I. BACKGROUND AND BASICS

Enacted as a seemingly inconsequential floor amendment having little to do with higher education, the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, popularly known as “FERPA” or the “Buckley Amendment”, nevertheless quickly became one of the mainstays of college and university law practice. And although it still tends to inhabit only the remotest fringes of our consciousness most of the time, it is fair to say that FERPA is relevant to virtually everything we do on our campuses. Thus, it is appropriate to “refresh” our understanding of its requirements every once in a while, and there is no time like the present.¹

Congress enacted FERPA in response to a growing public awareness and concern about the public dissemination by primary and secondary schools of information commonly considered private in nature, the withholding of “secret files” on students, and recordkeeping practices in general. Much like other “records” statutes of that era, it reflected a desire to give a measure of control to the subjects of government records – in this case, “education records”. In very general terms, then, FERPA gives college students the rights to:

1. Control the disclosure of their “education records” to others;

2. Inspect and review their own “education records”; and

3. Seek amendment of their “education records”.

¹ For true aficionados in the mold of West Virginia Senator Robert Byrd, who always carries a copy of the U.S. Constitution in his breast pocket, I also have included a copy of the complete FERPA regulations in Appendix A to this outline. Use it wisely.
Unlike at the primary and secondary level, these rights belong to the student, and not to the student’s parents or legal guardians, regardless of the student’s age. Moreover, the rights continue to exist after the student’s graduation and expire only upon the student’s death.

II. KEY DEFINITIONS

All of FERPA revolves around the central term “education records”\(^2\), which is defined in the implementing regulations as follows:

“Education records” . . . 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.

34 C.F.R. § 99.3 (emphasis added).

To fully understand that definition requires an understanding of the further definitions of each of the underlined terms, and a few more:

“Educational institution”: “any public or private . . . institution” that receives funds “under any program administered by the Secretary [of Education]”. 34 C.F.R. §§ 99.1 and 99.3. In other words, pretty much every institution of higher education.

“Record”: “any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche”. 34 C.F.R. § 99.3. Thus, the manner or form in which information is recorded is irrelevant; not only paper records, but also electronic records, photographs, videotapes, and even stone tablets are covered. Note, however, that information that is not recorded anywhere other than in your brain – that is, personal knowledge – is not a “record”, and thus not an "education record", and thus not subject to FERPA. (Be careful when dealing with information that is

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\(^2\) As we shall see, the commonly used variant “educational records” is both incorrect and misleading. While records that are “educational” in nature, such as student papers, exams, and transcripts, certainly are covered by
both within your personal knowledge and recorded in some other format, however, as it will not always be clear which you are relying on.)

“Student”: “any individual who is or has been in attendance at an educational . . . institution”. 34 C.F.R. § 99.3. The term does not include applicants, who thus are not protected by FERPA unless and until they are admitted and “attend”, thereby becoming “students”. If they do, however, FERPA “reaches back” and brings their application records within its scope.

“Attendance”: “includes, but is not limited to . . . attendance in person or by correspondence”. 34 C.F.R. § 99.3. Each institution has discretion to define when, between admission and the first day of classes, a student is first considered to be “in attendance”.

“Directly related”: The term is not defined in either the statute or the regulations, but, under long-standing interpretation of the Family Policy Compliance Office, the office within the Department of Education charged with overseeing FERPA, a record is considered to be “directly related” to a student if it contains “personally identifiable information” about that student.

“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.”

FERPA, so are a multitude of records that have nothing whatever to do with “academics”. Banish the term from your vocabulary.
34 C.F.R. § 99.3. Note that, in determining what “other information” would make a student’s identity “easily traceable”, an institution must take into account whether the person to whom disclosure is proposed has prior knowledge about the student that, in combination with the information to be disclosed, would allow the student’s identity to be deduced.

