to the students; to permit parents and eligible students to challenge those records on the grounds that they are inaccurate, misleading, or otherwise in violation of the student's privacy or other rights; to obtain the written consent of parents and eligible students before releasing personally identifiable information about the students contained in education records to other than organizations or individuals described in statutory exceptions; and to notify parents and eligible students of these rights.

On June 10, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the *Federal Register* (52 FR 22250). The NPRM included a discussion of the numerous revisions and invited public comment. The revisions are intended to simplify and clarify the regulations and not to alter any interpretation under existing regulations.

In response to the Secretary's invitation in the NPRM, educational associations, organizations, universities, and individuals submitted 20 letters, which contained a total of 113 comments. More than half of the letters were from institutions of higher education and were transmitted through an organization representing the higher education community. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations.

#### Executive Order 12606

The Secretary has reviewed these regulations in accordance with Executive Order 12606, "The Family." The regulations were assessed in light of the criteria set forth in the Executive Order to determine whether they have any potential negative impact on the family. They were found to have no negative impact. In fact, the regulations will strengthen the autonomy, stability, and rights of the family unit.

The criterion of the Order which is most applicable to these regulations asks: "Does this action strengthen or erode the authority and rights of parents in the education, nurture, and

supervision of their children?" The statute and the implementing regulations strengthen the rights of parents by reaffirming their basic right to have access to the education records of their children, their right to be assured of the privacy of their children's records, and their right to challenge records believed to be inaccurate, misleading, or otherwise in violation of the student's privacy.

Another criterion which is applicable to these regulations asks: "Does this action by government strengthen or erode the stability of the family and, particularly, the marital commitment?" Overall, these regulations are found to strengthen the stability of the family. In particular, the FERPA provisions which afford parents the right to have access to and some control over the education records of their children serve to encourage parents to be involved in the education of their children. Furthermore, by affording both parents (whether custodial or non-custodial) the right to have access to the records, the regulations serve to encourage joint parental involvement in their children's education.

#### Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

#### Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

#### List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education department, Family educational rights, Privacy, Parents, Reporting and recordkeeping requirements, Students.

(Catalog of Federal Domestic Assistance number does not apply.)

Dated February 19, 1988.

William J. Bennett,  
Secretary of Education.

The Secretary revises Part 99 of Title 34 of the Code of Federal Regulations to read as follows:

**PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY**

**Subpart A—General**

Sec.

- 99.1 To which educational agencies or institutions do these regulations apply?
- 99.2 What is the purpose of these regulations?
- 99.3 What definitions apply to these regulations?
- 99.4 What are the rights of parents?
- 99.5 What are the rights of eligible students?
- 99.6 What information must an educational agency's or institution's policy contain?
- 99.7 What must an educational agency or institution include in its annual notification?

**Subpart B—What are the Rights of Inspection and Review of Education Records?**

- 99.10 What rights exist for a parent or eligible student to inspect and review education records?
- 99.11 May an educational agency or institution charge a fee for copies of education records?
- 99.12 What limitations exist on the right to inspect and review records?

**Subpart C—What are the Procedures for Amending Education Records?**

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

- 99.21 Under what conditions does a parent or eligible student have the right to a hearing?
- 99.22 What minimum requirements exist for the conduct of a hearing?

**Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?**

- 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?
- 99.31 Under what conditions is prior consent not required to disclose information?
- 99.32 What recordkeeping requirements exist concerning requests and disclosures?
- 99.33 What limitations apply to the redisclosure of information?
- 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?
- 99.35 What conditions apply to disclosure of information for Federal or State program purposes?
- 99.36 What conditions apply to disclosure of information in health and safety emergencies?
- 99.37 What conditions apply to disclosing directory information?

**Subpart E—What are the Enforcement Procedures?**

- 99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?
- 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?
- 99.62 What information must an educational agency or institution submit to the Office?
- 99.63 Where are complaints filed?
- 99.64 What is the complaint procedure?

- 99.65 What is the content of the notice of complaint issued by the Office?
- 99.66 What are the responsibilities of the Office in the enforcement process?
- 99.67 How does the Secretary enforce decisions?

Authority: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g), unless otherwise noted.

**Subpart A—General**

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

(a) This part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of Education that—

- (1)(i) Was transferred to the Department under the Department of Education Organization Act (DEOA); and
- (ii) Was administered by the Commissioner of Education on the day before the effective date of the DEOA; or

(2) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 438 of the General Education Provisions Act inapplicable.

(Authority: 20 U.S.C. 1230, 1232g, 3467, 3507)

(b) The following chart lists the funded programs to which Part 99 does not apply as of April 11, 1988:

Name of program	Authorizing statute	Implementing regulations
1. High School Equivalency Program and College Assistance Migrant Program.....	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374) 20 U.S.C. 1070d-2).	Part 206.
2. Programs administered by the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research.	The Rehabilitation Act of 1973, as amended. (29 U.S.C. 700, <i>et seq.</i> ).	Parts 350-359, 361, 365, 366, 369-371, 373-375, 378, 379, 385-390, and 395.
3. Transition program for refugee children.....	Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96-212 (8 U.S.C. 1522(d)).	Part 538.
4. College Housing.....	Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749, <i>et seq.</i> ).	Part 614.
5. The following programs administered by the Assistant Secretary for Educational Research and Improvement: Educational Research Grant Program, Regional Educational Laboratories Research and Development Centers. All other research or statistical activities funded under Section 405 or 406 of the General Education Provisions Act.	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e), and section 406 of the General Education Provisions Act (20 U.S.C. 1221-1).	Parts 700, 708-708.

Note: The Secretary, as appropriate, updates the information in this chart and informs the public.

(c) 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.

(d) 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).

(e) 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)

#### § 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 438 of the General Education Provisions Act, as amended.

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

(Note: 34 CFR 300.580-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.)

#### § 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 438 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)

"Directory information" means information contained in an education record of a student which 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, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

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

"Disclosure" means to permit access to or the release, transfer, or other communication of education records, or

the personally identifiable information contained in those 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 of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
- (2) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are—

(i) Maintained separately from education records;

(ii) Maintained solely for law enforcement purposes; and

(iii) Disclosed only to law enforcement officials of the same jurisdiction;

(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, 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))

#### § 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 eligible 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) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

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

#### § 99.6 What information must an educational agency's or institution's policy contain?

(a) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of the Act and of this part. The policy must include—

(1) How the agency or institution informs parents and students of their rights, in accord with § 99.7;

(2) How a parent or eligible student may inspect and review education records under § 99.10, including at least—

(i) The procedure the parent or eligible student must follow to inspect and review the records;

(ii) With an understanding that it may not deny access to education records, a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records:

(iii) A schedule of fees (if any) to be charged for copies; and

(iv) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(3) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in § 99.31;

(4) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under § 99.1(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest;

(5) A statement that a record of disclosures will be maintained as required by § 99.32, and that a parent or eligible student may inspect and review that record;

(6) A specification of the types of personally identifiable information the agency or institution has designated as directory information under § 99.37; and

(7) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under § 99.20, to obtain a hearing under § 99.21(a), and to add a statement to the record under § 99.21(b)(2).

(b) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

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

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

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

(a) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under the Act and this part. The notice must include a statement that the parent or eligible student has a right to—

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

(2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) Consent to disclosures of personally identifiable information

contained in the student's education records, except to the extent that the Act and the regulations in this part authorize disclosure without consent;

(4) File with the U.S. Department of Education a complaint under § 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the act and this part; and

(5) Obtain a copy of the policy adopted under § 99.6.

(b) The notice provided under paragraph (a) of this section must also indicate the places where copies of the policy adopted under § 99.6 are located.

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

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

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

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

#### Subpart B—What are the Rights of Inspection and Review of Education Records?

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

(a) Except as limited under § 99.12, each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student.

(b) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

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

(d) The educational agency or institution shall give the parent or eligible student a copy of the records if failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the records.

(e) The educational agency or institution 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))

**§ 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, 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) and (B))

**Subpart C—What are the Procedures for Amending Education Records?**

**§ 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 or other rights, he or she may ask the educational agency or institution to amend the record.

(b) The education 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))

**§ 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 or other 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 or other 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 or other 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))

**§ 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))



**Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?**

**§ 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?**

(a) Except as provided in § 99.31, an educational agency or institution shall obtain a signed and dated written consent of a parent or an eligible student before it discloses personally identifiable information from the student's education records.

(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 provide the student with a copy of the records disclosed.

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

**§ 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 authorize representatives of—

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) 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, if a State statute adopted before November 19, 1974, specifically requires disclosures to those officials and authorities.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type or 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) 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 of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(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.

(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.

(b) This section does not forbid or 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) of this section.

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

**§ 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; or
- (4) A party seeking directory information.

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

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

**§ 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 of directory information under § 99.31(a)(11) or to disclosures to a parent or student under § 99.31(a)(12).

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

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

**§ 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 policy 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))

**§ 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) Paragraph (a) of this section shall be strictly construed.

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

**§ 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))

**Subpart E—What are the Enforcement Procedures?**

**§ 99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?**

(a) For the purposes of this subpart, "Office" means the Family Policy and Regulations Office, U.S. Department of Education.

(b) The Secretary designates the Office to—

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Education Appeal Board to act as the Review Board required under the Act.

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

**§ 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 person 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 and Regulations Office, U.S. Department of Education, Washington, DC 20202.

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

**§ 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.

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

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

(a) If the Office receives a complaint, it notifies the complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(b) The notice to the agency or institution under paragraph (a) of this section—

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

(2) Informs the agency or institution that the Office will investigate the complaint and that the educational agency or institution may submit a written response to the complaint.

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

**§ 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 take an action authorized under 34 CFR Part 78, including—

(1) Issuing a notice of intent to terminate funds under 34 CFR 78.21;

(2) Issuing a notice to withhold funds under 34 CFR 78.21, 200.94(b) or 298.45(b), depending upon the applicable program under which the notice is issued; or

(3) Issuing a notice to cease and desist under 34 CFR 78.31, 200.94(c) or 298.45(c), depending upon the program under which the notice is issued.

(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(g))

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**APPENDIX C**  
**Final Rules to Implement**  
**a Provision of the Higher Education**  
**Amendments of 1992**  
**to Exclude Law Enforcement Unit Records from FERPA**  
***Federal Register, January 17, 1995***

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Tuesday  
January 17, 1995

**Federal Register**

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**Part III**

**Department of  
Education**

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34 CFR Part 99  
Family Educational Rights and Privacy;  
Final Rule

116

## DEPARTMENT OF EDUCATION

## 34 CFR Part 99

RIN 1880-AA57

## Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** The Secretary amends the regulations implementing the Family Educational Rights and Privacy Act (FERPA), which is section 438 of the General Education Provisions Act. These amendments are needed to implement a provision of the Higher Education Amendments of 1992, which modified the conditions under which records of an institution's law enforcement unit are excluded from the definition of "education records." As amended, FERPA excludes from the definition of "education records," and thereby from the restrictions and rights of access under FERPA, records that are maintained by a law enforcement unit of an educational agency or institution that were created by that unit for the purpose of law enforcement.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:** Ellen Campbell, Family Policy Compliance Office, Office of Management, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202-4605. Telephone (202) 260-3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Party Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Postsecondary institutions that have questions relative to any of the requirements in the Higher Education Act regarding disclosure of information about campus safety policies and procedures and campus crime statistics should contact Paula M. Husselmann or Kimberly L. Goto at (202) 708-7888.

**SUPPLEMENTARY INFORMATION:** On August 11 and December 14, 1993, the Secretary published two notices of proposed rulemaking (NPRMs) for 34 CFR part 99 in the *Federal Register* (58 FR 42836-42837 and 58 FR 65298-65300, respectively). The second NPRM did not

change the proposed regulations but merely asked for additional public comment based on the response to the first NPRM.

