



The Optimal Reference Guide:

FERPA: Catch 1 through 22

Extraordinary insight into today's education topics

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Since this paper was written in 2006, many questions have been raised by State Education Agencies that are developing longitudinal data systems. In addition, questions have been raised by postsecondary institutions concerning the release of information from student records that could affect the safety and health of students and others. In March 2008 the Family Policy Compliance Office of the U.S. Department of Education published proposed revisions to regulations concerning the implementation of the Family Educational Rights and Privacy Act (FERPA). These proposed revisions are under review and should be finalized in the summer of 2008.

Most of the issues in this paper continue to be problems associated with the implementation of FERPA and were not addressed in the proposed revisions to regulations. Thus it is important for education agencies to continue to pursue clarifications of FERPA and to recommend changes to the law itself. The few items that have been addressed in the proposed revisions are described at the end of the paper.

The Case for Rewriting FERPA

FERPA (Family Educational Rights and Privacy Act) has protected the private information of students and provided access to education records by parents since 1977. A 1997 revision left in place the extant ambiguity and competing purposes of the original mandate. After so many years in force, the law needs to be brought into line with today's technology and information practices. Thank you, FERPA, for the rights you have preserved, but in all those years, we have been unable to articulate clear case law, precedents, and advance interpretations. FERPA's Compliance Office acts to resolve one complaint at a time. The constraints of the law are cited as the cause for this reticence. LEAs, SEAs, and the software vendors that provide them information systems have found this scarcity of guidance to be frustrating.

This paper is a call for FERPA to be updated by Congress to address these frustrations. The goal of the revision should be to ensure that the confidential information FERPA is intended to protect is protected while avoiding any undue restriction of information that contributes to data driven decision making that can improve the education of individual students.

The time has arrived for FERPA to be modernized. In 1977 (remember President Carter; primitive DOS or COBOL-based student information systems only in the advanced schools, paper records everywhere; State Education Agencies (SEAs) not maintaining individual student-level information systems; rotary phones in schools; silver coins in circulation; card punches and readers; IBM mainframes slower and with less memory than a laptop has today?) the world of education data was much simpler than it is now. FERPA as a law could only be written in the context of how education data (paper records) were created and shared at the time. Today's technology and automated information systems have created much more data, many more practical uses for the data, and many more people wanting the data.

To make the case for rewriting FERPA, this paper uses illustrations of conundrums that educators face when following FERPA.



ESP Insight

FERPA is the Family Educational Rights and Privacy Act. Background information about the law and the FERPA Compliance Office is available at <http://www.ed.gov/policy/gen/guid/fpco/ferpa>.



ESP Insight

ESP has assisted SEAs in the development of data access and use policies to comply with FERPA while meeting the objectives of new information systems.

FERPA Conundrum: A person cannot inspect educational records for the purpose of determining which persons have the right under FERPA to inspect those records because if the records contain personally identifiable information protected under FERPA which that person does not have the right to access, then that information cannot be inspected. The act of looking at the information to determine if one has the right to see it is not allowed.

Real-life example: A school district mailed out 35,000 report cards using the wrong addresses. Parents who opened the envelopes discovered they should not be seeing the grades of someone else's child.

FERPA Universal Access Loophole: A person needing to determine who should have access to education data has a need to know the data; therefore, that person can look at a student's educational record.

Real-life example: A school clerk enrolling a new student inspects the records that come from the student's prior school to determine who needs to see them.

Neither of these scenarios really makes sense, but they illustrate how one can get confused just thinking about who can view education data.

Catch 22's of FERPA

The phrase "Catch 22" is commonly used to describe a no-win situation. A Catch-22 situation is frustrating to everyone because the attempt to perform an action prevents it from happening.

If there is a rule, there is always an exception to it. In Joseph Heller's 1961 novel *Catch 22*, Yossarian cannot be excused from the war for being crazy because his concern for his own life proves that he is not crazy. The catch is attributed to those in power to ensure their power, and it is binding upon those who do not have power. In a situation where everything seems to be working out, *Catch-22* proves Robert Burns's conclusion that the best laid plans of mice and men often go awry.

The insidious aspect of Catch 22 is that it does not exist in reality, but because everyone believes that it does, it does. With FERPA, the 22 catches described in this paper appear initially to be problematic. In reality some may not be real, some may have simple solutions, and others require a change in the law to ensure overly cautious people do not interpret FERPA to the disadvantage of the students who are intended to be protected.

The full text of the law is available at <http://www.ed.gov/policy/gen/guid/fpco/ferpa> so you can see for yourself how certain requirements are currently worded.