“Maintained”: Although this term may be the most critical of all – especially when it comes to determining the status of, say, student e-mail messages that are stored on an institutional server – it is not defined in either the statute or the regulations. In Owasso Independent School Dist. v. Falvo, 534 U.S. 426, 435 (2002), the Supreme Court noted – tantalizingly – that “FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar”, but ultimately declined to define “maintain” that narrowly, or, really, to give much of any guidance on the question at all. Thus, for now, it seems safest to assume that a record is “maintained” by an educational institution whenever it is in the possession, custody, or control of any employee or agent of the institution.

In short, given the vast breadth of its various components, the term “education records” includes not only such standard “academic” records as student transcripts, papers, and exams, but also virtually any information about a student in any record that is in the hands of any institutional employee or agent. The only such records that are specifically excluded from the scope of the term, and that therefore are not subject to the restrictions of FERPA, are the following:

“Sole possession” records: “Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.” 34 C.F.R. § 99.3. For example, the private notes a professor may keep during the course of a semester for consultation when it comes time to set final grades.

“Law enforcement” records: those records that are “(i) created by [the institution’s] law enforcement unit [including non-commissioned public safety or security offices]; (ii) created for a law enforcement purpose; and (iii) maintained
by the law enforcement unit.” 34 C.F.R. §§ 99.3 and 99.8 (emphasis added). Records that are generated by others and sent to the law enforcement unit – say disciplinary records from the institution’s judicial affairs office – are not “law enforcement” records and remain covered by FERPA even when in the law enforcement unit’s hands. If the law enforcement unit discloses law enforcement records to others – which it is free to do, because they are not subject to FERPA – metaphysical things begin to happen: The law enforcement unit’s copy of those records remain free from FERPA restrictions, as do any copies that it discloses to the general public, but any copies that end up in the hands of other institutional employees or agents become transformed into “education records” subject to the full panoply of FERPA restrictions.

“Employment” records: records related solely to the employment of a “student” by the institution, provided that the student is not “employed as a result of his or her status as a student”. 34 C.F.R. § 99.3. In other words, if being a student is part of the job description and requirements – a work-study or GTA/GRA position, for example – any employment records concerning the student who holds the position are “education records” and thus subject to FERPA. This exclusion was intended primarily to keep the employment records of institutional employees who happen to take classes from becoming “education records”. Records pertaining to such employees’ student status are “education records”, however.

“Treatment” records: records 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.” 34 C.F.R. § 99.3. Although such records are not subject to FERPA, the final part of this definition nevertheless effectively prevents an institution from disclosing them other than in accordance with FERPA – a seeming paradox that is the entire basis for the general exclusion of student medical records from the privacy provisions of HIPAA.
“Alumni” records: “Records that only contain information [obtained] about an individual after he or she is no longer a student at that agency or institution”. 34 C.F.R. § 99.3. This exception is intended primarily to cover the sorts of records generated by an institution’s alumni office post-graduation. Note, however, that if the information recorded “relates back” to the student’s time at the institution, it is still an “education record” even though it was generated after its subject was no longer a “student”.

III. DISCLOSURE
A. WITH CONSENT

In general, an institution cannot disclose “education records” – or information from “education records” – to anyone other than the relevant student unless it first has obtained a signed and dated written consent from the relevant student (or all relevant students, if the records are “directly related” to more than one), specifying the records that may be disclosed, the purpose for which they may be disclosed, and the persons or classes of persons to whom they may be disclosed. 34 C.F.R. § 99.30(a) and (b). The requisite consent and signature may be obtained electronically if the method used “identifies and authenticates a particular person as the source of the electronic consent” and “indicates such person’s approval of the information contained in the electronic consent”. 34 C.F.R. § 99.30(d).

