

ADMINISTRATIVE MEMORANDUM

SUBJECT *Implementation of Policies and Procedures of
General Administration With Respect to the
Family Educational Rights and Privacy Act*

NUMBER 357

DATE May 25, 1995

By memorandum of March 30, 1995, from Richard H. Robinson, Jr., the constituent institutions were advised of the determination by the Family Policy Compliance Office, U.S. Department of Education, that General Administration must establish policies and procedures under the Family Educational Rights and Privacy Act of 1974 (FERPA) to the same extent as an institution with enrolled students. Attached are the Policies and Procedures of General Administration for the purposes of establishing and announcing to students their rights under FERPA to examine their education records maintained by this office, to seek modification to those records, and to condition disclosure of those records to third parties.

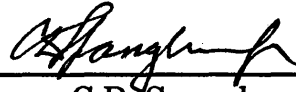
Among other considerations these Policies and Procedures address the matter of records maintained at General Administration that are the same as, or the derivative of, student records of a constituent institution. In general, a student who has accessed his or her education records at General Administration will be directed to the enrolling institution for any remedy aimed at modifying or correcting those records. General Administration will, in turn, then consider what, if any, change should be made to its records derived from those institutional records if the institution has deemed a change to be appropriate.

These Policies and Procedures place three specific duties on your institution:

- (1) to provide each year to your students General Administration's annual notification to students of their FERPA rights. This may be done through annual distribution of a sheet containing the statement of rights or by publication of those rights in some document of general, annual distribution (e.g., a catalog, a student newspaper, an orientation leaflet). (The annual notification text is attached to the General Administration Policies and Procedures.)
- (2) to maintain for student access a copy of the General Administration FERPA Policies and Procedures in the same place and in the same manner that your institution has established for student access to its own FERPA policies and procedures.

(3) to file with General Administration a copy of your institution's current FERPA policies and procedures. This is necessary, in particular, so that this office can honor the "directory information" policies of your institution and can refer to the appropriate institutional office on your campus any student challenge to records reposing at General Administration but originating at your institution.

These Policies and Procedures should be given immediate effect. Questions about them should be directed to Mr. David Edwards, Special Assistant to the President.



C.D. Spangler, Jr.

**THE UNIVERSITY OF NORTH CAROLINA
General Administration**

**Policies and Procedures Under the
Family Educational Rights and Privacy Act of 1974
(Effective May 25, 1995)**

The University of North Carolina General Administration ("General Administration") has adopted these policies and procedures in accordance with the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. Sec. 1232g (as amended). These Policies and Procedures pertain to the education records of students within The University of North Carolina ("the University") that General Administration maintains, whether those records were created by General Administration or by a University constituent institution and provided to General Administration.

It is the policy of General Administration that University students be accorded the full legal rights provided them under FERPA. Students currently enrolled at a constituent institution of The University of North Carolina are notified annually of these rights by means of an annual notification (which is distributed through the students' respective institutions) and by these Policies and Procedures (which are distributed to and maintained by all constituent institutions of The University of North Carolina and are referenced in an institutional publication of general distribution). The annual notice to students of their rights with respect to their education records at General Administration and these Policies and Procedures are in addition to that notice and those policies and procedures with respect to FERPA of each constituent institution. A copy of the current annual notification by General Administration to students is attached to, and made a part of, these Policies and Procedures.

Throughout this document the numbers cited within the brackets at various places within the text refer to federal FERPA regulations (as revised 1995). These regulations contain narrow exceptions and specific rules for certain special situations that are not always spelled out in the general policy. Therefore, in dealing with specific FERPA questions, individuals should refer to the FERPA regulations, which are provided with this document.

With respect to the education records of students in the High School Division of the North Carolina School of the Arts rights afforded under these Policies and Procedures to a student are to be afforded, instead, to the student's parents to the extent established by FERPA.

