

Wrightslaw: Family Education Rights and Privacy Act Regulations

34 CFR § Part 99

The **Family Educational and Rights and Privacy Act (FERPA)** is located at 20 U.S.C. § 1232g and its regulations are located at 34 CFR Part 99.

For the Third Edition of *Wrightslaw: Special Education Law*, we initially intended to include the full statute and complete regulations. However, after we completed formatting all for the book, we realized that both consisted of too many pages for the book. We decided to include a summary of the law in the book with a hyperlink to this document on our website. We took the formatted regulations, converted them to an adobe.pdf file, uploaded it to our website, and this is the result.

FERPA is a single statute with primary subsections “a” through “j.” Much of the statute has language that opens with “No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of . . .” and then it lists and details procedures that should not be done such as denying an individual the right to inspect and view their records.

The FERPA regulations are composed of five subparts, A through E, and written in a “Frequently Asked Questions” FAQ format of **41 questions and answers, quite unlike the IDEA, Section 504, and ADA regulations.** The questions are categorized under each subpart and **each question is its own regulation.** For example, regulation 34 CFR § 99.1 is the first question below with an answer. Below is a list of the 41 questions , followed by the questions and answers.

34 CFR Part 99, Subpart A - General

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34 CFR Part 99, Subpart A - General

34 CFR § 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 agency¹ 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 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).

34 CFR § 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.

34 CFR § 99.3 What definitions apply to these regulations?

[This portion includes definitions of words and terms in the Act such as attendance, directory information, and more. Education records, Eligible student, Personally identifiable information, and Student are included below and, for visual clarity, *italics were added* to those definitions. For the full text of this regulation and definitions not included below, see the Cornell LII link in the footnote.]²

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;

¹ This includes State Educational Agencies, referred to elsewhere in these regulations as **SEA**, and also to colleges and universities.

² <https://www.law.cornell.edu/cfr/text/34/99.3>

(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**;³ 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 created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.

(6) **Grades on peer-graded papers before they are collected and recorded by a teacher.**

Eligible student⁴ - means a student who has **reached 18 years of age** or is attending an institution of postsecondary education.

Personally Identifiable Information - The term **includes**, but is not limited to -

(a) **The student's name**;

(b) The name of the student's parent or other family members;

(c) The address of the student or student's family;

(d) **A personal identifier, such as the student's social security number, student number, or biometric record**;

(e) **Other indirect identifiers, such as the student's date of birth**, place of birth, and mother's maiden name;

(f) **Other information** that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, **to identify the student** with reasonable certainty; or

(g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

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.

34 CFR § 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

³ Regulation 34 CFR § 99.10(f) authorizes the records of the treating psychologist, psychiatrist, etc., to be sent to another professional if requested by the student, even though the student is not permitted access to these records from the educational facility because of this exception to the FERPA disclosure requirement. The other professional may use their discretion about release of such records to the student. That other professional is not bound by these regulations, but instead by the ethics and standards of their profession. In some instances, there may be specific state statutes and regulations that address this particular issue.

⁴ In these regulations you will see both terms, **student and eligible student**. The eligible student is either 18+ years old or enrolled in a postsecondary program. The student can also be that person or simply be a youngster in elementary school.

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.**

34 CFR § 99.5 What are the rights of students?

(a)

(1) **When a student becomes an eligible student,**⁵ the rights accorded to, and consent required **of, parents** under this part **transfer from the parents to the student.**⁶

(2) **Nothing in this section prevents an educational agency or institution from disclosing education records,** or personally identifiable information from education records, **to a parent** without the prior written consent of an eligible student **if the disclosure meets the conditions in** § 99.31(a)(8), § 99.31(a)(10), § 99.31(a)(15), or any other provision in § 99.31(a).

(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 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.

34 CFR § 99.6 [Reserved]

34 CFR § 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 § 99.31⁷ authorize disclosure without consent; and

(iv) File with the Department a complaint . . . ⁸

(3) The notice must include all of the following: . . .

(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.