Today, electronic records fly between schools, Local Education Agencies (LEAs), states, and the Federal government (well, almost). The capacity of education information systems to collect, process, and exchange individual student records has exploded. Decision support systems are giving direct access to individual-level data for teachers and others to run custom queries. Students are moving from one LEA to another and expecting their historical records to follow them (with some exceptions).

FERPA needs to be updated in several crucial respects.

1. Descriptive or demographic information needs to be exempted from confidentiality protection.
For example, why not publish race/ethnic frequencies when they merely represent enrollments? What is the harm in publishing a count of 2 Hispanic students enrolled in grade three in a school?
2. Publishing 100% or 0% should be allowed when the group size exceeds the adopted minimum for confidentiality.
Yes, everyone in the group will know how everyone else is classified, but this is typically the most essential information for accountability.
3. A set of directory and enrollment data elements should be established nationwide to allow interstate identification of individual students for the purpose of exchanging education records.
Parents can be informed, and student identification can be verified for records to be exchanged.

4. The Family Policy Compliance Office at the U.S. Department of Education (USED) should be empowered to develop and publish guidance for LEAs and SEAs.
Nothing would help more to clarify FERPA for those having to follow it. While some information has been published, still more is needed.
5. FERPA should resolve the issue of data ownership between the LEA and the SEA.
The data within an SEA's information system should be designated as owned by the entity that originally collected or created them—regardless of data stewardship. The SEA data steward should be required to certify that the data they possess are identical to what was provided them by the LEA.
6. FERPA should clarify what “reasonable effort” means related to suppressed cells being restored from other data provided.
How difficult must it be made for someone to derive suppressed values from others in the same table or publication?

Two recommendations made in the 2006 paper have been addressed in proposed regulations for implementing FERPA in 2008.

1. States that manage cumulative historical data records for individual students need to be allowed to provide those records to new schools.
SEAs were originally advised that they could not provide assessment scores for individual students when they were in prior schools. The implication was that, even though the SEA managed the statewide testing program and contracts directly for the scoring and reporting of the data, the SEA could not provide those scores to the receiving LEA when the student moved. Now, proposed revisions indicate that SEAs may pass along a student's prior record to a LEA where the student has enrolled on behalf of the sending LEA. This means that the receiving LEA will receive not only data from the sending LEA, but also from any previous LEAs from whom the SEA received data for the student. And assessment scores maintained by the SEA can be a part of that record.
2. FERPA should clarify that unmasked data may be provided upward to the next level of government, and that level of government inherits the responsibility to protect privacy—both in aggregate reporting and in responding to requests for data.
LEAs and SEAs are concerned that they are still responsible if they provide unmasked data to a higher authority and that authority fails to mask all the information they would have. The proposed revisions make it clear that the SEA bears responsibility for the security and confidentiality of data received from the LEAs, including in aggregate reporting and in responding to requests for data.

Solutions and Strategies for Catch 1 to 22

Here are a few strategies and possible solutions that may help avoid FERPA's catches. *En mass*, these catches illustrate the challenge LEAs and SEAs face interpreting and following this outdated 1977 law.

Situation	Catch	Result	Solution or Strategy
1. We need to know if a school has no students at the proficient level, but...	If zero students are in a reported category...	We can't report the category because this identifies each individual student as not being in this category.	Solution: Report ranges instead of exact counts. *
2. We need to recognize schools where all students have performed to our standards, but...	If 100% of all students are in a category...	We can't report the category because this identifies each individual student as being in this category.	Solution: Report ranges instead of exact counts. *
3. An SEA needs to use all directory information possible when resolving duplicate student records across the state, but...	If the data elements defined as directory information by the LEA differ from the SEA's...	The SEA can't provide all of its own directory information without violating an LEA's policy.	Solution: The SEA should seek legislation to establish a common minimum set of directory data statewide.
4. An LEA needs to use all directory information possible when requesting records from an LEA in another state, but...	If one state's data elements defined as directory information differ from another's...	We can't share data (in a student locator system) across states without showing confidential data.	Solution: User portals should practice identity management to know which data elements to display for users from each state. Better Solution: Change FERPA.
5. When students move to new LEAs within a state, they need their historical assessment results to follow them, but...	If the SEA is the holder of historical assessment records across all LEAs...	Assessment scores from one LEA cannot be shared by the SEA with a new LEA.	Strategy: This is common practice in many states already. Wait for a protest. Better Strategy: Change FERPA.
6. An SEA masks values when submitting data to Education Data Exchange Network (EDEN), but...	If EDEN receives a file with masked values for some cells...	Those missing values cannot be used for aggregations even if the new aggregations will follow EDEN's masking rules for confidentiality.	Solution: EDEN must collect unmasked values from all SEAs and establish a trusted relationship to protect confidentiality.