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

- A. Any individual who is, or has been, in attendance at a constituent institution of The University is a "student" and has the right to inspect and review his or her education records. [99.3, 99.10]**

"Education records" are those records directly related to a student that are maintained by an educational institution. The term does not include:

- 1. Records of instructional, supervisory, and administrative personnel that are in the sole possession of their maker and are not revealed to anyone else except a substitute.**
- 2. Records created and maintained by a University law enforcement unit for law enforcement purposes.**
- 3. Records relating solely to an employee of General Administration or of a constituent institution of The University of North Carolina in the individual's capacity as an employee that are not available for any other purposes. (However, records relating to a University student who is employed as a result of his or her status as a student are education records.)**
- 4. Student medical records created, maintained, and used only in connection with provision of medical treatment to the student, that are not disclosed to anyone other than the individuals providing the treatment. (While a student may not inspect his or her medical records, these records may be reviewed personally by a physician of the student's choice.)**
- 5. Records that contain only information relating to a person after he or she is no longer a student, such as alumni records. [99.3]**

- B. A student is not permitted to inspect the following records:**

- 1. Financial records and statements of his or her parents.**
- 2. Confidential letters and confidential statements of recommendation that were placed in his or her education records before January 1, 1975, and that are used only for the purposes for which they were intended.**
- 3. Confidential letters and confidential statements of recommendation concerning (a) admission to an educational institution, (b) an application for employment, or (c) the receipt of an honor, that were placed in his or her education**

records after January 1, 1975, where the student has waived his or her right to inspect those letters and statements. [99.12]

- C. A student who wishes to inspect his or her education records must file a written request for inspection with the individual who has custody of the records. In some cases the student will be able to review the records immediately while, in other cases, a certain amount of time will be needed to assemble the records for inspection, but the student will not be required to wait more than 45 days after receipt of the request before being allowed to inspect his or her education records. A student who exercises the right to review his or her education records is also entitled to a response from General Administration to reasonable requests for explanations and interpretations of those records. If a student has asked to inspect or review his or her education records, none of those records shall be destroyed until the student's request to inspect or review has been honored. [99.6, 99.10]
- D. General Administration, upon a student's request, may provide a student with a copy of his or her education records, and General Administration will always provide a student a copy of his or her education records where failure to provide such a copy would effectively prevent exercise of the right to inspect and review education records. The office providing the copies may charge a reasonable fee for each copy but will not charge a fee to search for or retrieve the records in question. [99.6, 99.10, 99.11]

General Administration may deny a request for a copy of education records if the student is easily able to come to the office that maintains the records and inspect them in person and if the records are so voluminous that copying them would be unreasonably burdensome for General Administration employees charged with the task. [99.6]

- E. Education records are maintained by several offices and officials at General Administration. Most of these records are copies or derivatives of education records created at a constituent institution of the University; some, though, may include additional education records created at General Administration. Offices at General Administration that are most likely to maintain education records are listed below:

1. Academic Affairs Division.
2. Legal Section, Office of the President.
3. Planning Division.
4. Research Division.
5. Student Services and Special Programs Division.

All requests to inspect education records should be directed to the Secretary of The University of North Carolina, whose office can be reached through the main telephone number of the University General Administration in Chapel Hill, which is 919-962-1000. The Secretary will determine the location of records pertinent to the inquiry and direct the student's request to the appropriate General Administration office. [99.6]