B. WITHOUT CONSENT

An institution may disclose “education records” without such consent only if it first redacts all “personally identifiable information” from the records or one of the 15 exceptions enumerated in the regulations applies. Those exceptions are as follows:

1. The disclosure is of “directory information”, meaning “information . . . that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student’s name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or
graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended.” 34 C.F.R. § 99.31(a)(11). To take advantage of this exception, an institution must first give its students notice of the information it has designated as “directory information” – which need not be the full list authorized by the regulations – and an opportunity to “opt out”. 34 C.F.R. § 99.37.1

2. The disclosure is to “school officials . . . whom the . . . institution has determined to have legitimate educational interests”. 34 C.F.R. § 99.31(a)(1). To take advantage of this exception, the institution must give annual notice of its criteria for determining who is a “school official” and what is a “legitimate educational interest”. 34 C.F.R. § 99.7(a)(3)(iii). Both definitions can be quite broad. In its model notice (attached as Appendix B), the Family Policy Compliance Office suggests the following language:

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.

Note also that it is the institution, and not the individuals who may wish access, who make these determinations.

3. The disclosure is to another educational institution where the student seeks or intends to enroll. 34 C.F.R. § 99.31(a)(2). To take advantage of this exception, sometimes referred to as the “transfer exception”, the “home” institution must first give notice
that it intends to respond to requests from other institutions for such information, either by making a “reasonable attempt” to notify the relevant students individually or by informing all students generally in its annual notice. 34 C.F.R. § 99.34.

4. The disclosure is to the student him- or herself. 34 C.F.R. § 99.31(a)(12).

5. The disclosure is to parents of a student who is considered their “dependent” for federal tax purposes. 34 C.F.R. § 99.31(a)(8). To establish the parents’ eligibility to receive such a disclosure, the institution must obtain either a copy of the parents’ most recent tax return (at least the first page, on which dependents are listed) or an acknowledgment from the student that the student is, in fact, their dependent; the institution may not presume dependency.

6. The disclosure is made “in connection with a health or safety emergency”, is made only to “appropriate parties”, and is limited to information that “is necessary to protect the health or safety of the student or other individuals”. 34 C.F.R. §§ 99.31(a)(10) and 99.36. The institution has some discretion to determine for itself, within reason, what situations constitute “emergencies”, what parties are “appropriate”, and what information is “necessary”.

7. The disclosure is made to “comply with a judicial order or lawfully issued subpoena”. 34 C.F.R. § 99.31(a)(9)(i). Before complying, the institution must in most cases first make a “reasonable effort to notify the . . . student of the order or subpoena in advance of compliance, so that the . . . student may seek protective action”. 34 C.F.R. § 99.31(a)(9)(ii). The institution need – and may – not give such advance notice in the case of grand jury or other law enforcement subpoenas, if the court or issuing agency has ordered that the existence or contents of the subpoena or information furnished in response not be disclosed. Id. Note that the institution’s obligations are limited to, at most, notifying the student;
it is not required to fight the order or subpoena on the student’s behalf, and it may comply regardless of the student’s wishes if the student fails to take action.

8. The disclosure is to a court in the context of a lawsuit that the student brought against the institution or that the institution brought against the student. 34 C.F.R. § 99.31(a)(9)(iii). The institution need not give the student advance notice of such a disclosure, but is limited to disclosing information that is “relevant” to the action and that does not relate to other students who are not adversary parties in the lawsuit.

9. The disclosure is to parents of a student who is under the age of 21 at the time of the disclosure and relates to a determination by the institution that the student has violated its drug or alcohol rules. 34 C.F.R. § 99.31(a)(15).

10. The disclosure is of the “final results” of a disciplinary proceeding against a student whom the institution has determined violated an institutional rule or policy in connection with alleged acts that would, if proven, also constitute a “crime of violence or non-forcible sex offense”. 34 C.F.R. § 99.31(a)(14). For purposes of this exception, “final results” is limited to the name of the student, the basic nature of the violation the student was found to have committed, and a description and the duration of any sanction the institution has imposed against the student. 34 C.F.R. § 99.39.