The proposed regulations define for the first time both "law enforcement unit" and "disciplinary action or proceeding." In contrast to law enforcement unit records, the Department has been legally constrained to treat the records of a disciplinary action or proceeding as "education records" under FERPA (20 U.S.C. 1232g), that is, protected against non-consensual disclosure except in statutorily specified circumstances and subject to inspection and review by parents and eligible students. The Secretary proposed the definition of "disciplinary action or proceeding" to help institutions distinguish disciplinary records from law enforcement unit records, which are excluded by statute from the definition of "education records" in the circumstances specified.

Many of the public comments received on the first NPRM challenged the Department's position on this issue and expressed the view that records of institutional disciplinary proceedings taken against students accused of criminal and other non-academic misconduct should not be considered "education records" under FERPA and should be available to the public even without the parent's or student's consent. This issue, which has been the subject of recent media attention, took precedence over the issue of law enforcement unit records in the comment process. The Secretary sought additional public comment on the issue because it raised important and sensitive concerns about campus crime as well as students' need for privacy and access to records in the educational process.

The Secretary remains legally constrained to conclude that records of an institution's disciplinary action or proceeding are "education records" under FERPA, not law enforcement unit records, and that excluding these records from the definition of "education records" can be accomplished only through a statutory amendment of FERPA by Congress. In support of this view, Congress enacted in 1990 a new statutory provision permitting non-consensual disclosure of only the *results* of disciplinary proceedings conducted by postsecondary institutions; the disclosure is limited to the alleged *victim* of a *crime of violence* as defined in the United States Code and not to the public generally. However, the Secretary also recognizes that the issue of full

public access to disciplinary hearing records concerning criminal and other non-academic misconduct is an important part of the ongoing debate concerning safety on college campuses and believes that, given the competing interests involved, these issues need to be aired and argued in the legislative arena. Therefore, the Secretary has notified Congress of the need to address this issue and has offered to work with Congress in drafting an appropriate FERPA amendment that identifies and balances these interests at various education levels.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRMs to comment, approximately 150 parties submitted comments on the proposed regulations. An analysis of the comments and changes in the regulations since publication of the NPRMs follows. Substantive issues are discussed under the section of the regulations to which they pertain.

*Section 99.3 What definitions apply to these regulations? Definition of "Disciplinary action or proceeding."*

**Comments:** A majority of commenters approved of the Secretary's effort to effectively clarify the distinction between disciplinary records and law enforcement unit records. Those commenters stated that to allow the release of student disciplinary records to the public without consent would compromise what they believe to be the fundamental educational mission of the campus judicial process. Several commenters also stated that if FERPA were amended to allow such disclosures, institutions would have to amend their disciplinary procedures to incorporate greater due process protections. These commenters, mostly officials at postsecondary institutions, argued that campus judicial systems have been effective in responding to violations of institutional policy because of the privacy protections afforded to students by FERPA.

A substantial minority, however, disagreed and stated that disciplinary records relating to criminal and other non-academic conduct should not be treated as "education records." They argued that postsecondary institutions have used FERPA to evade efforts by the public to gain access to information about crime on campuses. These commenters questioned the statement in the NPRMs that the Department has always considered records relating to an institution's internal proceedings that deal with violations of its own rules and standards of student conduct as

"education records" under FERPA. The commenters believe that the Department's position in this matter represents an effort to circumvent the recent State court ruling, *Red & Black Publishing Co. v. Board of Regents*, 427 S.E.2d 257, 261 (Ga. 1993), which considered records of a disciplinary action against a student fraternity outside the definition of "education records" and, thus, outside the privacy protections of FERPA. Several commenters also requested that the proposed definition of "disciplinary action or proceeding" be changed to include only violations of academically-related rules and that disciplinary action taken against a student for criminal acts be excluded.

**Discussion:** The Secretary has carefully analyzed the statutory and regulatory authority to address these concerns. Based on the broad definition of "education records," which includes those records, files, documents, and other materials that contain information directly related to a student, except those that are specifically excluded by statute, all disciplinary records, including those related to non-academic or criminal misconduct by students, are "education records" subject to FERPA. It is noted that *Red & Black Publishing Co. v. Board of Regents* concerned records of a student "organization court," which disciplined a student organization (fraternity) for a rules violation, and did not concern disciplinary action against an individual student. More recently, another State court ruled that FERPA prevented a university from releasing to the media personally identifiable information from student disciplinary records without consent. *Shreveport Professional Chapter of the Society of Professional Journalists v. Louisiana State University in Shreveport*, Case No. 393,332, First Judicial District Court, Caddo Parish, LA, (March 4, 1994). Although the Secretary is equally concerned with the problem of crime on campus, it is clear that only Congress has the authority to change the statutory provisions of FERPA to permit disclosure of disciplinary records without prior consent.

Nevertheless, because crime on our Nation's college campuses has escalated since 1974 when FERPA was enacted, the Secretary has notified Congress of the need to address this important issue. The Congress may find that public access to disciplinary records concerning criminal and other non-academic misconduct is an appropriate response to the problem of maintaining safe college campuses, and the Secretary has offered to work with Congress in

writing an appropriate amendment to FERPA.

The Secretary received very few comments from State and local educational officials on how the proposed definition of "disciplinary action or proceeding" might affect elementary and secondary schools. Issues regarding the privacy of minor students and their families on the elementary and secondary level may require different treatment than those of postsecondary students. At this time, FERPA is consistent with those State laws that protect information regarding juvenile offenders.

**Change:** None.

**Comments:** Even among those commenters who approved of the proposed definition of "disciplinary action or proceeding," several postsecondary officials noted that it is important that institutions be able to tell victims the outcome of a disciplinary proceeding regarding their assailant.

**Discussion:** Section 99.31(a)(13) of the FERPA regulations, which implements 20 U.S.C. 1232g(b)(6) of the statute, permits postsecondary institutions to disclose to an alleged victim of a crime of violence, as defined in the United States Code, the results of any disciplinary proceeding conducted by the institution against the alleged perpetrator. As noted earlier, this specific statutory exception to the prior written consent rule, enacted in 1990 as part of the Student Right-to-Know and Campus Security Act, demonstrates Congress' view that disciplinary records are education records under FERPA. Additionally, 34 CFR 668.47(a)(12)(vi) (Student Assistance General Provisions) provides that in cases of an alleged sex offense both the accuser and the accused shall be informed of the outcome of any institutional disciplinary proceeding at the postsecondary level. On the elementary and secondary level, Congress has made no changes to FERPA that would allow a school official to disclose information relating to a disciplinary action without the prior consent of that student's parents, to an alleged victim or the alleged victim's parents. The Secretary has no authority to change these statutory provisions to provide for disclosure of information from disciplinary records other than in the circumstances identified.

**Change:** None.

**Comments:** Some commenters noted that conduct that would constitute a criminal violation should not be kept confidential as part of a campus disciplinary proceeding and that disciplinary hearings should be open to the public. In contrast, a number of

school officials stated that to allow disciplinary hearings to be open to the public would substitute those processes for criminal proceedings, which would negate a long-standing separation of an on-campus disciplinary system from the criminal justice system.

**Discussion:** FERPA does not prevent an institution from opening disciplinary proceedings to the public. Rather, FERPA prevents the non-consensual disclosure of education records or personally identifiable information from "education records," unless the disclosure meets one or more of the statutory conditions for non-consensual disclosure. Schools routinely restrict access to disciplinary proceedings to those school officials with a "legitimate educational interest," which is the first condition for non-consensual disclosure under section (b)(1) of the statute, because information from "education records" is frequently disclosed in a disciplinary hearing.

As discussed above, the Secretary has advised and offered to work with Congress toward an appropriate solution to the concern about campus safety issues in relation to FERPA.

**Change:** None.

**Comments:** Several commenters expressed concern that, as parents, they would want to know how many sexual assaults had been reported at the schools to which their children had applied or at which their children were attending. These commenters believed that disciplinary records related to criminal conduct should not be considered "education records."

**Discussion:** Parents and students at the postsecondary level may currently obtain information about the type and the amount of crime on college campuses under 34 CFR 668.47(a)(6) (Student Assistance General Provisions), which implements the Student Right-to-Know and Campus Security Act. These provisions require postsecondary institutions to report annually statistics concerning the occurrence on campus of certain crimes, including sexual assaults, that have been reported to local police agencies and to any official of the institution who has significant responsibility for student and campus activities. The Secretary is enforcing these requirements fully and believes that they will make students—and their parents—aware of the nature and the amount of crime on any college campus they may attend or which they are considering attending.

**Change:** None.

**Comments:** One commenter noted that the definition of "disciplinary action or proceeding" does not specifically state that disciplinary

records are education records, thus leaving open to interpretation whether they are "education records" subject to FERPA. Another commenter suggested that the definition be changed to include all appeals of the initial adjudication or imposition of sanctions.

*Discussion:* Under FERPA, the statutory definition of "education records" is all inclusive, covering "those records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution." 20 U.S.C. 1232g(a)(4)(A). The only types of records specifically identified in FERPA are those that are specifically excluded from the definition of "education records," such as law enforcement unit records. 20 U.S.C. 1232g(a)(4)(B). FERPA does not list, identify, or single out any particular type of materials or documents as "education records." Consequently, the regulations explain that records of a law enforcement unit do not include or mean disciplinary records. That is, they are not excluded from the definition of "education records" under FERPA.

*Change:* None.

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

Definition of "law enforcement unit".

*Comments:* One commenter, a State assistant attorney general, interpreted the proposed rules to mean that if a school principal or dean maintained a record on a student in a discipline file it would be an "education record" protected by FERPA, but that the same record maintained by the institution's law enforcement unit would not be protected by FERPA and could be disclosed to an outside party directly from the campus law enforcement unit. A school official also commented that, under the proposed definition, it is not clear whether using law enforcement unit records during a disciplinary proceeding would render the records "disciplinary records" and thus "education records" subject to FERPA. A commenter from a State educational agency asked for clarification on whether a record of a law enforcement unit can lose its status and become an "education record."

*Discussion:* FERPA was amended by Congress to exempt from the definition of "education records" those records that are created by a law enforcement unit for a law enforcement purpose and maintained by that law enforcement unit, thus allowing educational agencies and institutions to disclose these records publicly without obtaining prior

written consent. If a law enforcement unit of an institution creates a record for law enforcement purposes and provides a copy of that record to a dean, principal, or other school official for use in a disciplinary proceeding, that copy is an "education record" subject to FERPA if it is maintained by the dean, principal, or other school official and not the law enforcement unit. The original document created and maintained by the law enforcement unit is not an "education record" and does not become an "education record" merely because it was shared with another component of the institution.

*Change:* None.

*Comments:* A few commenters said that the proposed definition of "law enforcement unit" was too broad and could encompass offices or components within an institution that may maintain information directly related to students but that are responsible for the institution's compliance with Federal civil rights laws, financial aid regulations, hiring requirements, etc., which should not be considered law enforcement activities under FERPA. It was also suggested that the definition be limited to enforcement of "criminal" laws.

*Discussion:* The proposed definition is intended to cover that part of the institution which is responsible for providing and maintaining a safe and orderly school environment by monitoring and dealing with the conduct of *individuals*, not the institution itself. After considering these comments, the Secretary agrees that the definition is potentially too broad and may encompass functions of the institution, such as an office of legal counsel, that should not be included. However, the Secretary believes that adding "criminal" to the definition might unnecessarily restrict or confuse school officials as to their responsibilities for ensuring school safety.

*Changes:* The Secretary has revised the definition of "law enforcement unit" by adding a new provision to clarify that it pertains to those individuals or parts of the institution responsible for maintaining the safety and security of school surroundings and for enforcing laws against individuals and organizations within the school community and not those responsible for the institution's own compliance with various laws.

*Comments:* Several commenters associated with postsecondary institutions stated that they did not believe, for various reasons, that their campus security departments were "law enforcement units" under FERPA and

requested clarification on the status of the records of what they considered a "non-law enforcement" campus security department. Some commenters also noted that a majority of colleges and universities do not employ "campus police officers" who possess police authority or perform official police functions. Instead, many institutions employ non-commissioned "campus security officers" whose main function is to keep the peace and enforce institutional policies. Another commenter noted that the definition of "law enforcement unit" was potentially confusing because student conduct code offenses are considered violations of the "law" and that an office that is responsible for student conduct might be considered a "law enforcement unit" under the definition.