II. The Student's Right to Seek Correction or Amendment of His or Her Education Records.

- A. A student who believes that information contained in his or her education records is inaccurate or misleading or violates his or her privacy rights may discuss these concerns informally with the custodian of the records in question and may request that they be amended. [99.20]
- B. Requests to amend education records at General Administration whose information is identical to or derivative of education records provided from another education agency (such as a constituent institution of the University) will be referred to the originating educational agency for consideration of the student's request to amend. Notation of this referral will be placed with the pertinent education records of General Administration. Upon being informed of the disposition by the originating agency of the request to amend, the custodian will determine what action, if any, is appropriate with respect to related education records at General Administration. [99.20]
- C. If the custodian finds that the request to amend relates to education records created by General Administration and if the custodian agrees with the request for amendment, the custodian will amend the records and so notify the student. If the custodian does not agree to the amendment, the custodian will notify the student within a reasonable period of time that the records will not be amended and will inform the student of his or her right to a formal hearing. All formal hearings will be conducted by the Education Records Committee of The University of North Carolina General Administration (the "Committee"). The Committee members shall be appointed by the President of the University from staff of General Administration in such numbers and for such terms of service as he may deem appropriate; however, no member of the Committee shall participate in a hearing in whose outcome the member has any direct interest. [99.20, 99.21, 99.22]
- D. Should the student and General Administration agree that an explanatory statement alone is the appropriate remedy, the student has the right, in lieu of requesting a formal hearing, to place a statement in his or her education records commenting on the

information in question and/or setting forth any reasons for disagreeing with the custodian's decision not to amend. Any such statement will be maintained as part of the student's education records as long as the record, or the contested portion of the record, is maintained by General Administration, and the statement will be disclosed to any party to whom the contested portion of the student's education record is disclosed thereafter. [99.21]

- E. A student request for a formal hearing must be submitted within fifteen (15) days after the student receives notice from the records custodian of his or her right to a formal hearing and must be addressed to the Secretary of the University, who will promptly refer it to the appropriate person or panel for hearing. The request for hearing must be written, be signed by the student, and contain a written statement setting forth the nature of the student's grievance and the attempts the student has made to resolve the matter with the custodian of the records in question. [99.6, 99.21]
- F. A hearing will be held on the matter within a reasonable time after receipt of the student's request, and he or she will be given reasonable advance notice of the date, place, and time of the hearing. [99.22]
- G. The student will be afforded a full and fair opportunity to present evidence relevant to the issues raised in the complaint and may be assisted by individuals of the student's choice at his or her own expense, including an attorney. [99.21]
- H. The Committee's decision will be based solely on the evidence presented at the hearing and will include a summary of the evidence and the reasons for the decision. The student will be notified in writing of the Committee's findings and recommendations within a reasonable period of time after the conclusion of the hearing. If the Committee decides that the challenged information within the student's education records is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it will recommend that the appropriate General Administration official amend the student's education records accordingly, and the official will inform the student in writing when the amendment has been made. [99.22]
- I. If the Committee decides that the challenged information from the student's education records is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it will inform the student that he or she has the right to place a statement in his or her education records commenting on the information and/or setting forth any reasons for disagreeing with the Committee's decision. Any such statement will be maintained and disclosed as set forth in section II.D., above. [99.21]

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

- A. "Personally identifiable information" means such information as the name of the student, his or her parent, or a member of the student's family; the address of a student or a member of the student's family; a personal identifier such as the student's social security number or student ID number; a list of personal characteristics from which the student can be easily identified; or other information from which the student can be easily identified. [99.3]
- B. With certain exceptions, listed in section III.D., below, General Administration will not disclose personally identifiable information from a student's education records without the student's prior written consent. To be effective, the written consent must be signed and dated by the student and must include:
1. A specification of the records to be disclosed;
 2. The purpose of the disclosure; and
 3. The party or class of parties to whom the disclosure may be made. [99.30]
- C. When personally identifiable information is disclosed from a student's education records pursuant to his or her written consent, the student may also, upon request, obtain a copy of the information so disclosed. [99.30(c)]
- D. General Administration may disclose personally identifiable information from a student's education records without his or her prior written consent in the following situations:
1. Disclosure to other school officials, including teachers, officials, and employees of the University who are determined to have a legitimate educational interest in the information. Such officials are deemed to have a "legitimate educational interest" in the information if it is necessary or desirable for them to obtain the information in order to carry out their official duties and/or to implement the policies of the University. [99.31(a)(1)]
 2. Disclosure to officials of another school or school system in which the student seeks or intends to enroll and disclosure to officials of another school or school system in which a currently enrolled University student is contemporaneously enrolled. (Note. Students are hereby notified that it is the policy of General Administration to forward education records upon request to officials of other schools or school systems in these situations without notifying the student of such transfer of

records.) Upon request the student will be provided a copy of the education records so transferred. [99.31(a)(2), 99.34]