11. The disclosure is to “a victim of an alleged perpetrator of a crime of violence or non-forcible sex offense” and consists only of the “final results” (as defined above) of an institutional disciplinary proceeding in connection with that alleged crime or offense. The institution may (and, under the Campus Sexual Assault Victims’ Bill of Rights Act, must) make such a disclosure regardless of the outcome of the proceeding. 34 C.F.R. § 99.31(a)(13).
12. The disclosure is in connection with financial aid that the student has applied for or received and is for the purpose of determining the student’s eligibility for, the amount of, or the conditions for the aid, or to enforce the terms and conditions of the aid. 34 C.F.R. § 99.31(a)(4).

13. The disclosure is to authorized representatives of the Comptroller General, Attorney General, Secretary of Education, or state or local educational authorities in connection with an audit of federal- or state-supported education programs or with the enforcement of or compliance with federal legal requirements relating to those programs. In the absence of consent or a specific federal law to the contrary, information collected under this exception must be protected so that individuals are not personally identifiable other than to the “authorized representatives”, and the information must be destroyed when no longer needed. 34 C.F.R. §§ 99.31(a)(3) and 99.35.

14. The disclosure is to accrediting organizations to carry out their accrediting functions. 34 C.F.R. § 99.31(a)(7).

15. The disclosure is to organizations conducting studies for educational institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction, provided that the studies are conducted in a manner that prevents personal identification of parents and students by anyone other than representatives of the organizations and the information is destroyed when no longer needed for purposes of the studies. 34 C.F.R. § 99.31(a)(6).

Each of these exceptions is independent of the others. If you can find one that applies to your situation, it doesn’t matter whether that situation also would qualify under any of the others. Thus, for example, if you have determined that a 19-year-old student’s serious, alcohol-related injuries constitute a “health or safety emergency” that is “appropriate” to disclose to the student’s parents, you
need not also determine whether the student is their dependent for tax purposes or whether the student has violated your alcohol policies.

Note also that, at least as far as FERPA itself is concerned, it is entirely within the institution’s discretion whether to make a disclosure under any of these exceptions. 34 C.F.R. § 99.31(b). Thus, for example, a parent never has a right, under FERPA, to see his or her college student’s education records, even if the student is the parent’s dependent for tax purposes, is involved in a health or safety emergency, and has violated the institution’s alcohol policies – and even if the student is not yet 18 years old. A subpoena, a court order, or another law such as the Campus Sexual Assault Victims’ Bill of Rights Act may require disclosure in certain circumstances, but FERPA does not.

C. REDISCLOSURE

FERPA imposes similar limitations on redisclosure. In general, an institution disclosing personally identifiable information from an education record must inform the recipient that it cannot redisclose that information without the consent of the student and that it may use the information only for the purpose for which the disclosure was made. 34 C.F.R. § 99.33(a). Exceptions to this requirement include disclosures of directory information; disclosures to the relevant student, to the parents of a dependent student, or to parents in connection with a drug or alcohol violation; and disclosures made in connection with a court order, lawfully issued subpoena, lawsuit in which the student and the institution are adversaries, or disciplinary proceeding involving an alleged crime of violence or non-forcible sex offense. 34 C.F.R. § 99.33(c).

D. RECORDKEEPING

The institution generally must maintain a record of each request for access to and each release of personally identifiable information from a student’s education records. This separate record must include, at a minimum, the identities of the requesters and recipients and the “legitimate interests” they had in the information. It also must be maintained with the student’s education records for as long as those records are themselves maintained. 34 C.F.R. § 99.32(a). Exceptions to this requirement include disclosures to a school
official, a parent or student, a person with written consent, or a person requesting
directory information, and disclosures in connection with a grand jury or other law
enforcement subpoena prohibiting disclosure of its existence or contents. 34
C.F.R. § 99.33(d).

IV. INSPECTION AND REVIEW

FERPA also gives college and university students the right to inspect and review
their own education records. 34 C.F.R. § 99.10(a). The institution must provide access
to the records within 45 days of a request and must respond to reasonable requests for
explanations and interpretations of the records. 34 C.F.R. § 99.10(b) and (c). FERPA
does not require the institution to provide copies of records to the student, unless
“circumstances effectively prevent” the student from exercising the right to inspect and it
is not possible to “make other arrangements” for inspection. 34 C.F.R. § 99.10(d). The
institution may not destroy records while a request for inspection is outstanding. 34
C.F.R. § 99.10(e).