*Discussion:* The Secretary has taken into consideration these comments and has revised the regulations to clarify that the term "law enforcement unit" under FERPA includes "a unit of commissioned police officers or non-commissioned security guards." That is, security departments such as those described by the commenters would be considered "law enforcement units" if they are officially authorized or designated by the institutions to carry out the functions listed in the regulatory definition, regardless of whether the individuals of that unit are commissioned police officers. The second part of the definition of law enforcement unit makes it clear that a security department retains its status as a "law enforcement unit" even if it also has responsibility for enforcing the institution's code of student conduct.

*Change:* The definition has been revised to state that it applies to units consisting of commissioned police officers as well as non-commissioned security guards.

*Comments:* One commenter, an official at a major university, stated that the law enforcement unit at that institution generates both "crime reports," which it considers public documents, and "incident reports," which are treated as education records and referred to the student affairs office for disciplinary purposes. The official further stated that he believes that the functions of the law enforcement unit and the functions of the student affairs office charged with administering the student discipline system are intertwined at his institution as they are at other institutions.

*Discussion:* If an institution has a security unit or individual with a dual role or function of enforcing institutional rules of conduct related to safety and security and referring

potential or alleged violations of law to government authorities, that unit or individual would be considered a "law enforcement unit" under FERPA. Under the new amendment, records of that unit that were created and maintained for a law enforcement purpose are considered records of a law enforcement unit and, therefore, excluded from the definition of "education records" under FERPA.

The Secretary has revised the proposed regulations to clarify that where a law enforcement unit also performs non-law enforcement functions, the records created and maintained by that unit are considered law enforcement unit records, even where those records were created for dual purposes (e.g. for both law enforcement and disciplinary purposes). Only records that were created and maintained by the unit *exclusively* for a non-law enforcement purpose will not be considered records of a law enforcement unit. For example, if a campus security unit initiates an investigation into an incident on campus relating to a possible violation of law or the student conduct code, the record created and maintained by the unit in connection with this investigation is a law enforcement unit record, whether or not it is ever referred to the local police authorities. If, however, the same unit or individual responsible for law enforcement investigates an incident for the purposes of internal disciplinary actions and creates a record *exclusively* for the purpose of a possible disciplinary action against the student, that record would not be considered a record of a law enforcement unit and would be an "education record" subject to FERPA. It should be stressed that the Secretary expects such occasions to be very rare, especially with incidents involving criminal conduct by students at postsecondary institutions.

Postsecondary institution officials should note also that when they decide to refer a matter to a disciplinary committee rather than to the institution's own law enforcement unit or directly to governmental law enforcement authorities, the institution is not relieved of its responsibilities for complying with the reporting requirements of the Student Right-to-Know and Campus Security Act, as codified in 34 CFR 668.47(a)(6) (Student Assistance General Provisions).

*Changes:* The definition has been clarified by the insertion of the word "exclusively" to indicate records created and maintained exclusively for internal disciplinary purposes are not law enforcement unit records and are,

therefore, not excluded from the definition of "education records."

*Comments:* One commenter suggested that the regulations be changed to allow institutions that may not have a law enforcement unit to publicly disclose records that relate to a criminal act but which are not necessarily related to a disciplinary action.

Another commenter expressed concern that, because most public elementary and secondary schools do not have a "law enforcement unit," an individual administrator could be considered a "law enforcement unit" under the proposed definition. The commenter believed this dual role of school administrator and law enforcement official could pose a potential problem for abuse because of his or her access to both education records and law enforcement unit records. He stated that, in such a circumstance, a school official could "essentially confer or remove parents' rights of access to records, or maintain or eliminate confidentiality with respect to certain records by choosing to characterize documents as education records or records of a law enforcement unit."

*Discussion:* The Secretary has carefully considered whether provisions should be included in the regulations to address these concerns. The definition of "law enforcement unit" has been clarified by adding the term "officially" to describe an office, department, or individual who is authorized or designated by the agency or institution to perform law enforcement unit functions. Additionally, a subsection has been added to the definition to further describe a "law enforcement unit" as an *entity or individual* whose function is to maintain the safety and security of the institution.

The inclusion of the term "individual" is intended to permit small educational agencies and institutions to designate a single individual responsible for "law enforcement" and related safety and security functions. The records created and maintained by that individual for a law enforcement purpose may be disclosed, without prior consent of the parent or eligible student to whom the records relate, and the parent or eligible student would have no right to inspect and review the records under FERPA. The Secretary believes that the benefits gained by safer school surroundings outweigh any potential problems for abuse of the privacy or access rights under FERPA that might occur by including "individual" in the definition.

However, the Secretary does not have the authority to change the regulations

to allow institutions that do not have a law enforcement unit to publicly disclose records that relate to a criminal act. Such a change would have to be made by Congress.

*Change:* The Secretary has revised the definition of "law enforcement unit" to include only entities or individuals officially authorized or designated by an agency or institution to enforce local or State law, or to refer to appropriate authorities a matter for enforcement of these laws, or to maintain the physical security and safety of the agency or institution.

*Comments:* A couple of commenters from State departments of education noted that the definition of law enforcement unit should be clarified to include a city police officer hired by a local educational agency or through special arrangements with local law enforcement authorities.

*Discussion:* The Secretary believes that the definition of "law enforcement unit" which includes the term "individual," as discussed in the previous comment, will allow schools to designate a single individual responsible for "law enforcement" and related safety and security functions. However, educational agencies and institutions should also be aware of the requirement under § 99.6 of the FERPA regulations to adopt a policy regarding how the agency or institution meets the requirements of FERPA. In that policy, educational agencies and institutions are required to include a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest. If agencies and institutions have a policy of disclosing information from education records to officials of their own law enforcement unit, the officials of that unit must be designated under the school's FERPA policy as school officials with a legitimate educational interest. The Department can provide further guidance on the formulation of such a policy.

The Secretary encourages educational agencies and institutions that do not have a separate law enforcement unit to develop working relationships with local police authorities. However, FERPA currently prohibits schools from disclosing information from education records to local police authorities absent the prior written consent of parents or a lawfully issued subpoena or court order.

*Changes:* None.

*Comment:* One commenter expressed concern that the proposed regulations do not permit officials of an institution's law enforcement unit to disclose



information that the unit had obtained from a student's education records to local police or prosecutors. He believes that the regulations, as proposed, would impede the institution's ability to investigate students suspected of falsified time sheets, transcript forgery, computer fraud, and similar crimes that may be demonstrated by documents considered "education records" under FERPA.

*Discussion:* An institution may disclose education records to an outside law enforcement agency without consent to comply with a judicial order or lawfully issued subpoena. The Secretary does not have the statutory or regulatory authority to permit the non-consensual disclosure of education records to outside law enforcement authorities in other circumstances. Any changes to this provision would have to be made by Congress.

*Changes:* None.

*Comment:* The same commenter proposed that § 99.8(c)(1) be changed by replacing "contacting its law enforcement unit, orally or in writing" with "disclosing education records or information from education records to its law enforcement unit."

*Discussion:* This provision was included in order to clarify that the Secretary would not consider an institution "contacting" its own law enforcement officials regarding suspected criminal activity to involve necessarily the disclosure of information from an education record, which the institution would not be permitted to do under FERPA unless those individuals had been designated in the school's FERPA policy as "school officials" with legitimate educational interest in accordance with 34 CFR 99.6.

Additionally, as referenced in the previous comment, FERPA does not permit any party, including the institution's own law enforcement unit, that has received information from education records to redisclose that information without the prior consent of the parent or eligible student or in accordance with one of the exceptions listed under 34 CFR 99.31, which includes disclosure in compliance with a judicial order or lawfully issued subpoena.

*Changes:* None.

*Comments:* A commenter from a large metropolitan school district agreed that exempting law enforcement unit records from the definition of "education records" promotes cooperation between local police agencies and local educational agencies in their efforts to reduce violence on school campuses. He further stated, however, that to regard disciplinary records as "education

records," which cannot be disclosed to the school district's own law enforcement unit, obstructs a law enforcement unit official's ability to maintain a safe school environment. In contrast, a commenter from a State educational agency, who agreed with the Secretary's proposed regulatory definition of "law enforcement unit," stated that the proposed change would allow schools to disclose to the public records created and maintained by school law enforcement units. He further noted, without explanation, that the change would assist public schools in working with local law enforcement authorities and other agencies to provide the best education for students in a safe environment conducive to learning.

*Discussion:* With regard to the first commenter's concern that FERPA prevents the disclosure of information from disciplinary records to the school district's designated law enforcement unit, as discussed in the previous comment section, FERPA does not prevent such a disclosure if the officials of the law enforcement unit have been designated as "school officials" with a legitimate educational interest under the district's student records policy, as required by 34 CFR 99.6. However, FERPA does prohibit an educational agency or institution from disclosing information from education records, including information from disciplinary records, to an outside, governmental law enforcement authority, except in certain circumstances such as in response to a judicial order or lawfully issued subpoena, provided notice requirements of § 99.31(a)(9) have been met. As previously noted, the Secretary does not have the statutory or regulatory authority to permit the non-consensual disclosure of information from education records, such as disciplinary records, to third parties, including governmental law enforcement authorities.

*Changes:* None.

*Comments:* A few commenters noted that students who are victims of crime should have a right to know about the progress of the investigation of their cases. In contrast, several commenters suggested that information regarding active criminal investigations be protected from disclosure until the investigations have been closed or adjudicated.

*Discussion:* The Secretary has considered these comments but believes that because agencies and institutions are *permitted*, not *required*, by FERPA to publicly disclose information from law enforcement unit records, schools should develop their own policies with

regard to if and when they will disclose the information.

*Changes:* None.

#### *Paperwork Reduction Act of 1980*

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

#### *Assessment of Educational Impact*

In the NPRMs, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the NPRMs and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

#### **List of Subjects in 34 CFR Part 99**

Administrative practice and procedure, Education, Family educational rights, Privacy, Parents, Reporting and recordkeeping requirements, Students.

Dated: January 10, 1995

**Richard W. Riley,**  
*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Part 99 of Title 34 of the Code of Federal Regulations as follows:

#### **PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY**

1. The authority citation for part 99 continues to read as follows: Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.3 is amended by republishing the introductory text of paragraph (b) and revising paragraph (b)(2) in the definition of "Education records" and by adding a new definition of "Disciplinary action or proceeding" in alphabetical order to read as follows:

#### **§ 99.3 What definitions apply to these regulations?**

\* \* \* \* \*

*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.

\* \* \* \* \*

*Education records* \* \* \* \*

(b) The term does not include:

\* \* \* \* \*

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8.

\* \* \* \* \*

3. A new § 99.8 is added to subpart A to read as follows:

**§ 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))

[FR Doc. 95-1000 Filed 1-13-95; 8:45 am]

BILLING CODE 4000-01-P

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**APPENDIX D**  
**Final Rules to Implement Changes**  
**on FERPA as Amended**  
**in the Improving America's Schools Act**  
***Federal Register*, November 21, 1996**

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Thursday  
November 21, 1996

**Federal Register**

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**Part III**

**Department of  
Education**

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**34 CFR Part 99**  
**Family Educational Rights and Privacy;**  
**Final Rule**

**DEPARTMENT OF EDUCATION****34 CFR Part 99**

RIN 1880-AA65

**Family Educational Rights and Privacy****AGENCY:** Department of Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations implementing the Family Educational Rights and Privacy Act (FERPA). The amendments are needed to implement section 249 of the Improving America's Schools Act of 1994 (IASA) (Pub. L. 103-382, enacted October 20, 1994), to eliminate unnecessary requirements, reduce regulatory burden, and incorporate several technical changes.

**EFFECTIVE DATE:** These regulations take effect December 23, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ellen Campbell, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202-4605. Telephone: (202) 260-3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** On March 14, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for 34 CFR part 99 in the *Federal Register* (61 FR 10664-10669). The preamble to the NPRM included a summary and discussion of the 1994 amendments and other major issues that were addressed in the proposed regulations.

