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Department of Education

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

notice, as required by § 99.37 of the regulations, with its annual notification of rights under FERPA.]

Model Notification of Rights Under FERPA for Postsecondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records. They are:

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

Students should submit to the registrar, dean, head of the academic department, or other appropriate official, written requests that identify the record(s) they wish to inspect. The University official will make arrangements for access and notify the student of the time and place where the records may be inspected. If the records are not maintained by the University official to whom the request was submitted, that official shall advise the student of the correct official to whom the request should be addressed.

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

Students may ask the University to amend a record that they believe is inaccurate or misleading. They should write the University official responsible for the record, clearly

identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the University decides not to amend the record as requested by the student, the University will notify the student of his or her right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the 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 University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company with whom the University has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a 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 University discloses education records without consent to officials of another school, upon request, in which a student seeks or intends to enroll. [Note: FERPA requires an institution to make a reasonable attempt to notify the student of the records request unless the institution 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 *State University* 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, an institution 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.]

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