There are several limitations on the right of inspection. First, if the requested
records contain information about more than one student, the requesting student may
have access only to those portions pertaining to him- or herself. 34 C.F.R. § 99.12(a).
In addition, students do not have the right to inspect the following:


2. Confidential letters and statements of recommendation, if the student has
waived the right to review and inspect those documents and they are
related to the student’s admission, application for employment, or receipt
of an honor or honorary recognition. 34 C.F.R. § 99.12(b)(3). Such a
waiver is valid only if it is not a condition of admission to or receipt of a
benefit or service from the institution and it is in writing and signed by the
student. 34 C.F.R. § 99.12(c)(1). If the student provides such a waiver,
the student must be given, upon request, the names of the persons
providing the recommendations, and the institution may not use the letters
for any purpose other than that for which they were originally intended. 34
C.F.R. § 99.12(c)(2). The student may revoke the waiver in writing;
however, revocation affects only those documents received after the date
of the revocation. 34 C.F.R. § 99.12(c)(3). In other words, a student may not revoke the waiver in order to see documents already received.

3. “Treatment” records, as defined above in Section II. However, upon request, the student may have any such records reviewed by a physician or other appropriate professional of the student’s choice. 34 C.F.R. § 99.10(f).

V. AMENDMENT

If a student believes that his or her education records contain inaccurate or misleading information or information that violates the student’s right to privacy, the student may request that the institution amend the records. 34 C.F.R. § 99.20(a). The institution must make a decision on the request within a “reasonable time” after receipt. 34 C.F.R. § 99.20(b). If the institution decides not to make the requested amendment, it must so inform the student and advise the student of the right to a hearing. 34 C.F.R. § 99.20(c).

If the student requests a hearing, it must meet the following minimum requirements:

1. It must be held within a reasonable time after the request;

2. The student must be provided reasonable notice of the date, time, and place;

3. The individual conducting the hearing must not have a direct interest in the outcome;

4. The student must have a “full and fair opportunity” to present his or her case and may be assisted or represented by others, including an attorney; and

5. The decision must be in writing, rendered within a reasonable time after the hearing, and based solely on the evidence presented at the hearing, and it must include a summary of the evidence and the reasons for the decision.
34 C.F.R. § 99.22.

If, as a result of the hearing, the institution agrees with the student, it must amend the record and notify the student in writing. 34 C.F.R. § 99.21(b)(1). If the institution does not agree, it must advise the student that he or she may place a written statement in the file commenting on the contested information and/or stating the nature of the disagreement. 34 C.F.R. § 99.21(b)(2). If the student chooses this option, the statement must be maintained with the contested information and disclosed in conjunction with any subsequent release of the contested information. 34 C.F.R. § 99.21(c).

The courts have ruled that this portion of FERPA is intended to deal with “scrivener’s errors”, not to provide a means by which a student may challenge substantive decisions, such as grades, or obtain information on how a particular grade was assigned. See, e.g., Adatsi v. Mathur, 934 F.2d 910 (7th Cir. 1991) (“FERPA addresses the situation where a student seeks to have misleading or inaccurate information in his records corrected. There is nothing inaccurate about Adatsi’s grade. He just feels he deserves something else. This fails to state a claim under FERPA.”); Tarka v. Cunningham, 741 F. Supp. 1281, 1282 (W.D. Tex.), aff’d, 917 F.2d 890 (5th Cir. 1990) (“At most, a student is only entitled to know whether or not the assigned grade was recorded accurately in the student’s record.”).