3. Disclosure to authorized representatives of the Comptroller General of the United States, the U.S. Secretary of Education, or State educational authorities in connection with the audit and evaluation of Federal or State-supported education programs or in connection with enforcement of or compliance with federal legal requirements relating to such programs. (Note. Unless the collection of personally identifiable information is specifically authorized by federal law, the recipients of the personally identifiable information under this section must handle it in such a way that students and their parents cannot be identified therefrom by individuals outside the recipients' organizations, and personally identifiable data must be destroyed when it is no longer needed.) [99.31(a)(3), 99.35]
4. Disclosure in connection with financial aid for which a student has applied or which he or she has received. Information may be disclosed under this provision only to determine a student's eligibility for financial aid, to determine the amount of the aid, to determine the conditions which will be imposed regarding the aid, or to enforce the terms or conditions of the financial aid. [99.31(a)(4)]
5. Disclosure to State and local officials or authorities to whom information is specifically allowed to be disclosed pursuant to State statute adopted:
 - (a) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and that system's ability to serve effectively the student whose records are released; or,
 - (b) after November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and that system's ability to serve effectively, prior to adjudication, the student whose records are released, and if the officials to whom the information is disclosed certify in writing to General Administration that the information will not be disclosed to any other party without the student's consent, except as provided under State law. [99.31(a)(5)]
6. Disclosure to organizations conducting studies for, or on behalf of, General Administration, or an institution or agency of the University, for the purpose of (a) developing validating, or administering predictive tests; (b) administering student aid

programs; or (c) improving instruction. The recipients of personally identifiable information under this section must handle it in such a way that students and their parents cannot be identified therefrom by individuals outside the recipients' organizations, and personally identifiable data must be destroyed when it is no longer needed for the purposes of the study. [99.31(a)(6)]

7. Disclosure to accrediting organizations in order to carry out their accrediting functions. [99.31(a)(7)]
8. Disclosure to a student's parents, if the student is their dependent for federal income tax purposes. [99.31(a)(8)]
9. Disclosure pursuant to a judicial order or lawfully issued subpoena. In some situations prior notification may not be possible; but General Administration will make a reasonable effort to notify the student of the order or subpoena before complying with it. However, in the case of a federal grand jury subpoena or any other subpoena issued for law enforcement purposes, General Administration will comply with any court or issuing agency order not to disclose to the student or anyone else the existence of or contents of the subpoena or any information furnished in response to the subpoena. [Note. General Administration will deem the filing by a student of a petition for judicial review a full and sufficient consent by the student to General Administration to release to the court any and all education records of the student responsive to the petition.] [99.31(a)(9), 99.31(b)]
10. Disclosure to appropriate parties in a health or safety emergency if the information is necessary to protect the health or safety of the student or others. [99.31(a)(10), 99.36]
11. Disclosure of "directory information" of a University constituent institution in the possession of General Administration that has been defined, authorized, and compiled, to the best knowledge of General Administration, in a manner consistent with FERPA. [99.3, 99.31(a)(11)]
12. Disclosure to the parents of a student of the High School Division of the North Carolina School of the Arts who has not reached age 18 nor subsequently enrolled in an institution of post-secondary education. [99.3, 99.31(a)(12)]
13. Disclosure of the results of certain disciplinary proceedings for alleged violations of institutional codes of student conduct upon which appeals therefrom have been taken pursuant to the "Code and Policies of the Board of Governors of The University

of North Carolina" (the "Code and Policies"). If the alleged violation:

- (a) involved the use, attempted use, or threatened use of physical force against the person or property of another; or,
- (b) is a felony that, by its nature involves a substantial risk that physical force may be used against the person or property of another in the course of committing the offense.