⁵ Note that in the preceding definitions, the "**eligible student**" has reached the 18th birthday **or** is attending a postsecondary institution.

⁶ Parental rights transfer to the student upon reaching the 18th birthday.

⁷ The 34 CFR § 99.31 regulation, in certain circumstances, authorizes disclosure of information without prior consent.

⁸ Throughout these FERPA regulations are portions that Wrightslaw did not include as they are lengthy, wordy, and, as noted earlier, the full regulation is available at Cornell LII. The **insertion . . . indicates that portions have been omitted**, but are available at: <https://www.law.cornell.edu/cfr/text/34/99.7>

- (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**.

34 CFR § 99.8 What provisions apply to records of a law enforcement unit?

- (a)
 - (1) **Law enforcement** unit means . . . that is officially authorized or designated by that agency or institution to -
 - (i) Enforce any local, State, or Federal law . . .
 - (2) A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.
- (b)
 - (1) Records of a law enforcement unit means those records, files, documents, and other materials that are . . .
 - (2) Records of a law enforcement unit does not mean . . .
- (c)
 - (1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.
 - (2) **Education records**, and personally identifiable information contained in education records, **do not lose their status as education records** and remain subject to the Act, including the disclosure provisions of § 99.30, while **in the possession** of the law enforcement unit.
- (d) The Act **neither requires nor prohibits the disclosure** by an educational agency or institution of its law enforcement unit records.

34 CFR Part 99, Subpart B - What Are the Rights of Inspection and Review of Education Records?

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

- (a) Except as limited under § 99.12,⁹ **a parent or eligible¹⁰ 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.

⁹ 34 CFR § 99.12 authorizes withholding of confidential information such as letters of recommendation for admission, awards, employment and other circumstances, subject to the specifics of that regulation.

¹⁰ Either a postsecondary student or 18 years of age or older.

(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.¹¹

34 CFR § 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.

34 CFR § 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

¹¹ For example, the student is not entitled to see the psychiatrist's treatment notes, but those notes may be provided to another psychiatrist chosen by the student.

(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.

34 CFR Part 99, Subpart C - What Are the Procedures for Amending Education Records?

34 CFR § 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**.

34 CFR § 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.

34 CFR § 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**.

34 CFR Part 99, Subpart D - May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

34 CFR § 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 student¹² 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.

34 CFR § 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) (i)

¹² In other words, the student is not yet 18 years of age.

(A) 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.

(B) A **contractor**, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph **provided that the outside party** -

(1) Performs an institutional service or function for which the agency or institution would otherwise use employees;

(2) **Is under the direct control of the agency** or institution with respect to the use and maintenance of education records; and

(3) Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

(ii) An educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records **in which they have legitimate educational interests**. An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement in paragraph (a)(1)(i)(A) of this section.

(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**, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

(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.

(5) ...

(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) Nothing in the Act or this part prevents a State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section **from entering into agreements with organizations conducting studies under paragraph (a)(6)(i)¹³ of this section** and redisclosing personally identifiable information from education records on behalf of educational agencies and institutions that disclosed the information to the State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section in accordance with the requirements of § 99.33(b).

(iii) An educational agency or institution **may disclose personally identifiable information under paragraph (a)(6)(i) of this section**, and a State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section **may redisclose** personally identifiable information under paragraph (a)(6)(i) and (a)(6)(ii) 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 that have legitimate interests in the information;

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

(C) The educational agency or institution or the State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section **enters into a written agreement** with the organization that -

(1) **Specifies the purpose, scope, and duration** of the study or studies and the information to be disclosed;

(2) Requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement;

(3) Requires the organization to conduct the study in a manner that does not permit personal identification of parents and students, as defined in this part, by **anyone other than representatives of the organization** with legitimate interests;

and

(4) Requires the organization **to destroy all personally identifiable information** when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be destroyed.

(iv) An educational agency or institution or State or local educational authority or Federal agency headed by an official listed in paragraph (a)(3) of this section is not required to initiate a study or agree with or endorse the conclusions or results of the study.