These regulations have been reviewed and revised in accordance with the Department's "Principles for Regulating," which were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. These principles advance the regulatory reinvention and customer service objectives of the Administration's National Performance Review and are essential to an effective partnership with States and localities. The Secretary amends these regulations because he believes they are necessary to implement the law and give the greatest flexibility to educational agencies and institutions. In addition, the regulations minimize burden while protecting parents' and students' rights.

The final regulations include changes made to the statute by the Improving America's Schools Act of 1994 (IASA). The IASA amended FERPA so that State

educational agencies are required to afford parents access to education records they maintain. The IASA also amended FERPA to permit nonconsensual disclosures of education records to officials in the State juvenile justice system as permitted by State law and, in certain circumstances, to permit the nonconsensual disclosure of information regarding disciplinary action taken against a student for behavior that posed a significant risk to the student or others.

Additionally, these regulations reflect the Department's effort to reduce unnecessary regulatory burdens. In this regard, the Department is removing the nonstatutory requirement that schools adopt a formal written student records policy. Instead, schools will now be required to include additional information in the annual notification of rights, which is required by statute, to ensure that parents are effectively notified of their rights and how to pursue them.

In reviewing the NPRM with respect to the issue of disclosing education records without consent pursuant to subpoenas and court orders, the Secretary has concluded that the language in this provision of the regulations should be revised to highlight that notification to the parent or eligible student of a subpoena or judicial order allows the parent or student the opportunity to seek protective action to prevent re-disclosures. Also, the Secretary clarifies that if an educational agency or institution initiates legal action against a parent or student, the records that can be disclosed are those records of that student that are relevant to the action. These additions are not intended to change the meaning of the regulatory requirements as published in the NPRM, but are merely a clarification of the Department's position on this issue. Changes made in response to the public comments on the NPRM are discussed in the following section.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, twenty-eight (28) parties submitted comments on the proposed regulations. An analysis of the public comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are discussed under the section of the regulations to which they pertain. Suggested changes and comments outside the scope of the NPRM are not addressed because the Secretary lacks the statutory authority to make the changes.

**Annual Notification of Rights (§ 99.7)**

*Comments:* Seven commenters submitted letters in support of the proposal to remove the requirement that educational agencies and institutions adopt student records policies. One commenter stated that the proposed change would not only lessen the burden on schools, but would facilitate communication between the schools and parents or eligible students. This commenter further stated that the cost associated with the change would not be significant because the school district updates its notices regardless of statutory requirements. Another commenter, representing a State educational agency (SEA), stated that the proposed changes would "be of benefit to parents." Another commenter representing a large public university stated that "the flexibility offered by not requiring having such a [student records] policy is a laudable goal \* \* \*. A move toward that type of freedom is a positive one."

Six commenters opposed the proposed change. One commenter stated that the current requirements are not burdensome. Two commenters noted that the policy is helpful in educating school officials about FERPA requirements and that the change in the requirements would be burdensome on schools because they would incur costs to publish a longer notification.

*Discussion:* The Secretary's purpose in removing the requirement that schools maintain a policy is twofold. Specifically, the Secretary believes that this change will help to ensure that parents and eligible students receive more effective notification of their rights under the law, including how to pursue those rights. Second, the Secretary hopes that the change will afford educational agencies and institutions greater flexibility by removing requirements that are not necessary to implement the law.

With respect to those commenters who noted that the student records policy is helpful in educating school officials about FERPA, the removal of the requirement that educational agencies or institutions adopt a formal student records policy does not prevent schools from maintaining a policy. The Department will continue to update and make available a sample model student records policy for any educational agencies and institutions that want to have a policy.

While the Secretary encourages educational agencies and institutions to develop and utilize student records policies, he also recognizes that the statute does not require that schools

have these policies. Because of this regulatory requirement, the Department has had to investigate complaints alleging that the contents of schools' student records policies did not meet the regulatory requirements. Often, the Department found that the policies did not comply.

The removal of the requirement to adopt a written policy aligns the FERPA regulations more closely to the statute and gives educational agencies and institutions flexibility regarding the content of their student records policies. In addition, the amount of Department resources spent on investigating complaints alleging violations of regulatory requirements that are not based on statutory requirements will be reduced.

In response to those comments that expressed concern regarding the burden and cost of publishing additional information in an annual notification, the Secretary has again reviewed the regulations. The Secretary has determined that some of the information proposed to be included in the annual notification is not necessary to meet the statutory requirement. In particular, the Secretary has removed the requirement that the notice list FERPA's exceptions to the prior written consent provision. In addition, the Secretary will not require that the annual notification specify the procedures for a hearing under FERPA's amendment provision, as long as schools provide this information to parents and eligible students seeking to amend education records. Lastly, the Secretary will not require the annual notification to include a reference to directory information.

The Department has created a model annual notification that is not significantly longer than the previous annual notification. The model is available from the address listed in the **FOR FURTHER INFORMATION CONTACT** section of these regulations and is published as an appendix to these regulations. The model is less than two 8½" by 11" pages in length (single-spaced), minimizing any additional burden on an institution. As noted in the NPRM, the Secretary will allow educational agencies and institutions up to three years to transfer from the current policy requirements and to implement the new requirements concerning an annual notification.

*Changes:* The Secretary has removed proposed § 99.7(a)(3)(ii) (B) and (C), § 99.7(a)(3)(iii), and § 99.7(a)(3)(v). The remaining provisions have been renumbered accordingly.

#### *Effective Notification*

*Comment:* One commenter requested that the regulations specify what would be acceptable notification to individuals with disabilities or those with limited English proficiency.

*Discussion:* The Secretary believes that each school is best able to determine what would constitute notice that would be reasonably likely to inform parents and eligible students whom it serves. The regulations give schools flexibility to determine how to effectively notify individuals with disabilities and those who have a primary or home language other than English. Schools must provide notice consistent with applicable civil rights laws. Effectively notifying individuals with disabilities may include, for example, providing notice in alternative formats such as audiotape, braille, computer diskette, or large print, as appropriate. Ideally, schools would consult with parents and eligible students in determining how best to provide them with notice.

*Changes:* None.

#### *Annual Requirement*

*Comment:* One commenter questioned the requirement that an educational agency or institution provide the notification annually. This commenter suggested that notification be made once, when a student first enters the school.

*Discussion:* The Secretary believes that requiring an annual notification that is reasonably likely to inform parents and eligible students of their rights strikes the proper balance between placing minimal requirements on educational agencies and institutions and ensuring that parents and students are effectively informed of their rights. The Department does not require schools to individually notify parents or eligible students of their rights, but only that they give notice that is reasonably likely to inform the parents and students of their rights.

*Changes:* None.

#### *Right To Inspect and Review Education Records (Section 99.10)*

*Comments:* Eleven SEAs submitted comments on the NPRM. Most commenters agreed that the Secretary's proposed requirement that access be provided within 45 days is reasonable. One commenter, while generally in favor of the proposed changes, stated that the 45-day time period was too long.

*Discussion:* Because most comments the Department received stated that the 45-day requirement is reasonable and

the statute requires that LEAs respond to requests for access within 45 days, the Secretary believes that making the response time consistent with the statutory requirement for LEAs will be less confusing to parents, students, and school officials.

*Changes:* None.

#### *Costs Associated With Making Records Available*

*Comments:* One commenter stated that SEAs would incur significant costs producing records for review.

*Discussion:* The Secretary recognizes that there may be some personnel and resource costs associated with affording access to records. However, § 99.11 of subpart B of the FERPA regulations allows SEAs to charge a fee for a copy of education records that is made for a parent or eligible student. This fee would cover most of the nominal costs associated with making records available to parents and eligible students.

*Changes:* None.

#### *Duplicate Records*

*Comments:* Two commenters suggested that SEAs should not be required to provide access to records that are duplicates of records maintained by an LEA.

*Discussion:* The requirement that SEAs provide access to education records is statutory. Congress did not make an exception for duplicate records. There is, therefore, no authority for the Department to limit a parent's or eligible student's right to access records maintained by an SEA, even if the records are duplicates of those records maintained by an LEA.

*Changes:* None.

#### *Prior Consent Provisions*

*Comments:* Three commenters contended that FERPA's provisions requiring the consent of the parent or eligible student prior to disclosure of education records also should apply to records maintained by SEAs, notwithstanding the source of the records.

*Discussion:* Congress only requires that SEAs comply with the access provisions of FERPA. SEAs are not required to comply with any of the other provisions of FERPA, such as the written consent requirement or the notification requirement. Accordingly, the Secretary has no authority to require SEAs to comply with FERPA's prior consent provisions.

*Changes:* None.

#### *SEAs and Annual Notification*

*Comments:* Several commenters representing SEAs asked if the annual

notification requirement applies to SEAs and if state-wide notification is required.

*Discussion:* As discussed in the preamble to the NPRM, FERPA does not apply to SEAs in general. Rather, the only provision in FERPA that applies to SEAs directly is the requirement that SEAs provide parents and eligible students access to education records when so requested. Accordingly, FERPA's notification requirement does not apply to an SEA, unless the SEA is an educational agency or institution under § 99.1 of this part.

*Changes:* None.

#### *Foster Parents*

*Comments:* One commenter was concerned that there was no proposed provision addressing the rights of a foster parent to inspect and review education records at an SEA.

*Discussion:* The regulations already define the term parent in § 99.3 to include "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." Thus, foster parents who are acting as a child's parent would have the rights afforded parents under FERPA with respect to that child's education records.

*Changes:* None.

#### *Prior Consent Not Required for Disclosures Pursuant to Court Orders and Lawfully Issued Subpoenas (Section 99.31) Subpoenas of Other Issuing Agencies*

*Comments:* Three commenters noted that the NPRM omitted statutory language that allows an educational institution to release education records without notifying the student when an agency (other than a court) issues a subpoena for a law enforcement purpose.

*Discussion:* The words "or other issuing agency" were inadvertently excluded from the NPRM. The Department did not intend to limit the application of this provision and has corrected the regulations to reflect the statutory language.

*Change:* The words "or other issuing agency" have been added to § 99.31(a)(9)(ii)(B).

#### *Implied Waiver of the Right To Consent*

*Comments:* Three commenters requested that the Secretary include regulations allowing an educational agency or institution to assume an implied waiver of the right to consent to the disclosure of education records to respond to a lawsuit filed by a parent or student against the agency or institution.

*Discussion:* While FERPA does not directly address this issue, the Department interprets FERPA to allow an educational agency or institution to infer the parent's or student's implied waiver of the right to consent to the disclosure of information from the student's education records if the parent or student has sued the institution. The Secretary believes this interpretation is sound because an educational agency or institution must be able to defend itself if a parent or student has initiated legal action against the agency or institution. This interpretation, however, does not place a requirement on educational agencies or institutions, and thus it is not included in the regulations.

*Changes:* None.

#### *Disclosure of Information from Disciplinary Records (Section 99.36)*

*Comment:* One commenter asked if an educational agency or institution may include information regarding disciplinary actions taken against a student other than those for conduct that posed a significant risk to the health or safety of the student or others in a student's education records.

*Discussion:* Neither FERPA nor the regulations prevent an educational agency or institution from maintaining any type of education records that an agency or institution has deemed necessary or appropriate to maintain. The new statutory provision, upon which the new regulatory provision is based, merely clarifies that nothing in FERPA prevents schools from maintaining, and disclosing under certain circumstances, specific information regarding disciplinary action taken against students.

*Changes:* None.

#### *Health or Safety Emergency Exception*

*Comments:* One commenter suggested that the new provision regarding disciplinary records be placed in its own section of the regulations, stating that Congress did not include this provision under the health or safety emergency exception to FERPA's prior written consent provision.

*Discussion:* The new provision governs disclosure of information about a student's behavior that poses significant risk to that student or other individuals. This new provision is closely related to, and logically follows, the existing health or safety exception to the prior written consent provision. The placement of the new provision in the same subpart with the previous health or safety emergency exception does not collapse the two provisions.

*Changes:* None.