General Administration may disclose the results of the disciplinary proceeding and its subsequent review upon appeal to the Board of Governors, to the alleged victim of the offense. [99.31(a)(13)] [Note. By reason of federal law external to FERPA, that is, the Student Right-to-Know and Campus Security Act, in tandem with the Higher Education Amendments of 1992, alleged victims of sexual assault must be permitted access to the results of related disciplinary proceedings and administrative review.]

- 14. If the University Board of Governors affirms a constituent institution's disciplinary action against a student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the University community, General Administration may disclose information about that disciplinary action to teachers and school officials in other schools who have legitimate educational interests in the student's behavior. [99.31(a)(13)(b)]
 - 15. While the foregoing provisions of this section III.D. permit certain disclosures without the subject student's prior consent, under FERPA such disclosures are permissive and can be further conditioned or even prohibited by the custodial institution or agency. Where, then, the education records considered for disclosure are the same as or derivative of education records first created at a constituent institution of the University, General Administration will seek to preserve and follow any relevant restriction to permissive disclosure. To accomplish this policy, General Administration directs that each university constituent institution maintain on file with general administration a copy of the institution's current FERPA policy. [99.31(b)]
- E. When personally identifiable information from education records is disclosed to another party, that party may not further disclose the information without the student's prior written consent, unless:

1. The initial disclosure is made with the understanding that the party receiving the information may redisclose it to specified individuals or organizations who meet the requirements of section III.D., above; and,
2. The record of disclosures (as required in section III.F., below) includes the names of the additional parties to whom the information may be disclosed and the legitimate interests that each additional party has in obtaining the information. [99.31, 99.32, 99.33]

If a party to whom such information is released permits access to the information in violation of this section III.E., that party will not be allowed access to information from General Administration education records for five years. This denial of access, however, shall not be enforced against State and local educational authorities accessing education records pursuant to section III. D. 3., above, nor against the alleged victim of an offense under an institutional code of conduct, accessing education records pursuant to section III.D.13., above.

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

The record of disclosures will not include disclosures to the student, disclosures to school officials with legitimate educational interests, disclosures pursuant to the student's written consent, or disclosures of "directory information" as defined above. [99.32]

The record of disclosures may be inspected only by the student, the records custodian and his or her assistants, and school or Federal officials charged with auditing the record-keeping procedures of General Administration. [99.32]

IV. Limit to FERPA Protection of Education Records.

FERPA's protection of personally identifiable information in a student's education records ends at the time of a student's death. Unless General Administration has information to the contrary, General Administration will presume that a student is deceased 75 years after the student's education records were created. Thereafter the student's education records will be open. [99.60(b)(2)]

Neither the foregoing policy concerning the duration of FERPA protection to education records that are in existence nor any other part of these Policies and Procedures places any obligation on General Administration to maintain specific education records for which there is no pending student request to inspect or to amend.

V. Complaints to the U.S. Department of Education.

Complaints alleging violations by General Administration of the provisions of FERPA or the regulations promulgated thereunder may be submitted in writing to Family Policy Compliance Office, U.S. Department of Education, 600 Independence Avenue, SW, Washington, D.C. 20202-4605, within 180 days of the date of the alleged violation or the date the complainant knew or reasonably should have known of the alleged violation. The Office may extend the time period if the complainant has a good reason for having missed the deadline. [99.63, 99.64]

**Students' Education Records
at General Administration of The University of North Carolina:
Annual Notification of Rights**

Certain personally identifiable information about students ("education records") may be maintained at The University of North Carolina General Administration, which serves the Board of Governors of the University system. This student information may be the same as, or derivative of, information maintained by a constituent institution of the University; or it may be additional information. Whatever their origins, education records maintained at General Administration are subject to the federal Family Educational Rights and Privacy Act of 1974 (FERPA).