Situation	Catch	Result	Solution or Strategy
7. Values in a published table are masked, but...	If masked fields are related to other unmasked fields in the table...	Masked fields might be recalculated.	Solution: Adequate masking rules must be implemented to avoid recalculations. *
8. Values across all tables in a publication are masked, but...	If other published reports contain data that enable recalculations...	We can't publish our own tables without masking even more data based upon other publications.	Solution: Adequate masking rules must be implemented to avoid recalculations. *
9. Masking is done to prevent recalculation with reasonable effort, but...	If reasonable effort does not have a commonly accepted definition...	We are vulnerable to second guessing.	Strategy: Adopt a statewide definition of reasonable effort. Better Strategy: Change FERPA.
10. Extreme masking is done to prevent recalculation by a zealot, but...	If too many fields are suppressed...	We can't make data driven decisions on missing data.	Strategy: Accept that this may happen. If too many values are masked, the information being reported loses its usefulness for decision making.
11. Agencies use case law or published guidelines to inform their policy making, but...	If the FERPA Compliance Office is asked for cases and guidelines...	There are no guidelines or case law provided because the Compliance Office does not want a decision made in one case to be misapplied when circumstances are different.	Solution: Change FERPA. Strategy: Review past FERPA decisions. **
12. Agencies want to have their current policies reviewed, but	If the FERPA Compliance Office is asked for a review...	We are informed that a violation must occur and a protest must be made to get a ruling.	Solution: Change FERPA. Strategy: Request technical assistance and hope for the best, or review past FERPA decisions. **
13. Agencies want prior clearance before implementing an important policy, but...	If the FERPA Compliance Office is asked for prior clearance...	No prior clearance is available.	Solution: Change FERPA. Strategy: Review past FERPA decisions. **
14. Agencies have practices in place that have become traditional and generally accepted, but...	If a protest is filed with the FERPA Compliance Office...	No statute of limitations is available to allow a practice to be considered acceptable.	Strategy: Continue. Unless a protest is filed and upheld, there is no change required.

Situation	Catch	Result	Solution or Strategy
15. The LEA must abide by parent requests made at the school level, but...	If a parent request at the school is not passed along to the LEA...	The LEA may violate the request.	Solution: Design information systems to share parent requests.
16. The SEA must abide by parent requests made at the LEA level, but...	If a parent request at the LEA is not passed along to the SEA...	The SEA may violate the request.	Solution: Design information systems to share parent requests.
17. A parent or a student turning 18 can change their minds about allowing directory information to be published, but...	If a parent changes his/her mind, or a student reaches majority and changes the request,...	The agency may have already published the data, or may have the data distributed throughout its data repositories.	Solution: Design information systems to allow changes.
18. The same person makes two identical requests for a data file from an education agency, but...	If one request is as a parent and the other is as a researcher ...	The parent request may be denied and the researcher request may be approved.	Solution: Be a researcher.
19. Different levels of government make their own masking rules, but...	If confidential data at the individual student level are shared...	Different levels of government may not mask to the satisfaction of others.	Solution: Each higher level of government must adopt an equal or higher standard than anyone at a lower level.
20. Higher minimum cell sizes are selected to ensure greater protection of individual student's personal information, but	If the data would result in decisions that benefit the children in the group...	There is more protection for the children and less help for the children.	Strategy: Keep minimum cell sizes as low as possible. *
21. Even demographic elements such as gender are considered personally identifiable, but	If demographic elements are among the directory elements masked and they are useful for cross tabulations...	Data driven decision making is hindered.	Solution: Adopt a policy that makes demographic elements directory elements.
22. NCLB requires compliance with FERPA, but	If cells with 100% of the students in them are masked...	NCLB cannot report its ultimate success in 2014 when 100% of the students are proficient.	Strategy: Report 100% anyway.

* Confidentiality and Reliability Rules for Reporting Education Data, The Optimal Reference Guide by Glynn D. Ligon, Ph.D. and Barbara S. Clements, Ph.D. (Available at www.espsg.com, My ESP Page)

** Guidelines for Accessing Student Records in a State Longitudinal Database by Barbara S. Clements, Ph.D. and Greg Nadeau (available at www.espsg.com/resources.php.)

Two of these 22 situations have been addressed in USED's proposed revisions to regulations.

- Number five relates to the sharing of historical data about a student by a SEA with an LEA that enrolls the new student. This is specifically allowed in the new regulations. SEAs may provide a receiving LEA a copy of a student's record on behalf of the sending LEA.
- EDEN (Education Data Exchange Network) seeks to obtain un-masked data from SEAs so that complete data will be provided. EDEN, now called *EDFacts*, provides assurances to SEAs that small cell sizes will be avoided and other measures will be taken to ensure that individual students are not identified.