#### *Obligation To Disclose Information*

*Comments:* A couple of commenters asked whether the FERPA provision permitting the disclosure of information concerning disciplinary action taken against a student for behavior that posed a significant risk to that student or other individuals creates a legal obligation to disclose this information, which would make educational agencies and institutions liable if this information were not disclosed.

*Discussion:* These regulations do not require the disclosure of any information from education records, except to the extent that the regulations afford parents and eligible students the right to access education records. Accordingly, the regulations do not create a legal obligation to disclose information from a student's disciplinary records under FERPA. Rather, the regulations give individual schools the discretion to determine the circumstances under which it is appropriate to disclose information.

*Changes:* None.

#### *Behavior That Poses a Significant Risk*

*Comments:* Some commenters suggested that the Department should clarify what behavior would constitute "behavior that posed a significant risk" and pointed out that a particular behavior at one institution may be deemed acceptable, and at another be considered putting the individual or others at "significant risk."

*Discussion:* The Secretary believes that defining a single standard of what constitutes behavior that posed a significant risk would restrict educational agencies and institutions from determining what is appropriate based on specific circumstances found at individual schools.

*Change:* None.

#### *Transfer of Student Education Records*

*Comments:* Three commenters suggested permitting nonconsensual disclosure of information concerning disciplinary action taken against a student for behavior that posed a significant risk to that student or other individuals if the student has transferred to another school.

*Discussion:* FERPA has always permitted, under § 99.31(a)(2), nonconsensual disclosure of this information (and other education records) in situations where students are seeking or intending to enroll in another educational agency or institution. If a student has been enrolled in the new institution for a period of time, the Secretary interprets § 99.31(a)(2) to permit educational agencies and

institutions to send corrected education records, or additional education records, to the new institution (if it has already sent education records under this exception) as part of an original disclosure.

*Change:* None.

*Students With Disabilities*

*Comment:* One commenter asked if the new provision permitting nonconsensual disclosure of information concerning disciplinary action applies to students with disabilities.

*Discussion:* FERPA applies to all education records equally, and does not distinguish between the records of students with disabilities and the records of other students. Moreover, the Secretary believes that individual educational agencies and institutions are in the best position to determine what information should be released in a particular situation. However, if a complaint is filed, the Department, through the Family Policy Compliance Office, would investigate the complaint and make a final determination whether FERPA had been violated.

*Changes:* None.

*Disclosure of Information Concerning Juvenile Justice System (Section 99.38)*

*Comment:* None.

*Discussion:* The Secretary believes that each school, working in conjunction with State and local authorities, can best determine whether a release of personally identifiable information from an education record "concerns the juvenile justice system's ability to effectively serve a student prior to adjudication." Thus, the regulations give schools flexibility in determining whether an education record of a juvenile may be released without the prior written consent of the parent.

**Executive Order 12866**

*Assessment of Costs and Benefits*

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements were identified and explained in the preamble to the NPRM published on

March 14, 1996. This discussion appeared under the heading *Paperwork Reduction Act of 1995* (61 FR 10666).

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the regulations justify the costs.

**Summary of Potential Costs and Benefits**

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: Analysis of Comments and Changes.

**Paperwork Reduction Act of 1995**

Sections 99.7 and 99.32 contain information collection requirements and have been approved by OMB under control number 1880-0508. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 99**

Administrative practice and procedure, Education, Information, Privacy, Parents, Records, Reporting and recordkeeping requirements, Students.

Dated: September 18, 1996.

**Richard W. Riley,**  
*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Part 99 of Title 34 of the Code of Federal Regulations as follows:

**PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY**

1. The authority citation for part 99 continues to read as follows:

**Authority:** 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.1 is amended by removing paragraph (b), redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) to read as follows:

**§ 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 provides administrative control of or direction of, or performs service functions for, public elementary or secondary schools or postsecondary institutions.

\* \* \* \* \*

**§ 99.2 [Amended]**

3. Section 99.2 is amended by removing the number "438" and adding, in its place, the number "444".

4. Section 99.3 is amended by removing in the definition of "Act" the number "438" and adding, in its place, the number "444" and by revising the definitions of "Disclosure" and "Record" to read as follows:

**§ 99.3 What definitions apply to these regulations?**

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

**§ 99.6 [Removed and reserved]**

5. Section 99.6 is removed and reserved.

6. Section 99.7 is revised to read as follows:

**§ 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)).

7. Section 99.10 is amended by adding “, or SEA or its component” following the word “institution” in paragraphs (c) and (e) and by revising paragraphs (a), (b), and (d), and the authority citation to read as follows:

**§ 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.

\* \* \* \* \*

(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.

\* \* \* \* \*

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

**§ 99.12 [Amended]**

8. Section 99.12 is amended by removing in paragraph (a) the commas after “inspect” and after “review” and by adding after the word “inspect” the word “and” and by revising the authority citation to read as follows:

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

**§ 99.20 [Amended]**

9. Section 99.20 is amended by removing in paragraph (a) the words “or other rights”.

**§ 99.21 [Amended]**

10. Section 99.21 is amended by removing in paragraphs (a), (b)(1), introductory text, and (b)(2) the words “or other”.

11. Section 99.31 is amended by redesignating paragraph (a)(6)(iii) as paragraph (a)(6)(iv), by adding a new paragraph (a)(6)(iii) and by revising paragraphs (a)(5)(i) and (a)(9) and the authority citation to read as follows:

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

(a) \* \* \*

(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.

\* \* \* \* \*

(6) \* \* \*

(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.

\* \* \* \* \*

(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) If the educational agency or institution initiates legal action against a parent or student and has complied with paragraph (a)(9)(ii) of this section, it may disclose the student's education records that are relevant to the action to the court without a court order or subpoena.

\* \* \* \* \*

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2), (b)(4)(B), and (f)).

12. Section 99.32 is amended by removing the word “or” following paragraph (d)(3), replacing the period at



the end of paragraph (d)(4) with a semicolon and adding the word "or" after the semicolon, adding a new paragraph (d)(5), and revising the authority citation to read as follows:

**§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?**

\* \* \* \* \*

(d) \* \* \*  
 (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))

13. Section 99.33 is amended by revising paragraphs (c) and (d) and by adding a new paragraph (e) to read as follows:

**§ 99.33 What limitations apply to the redisclosure of information?**

\* \* \* \* \*

(c) Paragraph (a) of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas under § 99.31(a)(9), to disclosures of directory information under § 99.31(a)(11), or to disclosures to a parent or student under § 99.31(a)(12).

(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.

**§ 99.34 [Amended]**

14. Section 99.34(a)(1)(ii) is amended by removing the word "policy" and adding, in its place, the words "annual notification".

15. Section 99.36 is amended by revising paragraph (b), adding paragraph (c) and revising the authority citation to read as follows:

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

\* \* \* \* \*

(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)(I) and (h))

16. A new § 99.38 is added to subpart D to read as follows:

**§ 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))

**§ 99.63 [Amended]**

17. Section 99.63 is amended by removing the word "person" and adding, in its place, the words "parent or eligible student".

**Appendix**

(Note: This appendix will not be codified in the Code of Federal Regulations.)

*Model Notification of Rights Under FERPA for Elementary and Secondary Institutions*

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. They are:

(1) The right to inspect and review the student's education records within 45 days of the day the District receives a request for access.

Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

(2) The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate or misleading.

Parents or eligible students may ask *Alpha School District* to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the District decides not to amend the record as requested by the parent or eligible student, the District will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the District as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the District has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the District discloses education records without consent to officials of another school district in which a student seeks or intends to enroll. [Note: FERPA requires a school district to make a reasonable attempt to notify the student of the records request unless it states in its annual notification that it intends to forward records on request.]

(4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the District to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

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

[Note: In addition, a school may want to include its directory information public

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Tuesday  
January 17, 1995

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**Part III**

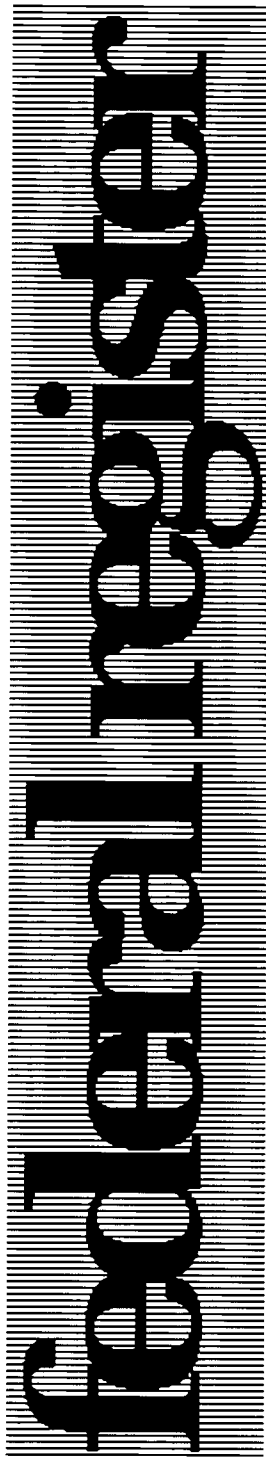
**Department of  
Education**

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**34 CFR Part 99  
Family Educational Rights and Privacy;  
Final Rule**

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**APPENDIX E**  
**Protection of Pupil Rights Amendment:**  
**Proposed Rules to Implement**  
**Amendments in the Goals 2000:**  
**Education America Act**  
*Federal Register, August 28, 1995*



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Monday  
August 28, 1995

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**Part VII**

**Department of  
Education**

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34 CFR Part 98  
Protection of Pupil Rights; Proposed  
Rule

131

## DEPARTMENT OF EDUCATION

## 34 CFR Part 98

RIN 1880-AA66

## Protection of Pupil Rights

**AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes regulations to implement the Pupil Protection Rights Amendments of 1994 (PPRA) to the Protection of Pupil Rights provision contained in the General Education Provisions Act (GEPA). PPRA was amended in the Goals 2000: Educate America Act (Pub. L. 103-227). The proposed regulations rename and revise the current regulations (34 CFR part 98 "Student Rights in Research, Experimental Activities, and Testing") for the Protection of Pupil Rights to implement these statutory changes and to make other changes that are necessary for proper program operation.

**DATES:** Comments must be received on or before October 27, 1995.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to LeRoy Rooker, U.S. Department of Education, 600 Independence Avenue SW., room 1366, Washington, DC 20202-4605. Comments may also be sent through Internet to "PPRA—Comments@ed.gov."

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the *Paperwork Reduction Act of 1980* section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Ellen Campbell, U.S. Department of Education, 600 Independence Avenue, SW., room 1366, Washington, DC 20202-4605. Telephone: (202) 260-3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** These proposed regulations have been reviewed and revised in accordance with the Department's "Principles for Regulating," which were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. These principles advance the regulatory reinvention and customer service objectives of the Administration's National Performance Review II and are essential to an effective partnership with states and localities. The Secretary

proposes these regulations because he believes they are necessary to implement the law and give the greatest flexibility to local governments and schools. In addition, the regulations minimize burden while retaining parents' and students' rights.

The Secretary interprets the Protection of Pupil Rights provision, as amended, contained in section 445 of the General Education Provisions Act (GEPA) to provide parents with the right to have access to surveys, analyses, or evaluations (surveys) administered by a State educational agency (SEA), local educational agency (LEA), or other recipient that asks a student to reveal information concerning the areas specified in section 445(b) of GEPA. In addition, parents or the student, if a student is an adult or an emancipated minor, must consent before a student is required to submit to a survey that asks a student to reveal information concerning these areas. Finally, parents or the student, if a student is an adult or an emancipated minor, must be notified of these rights and may file a complaint for alleged violations of these rights.

**Summary of Major Provisions**

The following is a summary of the regulatory provisions the Secretary proposes as necessary to implement the statute, such as interpretations of statutory text or standards and procedures for the operation of the program. The summary does not address provisions that merely restate statutory language. The Secretary is not authorized to change statutory requirements. Commenters are requested to direct their comments to the regulatory provisions that would implement the statute.