VI. ANNUAL NOTIFICATION OF RIGHTS

FERPA requires each institution to notify its students annually of their rights under the act. 34 C.F.R. § 99.7. The best place to start (and perhaps end) is the Family Policy Compliance Office’s model notice of rights, a copy of which is attached as Appendix B. The notice may be provided by “any means that are reasonably likely to inform . . . students of their rights”. 34 C.F.R. § 99.2(b). Each institution must also give “public notice” of its list of directory information and its procedure for “opting out”. 34 C.F.R. § 99.37(a). The easiest way to do so is by including this information in the annual notice.

VII. ENFORCEMENT

The responsibility for enforcing FERPA rests with the Family Policy Compliance Office of the Department of Education, which is authorized to investigate and review
potential violations and to provide technical assistance regarding compliance issues. 34 C.F.R. § 99.60. If it determines that a complaint is meritorious, the Office will recommend steps necessary to ensure compliance with the act and provide a reasonable time for the institution to come into compliance. 34 C.F.R. § 99.66(c). If the institution does not come into compliance, the Department is authorized to terminate all or any portion of the institution’s federal funds. 34 C.F.R. § 99.67. In Gonzaga University v. Doe, 536 U.S. 273 (2002), the Supreme Court held that FERPA does not create personal rights that an individual may enforce through 42 U.S.C. § 1983.

VIII. RESOURCES

The Family Educational Rights and Privacy Act: A Legal Compendium (NACUA, 2d ed.)


Catholic University’s FERPA Reference Chart: http://counsel.cua.edu/ferpa/resources/recchart.cfm

University of Maryland’s FERPA Tutorial: http://info.sis.usmd.edu/ferpaweb

AACRAO’s FERPA Final Exam: http://www.aacrao.org/compliance/ferpa/FERPA_Final_Exam.pdf
Appendix A

FERPA REGULATIONS
Family Educational Rights and Privacy Act Regulations

34 CFR Part 99

Subpart A—General

Section

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

99.2 What is the purpose of these regulations?

99.3 What definitions apply to these regulations?

99.4 What are the rights of parents?

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

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Subpart B—What Are the Rights of Inspection and Review of Education Records?

Section

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

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

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

Subpart C—What Are the Procedures for Amending Education Records?

Section

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

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

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

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

Section

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

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

99.32 What recordkeeping requirements exist concerning requests and disclosures?

99.33 What limitations apply to the redisclosure of information?

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

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

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

99.37 What conditions apply to disclosing directory information?

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

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

Subpart E - What are the Enforcement Procedures?

Section

99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

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

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

99.63 Where are complaints filed?

99.64 What is the complaint procedure?

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

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

99.67 How does the Secretary enforce decisions?

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

PART 99 - FAMILY EDUCATIONAL RIGHTS AND PRIVACY

The authority citation for part continues to read as follows:

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

Subpart A—General

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

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

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

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

(b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive nonmonetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.
(c) The Secretary considers funds to be made available to an educational agency or institution if 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 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

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

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

§ 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 444 of the General Education Provisions Act, as amended.

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

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

§ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:


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

"Attendance" includes, but is not limited to:

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

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

"Dates of attendance"

(a) The term means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter.

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

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

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

(Authority: 20 U.S.C. 1232g(a)(5)(A))
"Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

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

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

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

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

"Education records"

(a) The term means those records that are:

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8.

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

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

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

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

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

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

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

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

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

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

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

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

(Authority: 20 U.S.C. 1232g(d))
"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

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

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

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

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

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

"Personally identifiable information" includes, but is not limited to:

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

(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.

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

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

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

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

"Student," except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

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

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

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

§ 99.7 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 1800–0508)

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

§ 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 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 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 possession of the law enforcement unit.

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

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

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, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to—

(1) Any educational agency or institution; and

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

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

(ii) An SEA and its components are subject to subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.

(b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable
period of time, but not more than 45 days after it has received the request.

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

(d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall—

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

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

(e) The educational agency or institution, or SEA or its component, shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in § 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

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

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

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

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

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

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

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

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

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

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

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

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

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

(A) Admission to an educational institution;

(B) Application for employment; or
(C) Receipt of an honor or honorary recognition.