ATTACHMENT A – Family Education Rights and Privacy Act

[Code of Federal Regulations]
[Title 34, Volume 1, Parts 1 to 299]
[Revised as of July 1, 1997]
From the U.S. Government Printing Office via GPO Access
[CITE: 34CFR99]

TITLE 34--EDUCATION

PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Subpart A--General

Sec.

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

- (a) Except as otherwise noted in Sec. 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.
- (b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.
- (c) The Secretary considers funds to be made available to an educational agency or institution of funds under one or more of the programs referenced in paragraph (a) of this section—
 - (1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or
 - (2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

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

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

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59295, Nov. 21, 1996]

Sec.

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.

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59295, Nov. 21, 1996]

Sec.

99.3 *What definitions apply to these regulations?*

The following definitions apply to this part:

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

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

"Attendance" includes, but is not limited to:

(a) Attendance in person or by correspondence; and

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

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

"Dates of attendance"

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

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

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

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

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

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

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

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

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

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

"Education records"

(a) The term means those records that are:

(1) Directly related to a student; and

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

(b) The term does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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, hand writing, 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))

**Sec.
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)

**Sec.
99.5** ***What are the rights of students?***

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

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

(c) An individual who is or has been a student at an educational institution and who applies for admission at another component of that institution does not have the 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))

**Sec.
99.6** ***[Reserved]***

**Sec.
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))

Sec. 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?

Sec.

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 educational 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)(l) (A) and (B))

Sec.

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)(l))

Sec.

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

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

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

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

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

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

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

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

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

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

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

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

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

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

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

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

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

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

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

Sec.

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))

Sec.

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))

Sec.

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 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?

Sec.

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.

(d) "Signed and dated written consent" under this part may include a record and signature in electronic form that-

(1) Identifies and authenticates a particular person as the source of the electronic consent; and

(2) Indicates such person's approval of the information contained in the electronic consent.

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

Sec.

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

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

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

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

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

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The Secretary; or

(iv) State and local educational authorities.

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

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

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

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

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

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

(A) Allowed to be reported or disclosed pursuant to 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)(1) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

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

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

(B) Administer student aid programs; or

(C) Improve instruction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec.

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)(l) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.
- (d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to:
- (1) The parent or eligible student;
 - (2) A school official under § 99.31 (a)(1);
 - (3) A party with written consent from the parent or eligible student;
 - (4) A party seeking directory information; or
 - (5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

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

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

Sec.
99.33 ***What limitations apply to the redisclosure of information?***

(a)(I) 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)(I) 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))

Sec. 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 Subpart c.

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

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

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

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

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

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

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

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

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

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

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

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

Sec.

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))

Sec.

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 designated 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))

Sec.

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)(I)(J))

**Sec.
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?

**Sec
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)

Sec.

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))

Sec.

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))

Sec.

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 20202-5920.

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

Sec.

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))

Sec.

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))

Sec.

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))

Sec.

99.67 *How does the Secretary enforce decisions?*

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

(1) Withhold further payments under any applicable program;

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

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

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

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

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

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.)

(ii) 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 Offences, 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.

(b) Sexual Assault With An Object

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

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

(d) Forcible Fondling.

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

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

Nonforcible Sex Offenses

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

(a) Incest

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

(b) Statutory Rape

Nonforcible sexual intercourse with a person who is under the statutory age of consent.

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

[This is not an official version of the regulations. These regulations are codified in 34 CFR Part 99.]

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About ESP Solutions Group

ESP Solutions Group provides its clients with *Extraordinary Insight™* into K-12 education data systems and psychometrics. Our team is comprised of industry experts who pioneered the concept of “data driven decision making” and now help optimize the management of our clients’ state and local education agencies.

ESP personnel have advised school districts, all 52 state education agencies, and the U.S. Department of Education on the practice of K-12 school data management. We are regarded as leading experts in understanding the data and technology implications of the **No Child Left Behind Act (NCLB)**, **Education Data Exchange Network (EDEN)**, and the Schools **Interoperability Framework (SIF)**.

Dozens of education agencies have hired ESP to design and build their student record collection systems, federal reporting systems, student identifier systems, data dictionaries, evaluation/assessment programs and data management/analysis systems.

To learn how ESP can give your agency *Extraordinary Insight™* into your K-12 education data, contact ESP at (512) 879-5300 or info@espsg.com.

This document is part of *The Optimal Reference Guide Series*, designed to help education data decision makers analyze, manage, and share data in the 21st Century.

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