**Section 98.1 Applicable Program**

The Protection of Pupil Rights provision contained in GEPA applies to any program that is an "applicable program" under section 400(c)(1) of GEPA. Under this section the term "applicable program" means any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law. The term includes each program for which the Secretary or the Department has administrative responsibility under the Department of Education Organization Act (DEOA) or under Federal law effective after May 4, 1980.

**Section 98.2 Purpose**

The Secretary interprets section 445 of GEPA to provide four general rights:

(1) Parental right of access to certain

surveys and the instructional material used in connection with these surveys of a student; (2) parental or student right to consent before a student is required to submit to certain surveys; (3) parental or student right to file a complaint for alleged violations of their rights under the law; and (4) parental or student right to receive effective notice of these rights. The Secretary would implement each of these rights in the proposed regulations.

**Section 98.3 Definitions**

The Secretary proposes to define "recipient" to include (1) a contractor who receives financial assistance directly from the Department to carry out the project and (2) the Department. This definition clarifies that any survey that the Department directly contracts for or carries out itself would be subject to these regulations.

The Secretary proposes not to define the term "survey" because he believes the term is self-explanatory. The Secretary would welcome comment on whether the terms "survey, analysis, or evaluation" as used in section 445 of GEPA should be defined in regulations.

**Sections 98.10, 98.20 Access and Consent**

Section 445(a) of GEPA provides for the parental right of access to instructional materials that will be used in connection with any survey as part of any applicable program.

Section 445(b) of GEPA provides for the parent's, in the case of an unemancipated minor, and student's, if the student is an adult or emancipated minor, right of consent to submit to a survey that reveals information concerning one or more of the areas specified in the statute (also listed in § 98.4(a)(2)).

The Secretary interprets the statutory provisions on access and consent to be read together; this interpretation would require an SEA, LEA, or other recipient of program funds from the Department of Education to make available for inspection by a parent or guardian only those surveys (and instructional material in connection with a survey) concerning one or more of the areas listed in section 445(b) of GEPA. Because, unlike the Family Educational Rights and Privacy Act (FERPA), this statute makes no specific reference applying the access and consent provisions to post-secondary institutions and the legislative history supports only applying these provisions to elementary and secondary school students, these proposed regulations will only apply to surveys administered in elementary and secondary schools.

—*Access provision:* The Secretary would implement the access provision by requiring that an SEA, LEA, or other recipient that uses any type of program funds received from the Department, to develop or implement a survey must make available for inspection by a parent or guardian of a student a survey, and the instructional materials used in connection with the survey, if the survey (1) asks the student to reveal information concerning one or more of the areas listed in section 445(b) of GEPA; and (2) is administered in an elementary or secondary school.

—*Compliance with a request for access:* An SEA, LEA, or other recipient would be required to comply with a request to inspect a survey (and the instructional materials used in connection with the survey) without unnecessary delay and in no case more than 45 days after it has received the request. This requirement is consistent with FERPA. Also, the Secretary believes this requirement is a reasonable way to ensure a prompt response to a parent's request for access to these materials while not requiring an SEA, LEA, or other recipient to provide immediate access.

An SEA, LEA, or other recipient would not be required to provide parents with their own copy of a survey (and the instructional material used in connection with the survey). The Secretary believes that such a requirement would be unduly burdensome. The Secretary notes, however, that an SEA, LEA, or other recipient may wish to provide a copy of a survey in order to accommodate parents with disabilities.

—*Destruction of material:* An SEA, LEA, or other recipient would not be permitted to destroy any survey or the instructional material used in connection with the survey, if there is an outstanding request to inspect the material under § 94.10 of the regulations. The Secretary believes this provision is necessary to ensure that a parent's request for access is not frustrated.

—*Consent provision:* The Secretary would implement the consent provision by requiring an SEA, LEA, or other recipient to obtain the prior consent of the parent or guardian, or student, as appropriate, before a student is required to submit to the survey if the SEA, LEA, or other recipient (1) uses any type of program funds, received from the Department, to develop or implement a survey; (2) the survey is administered in an

elementary or secondary school; and (3) requires a student to submit to a survey that asks the student to reveal information concerning one or more of the areas listed in section 445(b) of GEPA. The Secretary has not interpreted "required" as used in section 445(b) of GEPA. By not interpreting the word "required", the Secretary will not be imposing a single rule to address a myriad of situations. Recipients will make initial judgments in individual cases as to whether a survey is or has been "required" in the administration of their activities. In the event a complaint is filed with the Department, the Department will determine on a case-by-case basis in light of all the circumstances whether a student has been required to submit to a survey.

Section 445(b) of GEPA provides that if a student is an unemancipated minor, a parent or guardian of a student provides the consent. If a student is an adult or emancipated minor, the student provides the consent. An adult would be defined as an individual who has attained 18 years of age. An emancipated minor would be defined according to the definition under State law.

—*Obtaining consent:* To meet the requirements of prior consent an SEA, LEA, or other recipient must provide an opportunity for the student or parent or guardian of a student to review a general description or summary of the type of information found in section 445(b) that is included in the survey and to provide information to the parent or guardian on the right to inspect the materials before the student submits to the survey. Rather than prescribing in regulations a standard form of written consent for parents or guardians, the Secretary proposes to allow an SEA, LEA, or other recipient the flexibility to develop its own type of written consent. To provide guidance to SEAs, LEAs, and other recipients, the Department intends to develop a model consent form.

#### Section 98.30 LEA Notification

Section 445(c) of GEPA provides that educational agencies and institutions shall give parents and students effective notice of their rights. The Secretary would implement this provision by requiring each LEA to give effective notice to parents of students in attendance, and students currently in attendance, at the LEA of their rights under the regulations. The notice would state, at a minimum, that parents and

students have the four rights listed in § 98.2. An LEA would have the option to include more information in the notice. With respect to frequency, an annual notification, for example, would constitute an effective notice.

#### Section 98.40 Family Policy Compliance Office and the Office of Administrative Law Judges Functions

Section 445(e) of GEPA requires the Secretary to establish or designate an office and review board within the Department to investigate, process, review, and adjudicate violations of the rights established under this section. The Secretary would designate the Family Policy Compliance Office (Office) to investigate, process, and review complaints of violations under the regulations and to provide technical assistance to ensure compliance with the regulations. The Secretary would designate the Office of Administrative Law Judges as having jurisdiction over proceedings to recover, withhold, and terminate funds and to conduct hearings to compel compliance through cease and desist orders.

#### Section 98.41 Conflict With State or Local Laws

If an SEA or LEA determines that it cannot comply with the requirements of these regulations due to a conflict with State or local laws, it would be required to notify the Office within 45 days, giving the text and citation of the conflicting law. This provision is consistent with the Family Educational Rights and Privacy regulations (34 CFR 99.61). The Secretary believes that, to the extent possible, these proposed regulations should parallel the regulations implementing the Federal Educational Rights and Privacy Act (FERPA) because both the protection of pupil rights legislation and FERPA were originally introduced together with a common purpose and, therefore, should be administered in a similar fashion.

#### Section 98.42 SEA or LEA Required Reports

Under the proposed regulations the Office may require an SEA or LEA to submit reports containing information necessary to resolve complaints under this part, including information regarding the source of funding for the survey, and to ensure that SEAs, LEAs, or other recipients are complying with the statute. This requirement is in the current regulations (34 CFR 98.6).

#### Sections 98.43, 98.44, 98.45 Complaint Procedures

The statute does not specify any procedures for filing or processing a

complaint. The regulations would allow a parent or student, as appropriate, to file a written complaint with the Office regarding an alleged violation under this part. This requirement is in the current regulations (34 CFR 98.7(a)).

The proposed regulations would clarify when a parent and student have a right to file a complaint. Also, the proposed regulations would require that a complaint contain specific allegations of fact giving reasonable cause to believe that a violation of this part has occurred. The Office would investigate each timely complaint to determine whether an SEA, LEA, or other recipient has failed to comply with the proposed regulations. These requirements are in 34 CFR 98.7(a) and (b), respectively, of the current regulations.

The proposed regulations clarify when a complaint would be timely and when the Office may extend the time limit. These provisions are consistent with the requirements in 34 CFR 99.64(c) and (d) of the FERPA regulations. Again, the Secretary believes that for the reasons already discussed, and to the extent possible, the proposed regulations should be consistent with the FERPA regulations.

—*Notice of complaint issued by the Office:* The Office notifies the complainant and the SEA, LEA, or other recipient in writing if it initiates an investigation of a complaint and notifies the complainant if it does not initiate an investigation of a complaint. The required content of the notice to the SEA, LEA, or other recipient is consistent with 34 CFR 98.8(a) and (b) of the current regulations. The Secretary believes this notification is necessary to keep the complainant properly informed of the status of his or her complaint.

#### *Sections 98.46, 98.47 Enforcement Process*

The statute does not prescribe any enforcement procedures except for the establishment or designation of an office and review board within the Department of Education to investigate, process, review and adjudicate violations of the rights established by section 445 of GEPA. Under the proposed regulations, the Office would review a complaint and response and may permit the parties to submit further written or oral arguments or information. Following its investigation, the Office would provide to the complainant and the SEA, LEA, or other recipient written notice of its findings and the basis for its findings. If the Office found that the SEA, LEA, or other recipient had not complied with these regulations, the notice would (1) include a statement of the specific steps

that the SEA, LEA, or other recipient must take to comply; and (2) provide a reasonable period of time, given all the circumstances of the case, during which the SEA, LEA, or other recipient may comply voluntarily. This procedure is consistent with that in 34 CFR 98.9 of the current regulations.

If an SEA, LEA, or other recipient other than a contractor does not voluntarily comply with the proposed regulations, the Office may, in accordance with part D of GEPA, (1) withhold, recover, or terminate funds under 34 CFR 81.3; or (2) issue a complaint to compel compliance through a cease-and-desist order under 34 CFR 81.3. This is consistent with 34 CFR 98.10(a)(1) of the current regulations.

If a contractor does not voluntarily comply with the proposed regulations, the Office may direct the contracting officer to take an appropriate action authorized under the Federal Acquisition Regulation, including either (1) issuing a notice to suspend operations under 48 CFR 12.5; or (2) issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

If, after an investigation, the Secretary finds that an SEA, LEA, or other recipient has complied voluntarily with these regulations, the Secretary provides the complainant and the SEA or LEA written notice of the decision and the basis for the decision. These enforcement provisions are consistent with 34 CFR 98.10(b) of the current regulations.

#### **Executive Order 12866**

##### *1. Assessment of Costs and Benefits*

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary to administer this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

##### *2. Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 98.1) *To which programs do these regulations apply?* (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FOB-10B), Washington, DC 20202-2241.

##### **Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds from the Department. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would

impose minimal requirements to ensure that LEAs comply with the pupil protection requirements in GEPA.

**Paperwork Reduction Act of 1980**

Section 98.30 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

SEAs, LEAs, and other recipients may be affected by these regulations. The Department needs and uses the information to ensure compliance with requirements in the Pupil Protection Rights in GEPA. Annual public reporting burden for this collection of information is estimated to be .25 hours per response for 15,713 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. This section highlights those issues already discussed in the preamble on which the Secretary would particularly like comment.

The Secretary has attempted to balance a number of interests by interpreting "applicable program" narrowly and applying these regulations only to surveys that are developed or implemented under Department programs. The Secretary believes that this interpretation balances the rights of parents and students under the statute with the interests of local governments and schools in minimal administrative burdens. The Secretary requests comments on this interpretation. The Secretary is trying to minimize the role of the Federal government in implementing the statute.

The Secretary specifically requests comments from school officials regarding the practicality of a narrow interpretation. As proposed, if asked, an SEA or LEA would have to be able to identify which funds it used to develop, or otherwise implement, a survey. On the other hand, if the Secretary interpreted "applicable program" broadly, the regulations would apply to

any survey given by a school that receives money from the Department, and an identification of whether Department money was used in developing or implementing the survey would be unnecessary. The Secretary welcomes comments on whether school officials believe the broader interpretation of "applicable program" would be less burdensome.