FERPA provides that a student may inspect his or her education records. If the student finds the records to be inaccurate, misleading, or otherwise in violation of the student's privacy rights, the student may request amendment to the record. FERPA also provides that a student's personally identifiable information may not be released to someone else unless (1) the student has given a proper consent for disclosure or (2) provisions of FERPA or federal regulations issued pursuant to FERPA permit the information to be released without the student's consent.

A student may file with the U.S. Department of Education a complaint concerning failure of General Administration or an institution to comply with FERPA.

The policies of The University of North Carolina General Administration concerning FERPA may be inspected in the office at each constituent institution designated to maintain the FERPA policies of the institution. Policies of General Administration may also be accessed in the Office of the Secretary of The University of North Carolina, General Administration, 910 Raleigh Road, Chapel Hill, NC.

Further details about FERPA and FERPA procedures at General Administration are to be found in the referenced policies. Questions about the policies may be directed to Legal Section, Office of the President, The University of North Carolina, General Administration, Annex Building, 910 Raleigh Road, Chapel Hill, NC (mailing address P.O. Box 2688, Chapel Hill, NC 27515-2688; tel: 919-962-4588).

NOTE: FERPA was amended in 1994. Additional regulations incorporating the statutory amendments are expected to be issued in 1995 but are not yet available.

Office of the Secretary, Education

§ 99.1

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Subpart E—What are the Enforcement Procedures?

Subpart A—General

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Sec.

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

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AUTHORITY: 20 U.S.C. 1232g, unless otherwise noted.

SOURCE: 53 FR 11943, Apr. 11, 1988, 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, 3487, 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, 706-708. |

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 300.560-300.576 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.

Office of the Secretary, Education

(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))

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

Disclosure means to permit access to or the release, transfer, or other communication of 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 the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8.

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that:

(A) Are made and maintained in the normal course of business;

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

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

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

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

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

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

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

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

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

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

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

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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))

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§ 99.4 What are the rights of parents?

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

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

§ 99.5 What are the rights of students?

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

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

(c) 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))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3188, Jan. 7, 1993]

§ 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 institu-

tion 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 § 99.31(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.

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

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

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3188, Jan. 7, 1993]

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

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

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

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988]

§ 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))

§ 99.10

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.

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(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 educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under § 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))
[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988]

§ 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

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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 is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in § 99.31.

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

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

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

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

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

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

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

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

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

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

(i) The Comptroller General of the United States;

(ii) The 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 of State or local officials to whom disclosures may be made under that paragraph.

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

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

(B) Administer student aid programs; or

(C) Improve instruction.

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

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

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

(iii) 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.

(13) The disclosure is to an alleged victim of any crime of violence, as that term is defined in section 16 of title 18, United States Code, of the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime with respect to that crime.

(b) This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) and (13) of this section.

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

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

§ 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

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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 re-disclosure 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

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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))
[53 FR 11943, Apr. 11, 1988; 53 FR 19388, May 27, 1988]

§ 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 Office of Administrative Law Judges?

(a) For the purposes of this subpart, "Office" means the Family Policy Compliance 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 Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in section 400 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g (f) and (g), 1234)
[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

§ 99.61

§ 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 Compliance Office, U. S. Department of Education, Washington, D.C. 20202-4605.

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

[58 FR 3189, Jan. 7, 1993]

§ 99.64 What is the complaint procedure?

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

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

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office extends 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. 1232g(f))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

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

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

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

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

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

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

[58 FR 3189, Jan. 7, 1993]

§ 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))

Office of the Secretary, Education

§ 99.67

§ 99.67 How does the Secretary enforce decisions?

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

(1) Withhold further payments under any applicable program;

(2) Issue a complaint to compel compliance through a cease-and-desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

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

(NOTE: 34 CFR part 78 contains the regulations of the Education Appeal Board.)

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

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988; 58 FR 3189, Jan. 7, 1993]