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

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

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

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

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

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

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

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

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

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, 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))

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

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall:

(i) Amend the record accordingly, and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting
on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall:

(1) Maintain the statement with the contested part of the record for as long as the record is maintained, and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

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

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

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

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under § 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

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

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

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

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

§ 99.30 Under what conditions 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))

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

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

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

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

3. The disclosure is subject to the requirements of § 99.35, to authorized representatives of—

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The Secretary; or

(iv) State and local educational authorities.

4. 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. 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 a 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 a State statute adopted after November 19, 1974, subject to the requirements of § 99.38.

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

6. 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 in
formation under paragraph (a)(6)(i) of this section only if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15)(i) The disclosure is to a parent of a student at an institution of postsecondary education regarding the student’s violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance if—

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

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

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

(b) Paragraph (a) of this section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11), (13), (14), and (15) of this section.

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

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

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

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

(i) The parties who have requested or received personally identifiable information from the education records; and

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

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

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

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

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

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

(3) Those parties authorized in § 99.31(a)(1) and (3) for the purposes of auditing the record-keeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to:

(1) The parent or eligible student;

(2) A school official under § 99.31(a)(1);

(3) A party with written consent from the parent or eligible student;

(4) A party seeking directory information; or

(5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

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

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

§ 99.33 What limitations apply to the redisclosure of information?

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

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

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

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

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

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

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

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

(Authority: 20 U.S.C. 1232g(b)(4)(B))
§ 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

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

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

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

(ii) The annual notification of the agency or institution under § 99.7 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 Sub-
part 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 enforce-
ment of or compliance with Federal legal require
ments 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 any
one except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

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

(1) The parent or eligible student has given written consent for the disclosure under § 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

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

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

(a) An educational agency or institution may disclose personally identifiable information
from an education record to appropriate parties in connection with an emergency if
knowledge of the information is necessary to protect the health or safety of the student or
other individuals.

(b) Nothing in the 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))

§ 99.37 What conditions apply to disclosing directory information?

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

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

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

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

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

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

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

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

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

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

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

As used in this part:

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

Arson
Assault offenses
Burglary
Criminal homicide—manslaughter by negligence
Criminal homicide—murder and nonnegligent manslaughter
Destruction/damage/vandalism of property
Kidnapping/abduction
Robbery
Forcible sex offenses.

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

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

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

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

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

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)

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

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

(Authority: 20 U.S.C. 1232g (f))
§ 99.62 What information must an educational agency or institution submit to the Office?

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

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

§ 99.63 Where are complaints filed?

A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-4665.

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

§ 99.64 What is the complaint procedure?

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

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

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

(d) The Office may extend the time limit in this section for good cause shown.

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

§ 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))

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

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

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

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

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

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

§ 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under §99.66(e), 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)

Appendix A to Part 99 - Crimes of Violence Definitions

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

Assault Offenses
An unlawful attack by one person upon another.

(NOTE: By definition there can be no "attempted" assaults, only "completed" assaults.)

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

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

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

(NOTE: This offense includes stalking.)

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

Criminal Homicide—Manslaughter by Negligence.
The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter
The willful (nonnegligent) killing of one
human being by another.

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

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

(NOTE: Kidnapping/Abduction includes hostage taking.)

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

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

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

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

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

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

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

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

(NOTE: Forcible Fondling includes "Indecent Liberties" and "Child Molestation.")

**Nonforcible Sex Offenses (Except "Prostitution Offenses")**. Unlawful, nonforcible sexual intercourse.

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

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

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

MODEL ANNUAL NOTICE OF FERPA RIGHTS
The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records. These rights include:

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 is inaccurate.
   Students may ask the University to amend a record that they believe is inaccurate. 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.
   If the University decides not to amend the record as requested by the student, the University will notify the student of the decision and advise 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.

   Upon request, the University discloses education records without consent to officials of another school 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 20202-5901

[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.]