The Secretary also requests comments on whether it is clear that these proposed regulations only apply to surveys that are developed, purchased, implemented, or otherwise funded under Department programs covered by section 445 of GEPA. The Secretary also requests comments on whether the provisions regarding access and consent rights, §§ 98.10 and 98.20 respectively, provide adequate guidance.

As previously stated in the preamble the Secretary would like comments on whether the regulations should include a definition of "survey" (see discussion of § 98.3 Definitions) and "required" (see discussion of §§ 98.10, 98.20 Access and consent: Obtaining consent).

Finally, as already discussed, the regulations interpret the statute to apply to surveys administered in elementary or secondary schools because the statute specifically provides protections under this law to "students." The Secretary requests specific comments on whether the statutory provisions should be interpreted to include surveys administered in settings outside of schools, such as Department-sponsored household-based surveys, conducted either by telephone or in person.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 1366, FOB-10, 600 Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 98**

Administrative practice and procedure, Education, Educational research, Privacy, Reporting and recordkeeping requirements, Schools, and Students.

Dated: August 21, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 98 to read as follows:

**PART 98—PROTECTION OF PUPIL RIGHTS**

**Subpart A—General**

Sec.

- 98.1 To which programs do these regulations apply?
- 98.2 What is the purpose of these regulations?
- 98.3 What definitions apply to these regulations?

**Subpart B—Access**

- 98.10 What are a parent's rights of access to a survey?

**Subpart C—Consent**

- 98.20 In what circumstances must an SEA, LEA, or other recipient obtain consent before requiring a student to submit to a survey?

**Subpart D—Notification**

- 98.30 What must an LEA include in its annual notification?

**Subpart E—Enforcement**

- 98.40 What are the functions of the Family Policy Compliance Office (Office) and the Office of Administrative Law Judges?
- 98.41 What are an SEA's and LEA's responsibilities in the case of a conflict with State or local laws?
- 98.42 What information must an SEA, LEA, or other recipient submit to the Office?
- 98.43 Where are complaints filed?
- 98.44 What is the complaint procedure?
- 98.45 What is the content of the notice of complaint issued by the Office?
- 98.46 What are the responsibilities of the Office in the enforcement process?
- 98.47 How does the Office enforce decisions?

Authority: 20 U.S.C. 1232h, unless otherwise noted.

**Subpart A—General**

**§ 98.1 To which programs do these regulations apply?**

This part applies to any applicable program, that is, any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law.

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

**§ 98.2 What is the purpose of these regulations?**

Parents and students have the following rights under this part:

- (a) Parental right to have access to certain surveys, analyses, or evaluations

(surveys), and the instructional materials used in connection with these surveys of a student.

(b) Parental or student right to consent before the student is required to submit to certain surveys.

(c) Parental or student right to file a complaint for alleged violations of the rights in paragraphs (a), (b), and (d) of this section.

(d) Parental or student right to receive effective notice of the rights under paragraphs (a), (b), and (c) of this section.

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

### § 98.3 What definitions apply to these regulations?

(a) The following terms used in this part are defined in 34 CFR 77.1:

Department  
Elementary school  
Grantee  
Local educational agency (LEA)  
Secondary school  
Secretary  
State educational agency (SEA).

(b) *Other definitions.* The following definitions also apply to this part:

*Adult* means an individual who has attained 18 years of age.

*Emancipated minor* means a person under 18 years of age who would be considered emancipated according to state law.

*Recipient*, for the purposes of this part, means a grantee, subgrantee, or contractor that receives financial assistance directly from the Department to carry out a project and includes the Department.

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

### Subpart B—Access

#### § 98.10 What are a parent's rights of access to a survey?

(a) An SEA, LEA, or other recipient that receives funds from the Department to develop or implement a survey shall make available for inspection by a parent or guardian of a student the survey, and the instructional materials used in connection with the survey, if the survey—

(1) Is administered in an elementary or a secondary school; and  
(2) Asks the student to reveal information concerning one or more of the following areas:

- (i) Political affiliations.
- (ii) Mental and psychological problems potentially embarrassing to the student or his or her family.
- (iii) Sex behavior and attitudes.
- (iv) Illegal, anti-social, self-incriminating, and demeaning behavior.
- (v) Critical appraisals of other individuals with whom the student has close family relationships.

(vi) Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.

(vii) Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(b)(1) An SEA, LEA, or other recipient shall comply with a parent's request to inspect a survey (and the instructional material used in connection with the survey) under paragraph (a) of this section without unnecessary delay and in no case more than 45 days after the recipient receives the request.

(2) An SEA, LEA, or other recipient is not required to give a personal copy of the survey, and the instructional materials, to a parent who requests to inspect a survey under paragraph (a) of this section.

(c) An SEA, LEA, or other recipient may not destroy any survey, or any instructional material used in connection with the survey, if there is an outstanding request by a parent to inspect the material under this section.

(d) An SEA, LEA, or other recipient shall make the survey available for inspection under paragraph (a) of this section even if a student is not required to submit to the survey under § 98.20.

(Authority: 20 U.S.C. 1232h(a))

### Subpart C—Consent

#### § 98.20 In what circumstances must an SEA, LEA, or other recipient obtain consent before requiring a student to submit to a survey?

(a) An SEA, LEA, or other recipient shall obtain the prior consent of the parent or guardian of a student, or the student, if appropriate under paragraph (b) of this section, before the student is required to submit to the survey if the SEA, LEA, or other recipient—

- (1) Uses funds, received from the Department, to develop or implement the survey;
- (2) Administers the survey in an elementary or secondary school;
- (3) Requires the student to submit to the survey; and
- (4) Asks the student in the survey to reveal information concerning one or more of the areas listed in § 98.10(a)(2).

(b)(1) If a student is an unemancipated minor, the SEA, LEA, or other recipient must obtain the consent required in paragraph (a) of this section, in writing, from the parent or guardian of the student.

(2) If a student is an adult or emancipated minor, the SEA, LEA, or other recipient must obtain the consent required in paragraph (a) of this section from the student.

(c) To meet the requirements of prior consent the SEA, LEA, or other recipient must provide—

(1) An opportunity for the student or parent or guardian of a student to review a general description or summary of the type of information found in § 98.10(a)(2) that is included in the survey; and

(2) Information to the parent or guardian on the right to inspect these materials before the student submits to the survey.

(Authority: 20 U.S.C. 1232h(b))

### Subpart D—Notification

#### § 98.30 What must an LEA include in its notification?

(a) Each LEA shall give effective notice to parents of students in attendance, and to students currently in attendance at the LEA of their rights under this part.

(b) The notice must state that parents and students have the rights listed in § 98.2.

(c) As used in paragraph (a) of this section, effective notice means a notice that is reasonably likely to inform parents and students, including those with disabilities and those whose primary or home language is not English, of their rights.

(Authority: 20 U.S.C. 1232h(c))

### Subpart E—Enforcement

#### § 98.40 What are the functions of the Family Policy Compliance Office (Office) and the Office of Administrative Law Judges?

(a) The Family Policy Compliance Office (Office)—

(1) Investigates, processes, and reviews complaints of violations under this part; and

(2) Provides technical assistance to ensure compliance with this part.

(b) The Office of Administrative Law Judges has jurisdiction to conduct the following proceedings to enforce the requirements in this part—

- (1) Hearings for recovery of funds.
- (2) Withholding hearings.
- (3) Termination hearings.
- (4) Cease and desist hearings.

(Authority: 20 U.S.C. 1232h(e))

#### § 98.41 What are an SEA's and LEA's responsibilities in the case of a conflict with State or local laws?

If an SEA or LEA determines that it cannot comply with any of the requirements of this part due to a conflict with State or local laws, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.



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

**§ 98.42 What information must an SEA, LEA, or other recipient submit to the Office?**

The Office may require an SEA, LEA, or other recipient to submit reports containing information necessary—

- (a) To resolve complaints under this part, including information regarding the source of funding for the survey; and
- (b) To ensure that SEAs, LEAs, or other recipients are complying with the statute.

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

**§ 98.43 Where are complaints filed?**

A parent or student, as appropriate under § 98.44(a), may file a written complaint with the Office regarding an alleged violation under this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, 600 Independence Avenue, SW., FOB-10, room 1366, Washington, D.C. 20202-4605.

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

**§ 98.44 What is the complaint procedure?**

(a)(1) A parent may file a complaint under this part for alleged violations of the parent's rights of access, consent, or to be notified of the parent's rights under §§ 98.10, 98.20, and 98.30.

(2) A student who is an emancipated minor or an adult may file a complaint under this part for alleged violations of the student's rights to consent or to be notified of the student's rights under §§ 98.20 and 98.30.

(b) A complaint filed under § 98.43 must contain specific allegations of fact giving reasonable cause to believe that a violation of this part has occurred.

(c) The Office investigates each timely complaint to determine whether the SEA, LEA, or other recipient has failed to comply with the provisions of this part.

(d)(1) For purposes of this section, a timely complaint is an allegation of a

violation of this part that is submitted to the Office within 180 days of—

- (i) The date of the alleged violation; or
- (ii) The date that the complainant knew or reasonably should have known of the alleged violation.

(2) The Office may extend the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

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

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

(a) The Office notifies the complainant and the SEA, LEA, or other recipient in writing if it initiates an investigation of a complaint under § 98.46(b). The notice to the SEA, LEA, or other recipient—

- (1) Includes the substance of the alleged violation; and
- (2) Requests that the SEA, LEA, or other recipient 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 complainant fails to meet the requirements of § 98.44.

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

**§ 98.46 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 SEA, LEA, or other recipient written notice of its findings and the basis for its findings.

(c) If the Office finds that the SEA, LEA, or other recipient has not

complied with this part, the notice under paragraph (b) of this section—

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

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

**§ 98.47 How does the Office enforce decisions?**

(a) If the SEA, LEA, or other recipient other than a contractor does not comply during the period of time set under § 98.46(c)(2), the Office may, in accordance with part D of the General Education Provisions Act—

- (1) Withhold, recover, or terminate funds under 34 CFR 81.3; or
- (2) Issue a complaint to compel compliance through a cease-and-desist order under 34 CFR 81.3.

(b) If a contractor does not comply during the period of time set under § 98.13(c)(2), the Office may direct the contracting officer to take an appropriate action authorized under the Federal Acquisition Regulation, including either—

- (1) Issuing a notice to suspend operations under 48 CFR 12.5; or
- (2) Issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

(c) If, after an investigation under § 98.44(c), the Secretary finds that an SEA, LEA, or other recipient has complied voluntarily with this part, the Secretary provides the complainant and the SEA, LEA, or other recipient written notice of the decision and the basis for the decision.

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

[FR Doc. 95-21227 Filed 8-25-95; 8:45 am]

BILLING CODE 4000-01-P

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## Acknowledgments

*Protecting the Privacy of Student Records: Guidelines for Education Agencies* is the product of a collaborative effort involving numerous individuals from federal, state, and local education agencies, public and private educational institutions, and national professional associations, as well as educators, administrators, and researchers.

Members of the Data Confidentiality Task Force of the National Forum on Education Statistics and Lee Hoffman of the National Center for Education Statistics (NCES) provided leadership and painstakingly reviewed every draft of the manuscript. (Their names and affiliation are listed in the Foreword of this document.) In addition, authors are most grateful to LeRoy Rooker and Ellen Campbell of the Family Policy Compliance Office, U.S. Department of Education. They explained and clarified the federal laws and their regulations, and reviewed several versions of the manuscript.

In October 1996, a group of federal agency representatives met in Washington, D.C. to review the document and provided invaluable suggestions on specific issues related to their respective programs:

Robert Burton  
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As an additional effort to solicit feedback from potential users, we convened a Stakeholders' Group in November 1996. Their suggestions, some beyond what we could have imagined, contributed to the final version of this document:

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Many other reviewers have contributed to the development of this document. Some of them directly by sharing their knowledge, expertise, and time; and some indirectly by circulating the drafts among their colleagues to solicit feedback. Their time and effort spent on this process are deeply appreciated:

Walter Ball  
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Under contract from NCES, Oona Cheung and Barbara Clements of the Council of Chief State School Officers (CCSSO) and Ellen Pechman of Policy Studies Associates wrote the manuscript. Carol Lam, Suzanne LeFave Sardina, and Tiffanie Lee of CCSSO provided research and logistical support for the product development. Paula Delo and David Wargin of the CCSSO Communications Office directed the editing and design tasks. Carole Thompson edited the manuscript and Manuel Valencia of MV Design designed and produced the publication.

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## Tools to Use This Document

- ✓ **Abbreviated Topical Index**
- ✓ **Section Summary**
- ✓ **Index of Commonly  
Asked Questions**

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## SECTION SUMMARY

### Section 1. A Primer for Privacy

#### A. Principles Underlying Privacy Protections

- Strong federal statutes protect the privacy rights of students and their families. These statutes encompass education records kept in electronic and paper media.
- Agency and school personnel are legally and ethically obliged to safeguard the confidentiality of student data.
- To understand the concept of information privacy, you can apply a short set of principles for providing and using personal information.

#### B. Key Concepts of Privacy Laws and Confidentiality Policies

- Federal and state privacy statutes pertaining to students build on the concepts of common law and constitutional provisions that imply privacy guarantees.
- The underlying important concepts include *notification*, *disclosure*, and *informed consent*.

#### C. Important Terms

- An *education record* is a compilation of records, files, documents, and other materials that contain information directly related to a student and maintained by education agencies or institutions, or by individuals acting on behalf of the agencies.
- *Confidentiality* refers to your obligation not to disclose or transmit information to unauthorized parties.
- *Privacy* reflects an individual's freedom from intrusion.
- *Security* refers to technical procedures which ensure that only the authorized and intended parties have access to data.
- *Disclosure* includes permitting access to, revealing, releasing, transferring, disseminating, or otherwise communicating all or any part of any individual record orally, in writing, or by electronic or any other means to any person or entity.
- FERPA defines parent as a natural or adoptive parent, legal guardian, or an individual acting as a parent in the absence of the parent or guardian. These rights transfer to eligible students when they reach 18 or when they attend a post-secondary education institution.
- An *agency* or school refers to the entity that collects, maintains, uses, and releases information from education records.

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## SECTION SUMMARY

### Section 2. Summary of Key Federal Laws

#### **A. Privacy-Related Laws That Apply to Agencies and Schools**

- Federal privacy laws apply to education agencies, institutions, and schools that receive federal funds from the U.S. Department of Education.
- The Family Educational Rights and Privacy Act establishes the broad privacy protections for education records.
- The Protection of Pupil Rights Amendment gives parents rights to review their child's records.
- Other federal laws, such as IDEA, affect data collection, maintenance, and disclosure procedures.

#### **B. Privacy Protecting under FERPA: Responsibilities of Agencies and Schools**

- FERPA grants parents, and students over eighteen, access to education records and restricts disclosure of this information without their consent.
- Districts' written privacy policies ensure the uniform application of FERPA.
- FERPA protects most information collected by schools about students. However, teachers' informal notes, records of school-based law enforcement units, and employment records do not fall under the jurisdiction of this law.
- Directory information of individual students may be released without prior consent. However, school districts must give public notice of what is considered in this category.
- The U.S. Department of Education does not require local education agencies to notify parents or eligible students individually of their rights, but agencies must provide notice where it is likely to be seen.
- Parents and eligible students may inspect, review, and request to amend education records.
- FERPA restricts release of information without prior consent. However, FERPA allows disclosure if officials have a legitimate educational interest in gaining access to the information.

- FERPA restricts records matching and redisclosures of private information to third parties. It also established penalties for inappropriate redisclosure.
- In 1996, new provisions clarified FERPA, making it easier for school officials to understand the law's central requirements.

#### **C. U.S. Department of Education-Funded Surveys and Studies**

- PPRa applies to programs that receive funding from the U.S. Department of Education. This law requires that schools and contractors obtain written consent from the parents before minor students are required to participate in a survey, analysis, or evaluation that reveals certain information.
- PPRa requires education agencies to establish procedures for parents to follow if they believe their rights are violated under PPRa.

#### **D. FERPA and Special Education Records**

- The privacy of special education records is protected by FERPA and by the Individuals with Disabilities Education Act.
- Any participating agency or institution that collects, maintains, or uses personally identifiable information about students with disabilities must protect the privacy of these special education records.
- Records pertaining to the identification, evaluation, and educational placement of children with disabilities and the free and appropriate public education must be available for inspection by parents.
- Agencies must maintain, for public inspection, a list of employees who have access to personally identifiable information.
- State and local education agencies must designate a person who is trained in privacy protection policies and procedures to serve as the custodian of the special education records of children with disabilities.

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### **E. Other Federal Laws Affecting Information Privacy in Schools**

- Education records may be protected by laws administered simultaneously by other state and federal agencies, as well as by the U.S. Department of Education.
- The National School Lunch Act of 1994 protects the privacy of information that agencies collect and from families of children who are eligible to receive free or reduced-price meals.
- Confidentiality regulations apply to records of students who receive assistance or treatment under laws administered by the federal Substance Abuse and Mental Health Services Administration.
- The federal Office of Management and Budget reviews and approves the federally administered questionnaires, surveys, or forms before they are to be used by state and local education agencies and programs that receive federal funds.

- The Privacy Act of 1974 stipulates allowable uses of social security numbers by government agencies and gives individuals the right to refuse to disclose or use their social security numbers except for the purposes defined by the social security law.

### **F. Resources in Interpreting Federal Laws That Protect the Privacy of Education Records**

- Experts in government offices and education organizations can assist education agencies in protecting the privacy of education records.

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## SECTION SUMMARY

### Section 3. Protecting the Privacy of Individuals during the Data Collection Process

#### A. Determining the Agency's Student Data Needs and Uses

- Data collectors must justify the need for every item of information that in an individual education record.
- Maintaining data efficiently allows data to be used for multiple purposes. However, you must justify all uses under existing policies inform data providers of these uses.

#### B. What Information Can Be Requested about Students?

- You should consult state and local laws, policies of school boards, and professional ethics in deciding what information to collect and maintain about students.
- Data providers should be informed about why the information is collected and if providing such information is mandatory.
- Data collectors should demonstrate that the data produced will be of sufficient value, applicability, and usefulness to justify the cost and burden of collecting them.

#### C. Classifying Data Elements or Record Sensitivity

- Written policies help you to classify the data into directory information, transcript information, or supplemental information, and to determine how you should maintain and release each piece of information.

#### D. Ensuring Data Integrity and Accuracy

- When you choose data elements and the procedures to collect them, you should consider the quality of the data.

#### E. Assigning and Using Unique Identification Codes

- You can derive unique identification codes by a variety of methods (e.g., assigning sequential numbers or adopting algorithms to generate codes using selected characteristics).
- Many agencies and schools use social security numbers as the identification codes. School may ask for social security numbers but cannot require them.
- Using social security numbers may be helpful to agencies or schools in maintaining appropriate and accurate information about the students. However, school officials must protect the numbers from illegal access and unauthorized release.

#### F. How Long Should Data Be Maintained?

- In addition to federal and state requirements, agencies or schools should establish policies to determine the length of time each type of data is maintained and how data will be expunged or replaced.

---

**SECTION SUMMARY**  
**Section 4. Securing the Privacy  
of Data Maintained  
and Used within an Agency**

**A. Management Responsibilities**

- An official designated as the records manager should be responsible for keeping individual records safe and intact from accidents, unauthorized access, theft, changes, or unintentional release.

**B. Defining "Legitimate Educational Interests"**

- It is more practical to establish criteria for determining broad categories of positions than to list exactly who or what individual positions are considered "school officials."
- While agencies or schools may establish a policy to determine what constitutes "legitimate educational interest," the decision also may be made case-by-case.
- If you have any questions about whether a requestor has a legitimate educational interest, ask the records manager not to disclose the information without prior approval from the parents or other appropriate officials.

**C. Training Agency Staff**

- All staff should be trained in information security as soon as they are hired. You should inform staff of what is considered appropriate and inappropriate access to data and use of the information within the records.

**D. Professional Ethical Standards**

- Existing professional standards are invaluable resources to support policymaking and training.

**E. Research Use within an Agency**

- It is important to determine each time whether the staff assigned to conduct the research are trained and authorized to access the data. An alternative approach is to sidestep the question of security by creating a research file deleting the students' identifying information.

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**SECTION SUMMARY**  
**Section 5. Providing Parents Access  
to Their Child's Record**

**A. Notifying Parents of Their Rights**

- Parents should be informed of their rights under FERPA, although the actual means of notification is the decision of the agency or school.

**B. Providing Access to Individual Records**

- It is important for an agency or school to prepare written procedures for handling record requests.

**C. Handling a Parent's Request**

- The agency or school should verify the authenticity of requests and comply within forty-five days.

**D. Managing the Review**

- A designated official should manage the review process. This official can verify the identification of the parents, explain the laws, help parents understand the record, and refer parents to appropriate resources.

**E. Providing Copies or Charging a Fee**

- Agencies or schools may, but are not required to, provide copies of the records.
- If it is not feasible for the parents to review the records because of distance, you should provide a copy of the record.

- While agencies or schools are not allowed to charge for the search and retrieval of records, they may charge for copying time and postage.

**F. Handling Challenges to Record Contents**

- Written procedures can guide parents through the process of challenging their child's record. The school or district may provide a form to streamline the process.

**G. Managing the Hearing Procedures**

- Parents should be notified as soon as a hearing is scheduled. The hearing may be presided over by an agency or school official, if this person is considered a third party.
- Evidence presented should be documented. The decision should be based solely on the evidence presented at the hearing.
- It is important to follow through on the decision of the hearing.

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## SECTION SUMMARY

### Section 6. Releasing Information Outside an Agency

#### A. Types of Information Release

- Non-personally identifiable data do not reveal specific information about an individual. Release of this type of data is generally allowed.
- Personally identifiable data are those that contain information that would make the student's identity and any related information about him or her easily recognized. Release of this type of data is subject to established policy in the school district, as well as state and federal laws.

#### B. Release of Directory Information

- State and local laws may specify what types of information are considered directory information, which may be released without prior consent. However, parents must be informed of what is considered directory information and given the opportunity to withhold its release.

#### C. Release with Prior Consent

- Non-directory information can be released with written consent from the parent. The consent should specify the information that may be released, the purpose of the release, and the recipient.

#### D. Release without Prior Consent

- Personally identifiable information may be released as authorized in established policies and federal or state law or regulations.
- Examples of those to whom information from education records may be released without seeking consent from parents include authorized representatives from state and local education agencies, the juvenile justice system, and health or safety personnel in case of an emergency.
- Information about a student's eligibility for free and reduced-price school meals may be released only as authorized under the NSLA and its regulations.

#### E. Release to Researchers

- Requests from researchers should be handled case-by-case. You should establish a set of criteria, application procedures, and written guidelines for making the decision.

#### F. Release to Other Service Agencies

- Agencies are developing strategies which establish the kinds of privacy standards and procedures that would ensure the confidentiality of information while allowing restricted use of information for specific and pre-approved purposes.
- Interagency sharing of information from students' education records generally requires a signed release by parents or eligible students, regardless of whether the records originate in schools, health centers, and employment or social service agencies.

#### G. Review Prior to Release

- As a final security control, a designated official could review the compiled data and verify that local procedures have been followed, before approving the release.

#### H. Avoiding Misuse of Information by Non-Intended or Secondary Users

- Recipients should be required to sign an affidavit that they will not release any personally identifiable information received.

#### I. Document the Release

- It is important for you to document data releases whether or not prior consent was required. This information should remain in the record as long as you maintain the record.

#### J. Ensure the Security of Data in Electronic Transmission

- You should establish policies to cover instances in which information may be released through electronic means. You can use a variety of methods safeguard the data, including encryption and passwords, and careful logging of a transfer.

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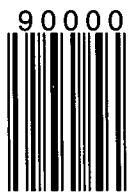


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ISBN 0-16-049118-5



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United States  
Department of Education  
Washington, DC 20208-5650

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