(v) 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

¹³ That references the portion immediately above, (a)(6)(i), which authorizes the release of such personally identifiable information in order to “improve instruction” and develop “predictive tests.”

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**;

(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; or

(C) An **ex parte court order** obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.¹⁴

(iii)¹⁵

(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 § 99.36.¹⁶

(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 student¹⁷ 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**.¹⁸ 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**

¹⁴ Title 18 of the United States Code is related to federal crimes and the two listed in this subsection relate to acts of terrorism.

¹⁵ In a suit against a public school or college or university, the plaintiff, whether it is the institution, parent, or adult student, is authorized to release education records.

¹⁶ This relates to a threat to the health and safety of a student and other individuals.

¹⁷ Student is younger than 18.

¹⁸ A “non-forcible sex offense” constitutes statutory rape or incest as defined in Appendix A to 34 CFR Part 99, available at: https://www.law.cornell.edu/cfr/text/34/appendix-A_to_part_99

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.

(16) The disclosure concerns sex offenders and other individuals required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14071, and the information was provided to the educational agency or institution under 42 U.S.C. 14071 and applicable Federal guidelines.

(b)

(1) De-identified records and information. An educational agency or institution, or a party that has received education records or information from education records under this part, **may release the records** or information **without the consent required by § 99.30 after the removal of all personally identifiable information** provided that the educational agency or institution or other party has made a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information.

(2) An educational agency or institution, or a party that has received education records or information from education records under this part, **may release de-identified student level data** from education records for the purpose of education research **by attaching a code to each record** that may allow the recipient to match information received from the same source, provided that -

(i) An educational agency or institution or other party that releases de-identified data under paragraph (b) (2) of this section does not disclose any information about how it generates and assigns a **record code**, or that would **allow a recipient to identify a student based on a record code**;

(ii) The record code is used for no purpose other than identifying a de-identified record for purposes of education research and cannot be used to ascertain personally identifiable information about a student; and

(iii) The record code is **not based on a student's social security number** or other personal information.

(c) An educational agency or institution must use **reasonable methods to identify and authenticate the identity of parents, students**, school officials, and any other parties **to whom the agency or institution discloses personally identifiable information** from education records.

(d) Paragraphs (a) and (b) of this section do not require an educational agency or institution or any other party to disclose education records or information from education records **to any party except for parties** under paragraph (a)(12) of this section.¹⁹

¹⁹ In other words, parents, (a)(12), are entitled to the records.

34 CFR § 99.32 What recordkeeping requirements exist concerning requests and disclosures?

This regulation details the requirements to keep records of each request for access, who accessed the records and the nature of their legitimate interest to access the records. It is not included here, but is available at Cornell LII.²⁰

34 CFR § 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)
 - (1) 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 -
 - ...

34 CFR § 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)²¹ 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 or is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer;
 - (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:

²⁰ <https://www.law.cornell.edu/cfr/text/34/99.32>

²¹ This describes disclosure where the student intends to enroll and student has authorized the disclosure.

- (1) The student is enrolled in or receives services from the other agency or institution; and
- and
- (2) The disclosure meets the requirements of paragraph (a) of this section.

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

This regulation authorizes the disclosure of information to and from state and local education officials “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 that relate to those programs.” It is not included here but is available at Cornell LII.²²

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

This regulation explains that “(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals . . . (c) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals.” The full regulation is not here but is available from Cornell LII.²³

34 CFR § 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 complying with the notice** and opt out conditions in paragraph (a) of this section. However, the agency or institution must continue to honor any valid request to opt out of the disclosure of directory information made while a student was in attendance unless the student rescinds the opt out request.

(c) A parent or eligible student **may not** use the right under paragraph (a)(2) of this section to **opt out** of directory information disclosures to -

- (1) Prevent an educational agency or institution from disclosing or requiring a student to disclose the student’s **name, identifier, or institutional email address in a class** in which the student is enrolled; or
- (2) Prevent an educational agency or institution **from requiring a student to wear**, to display publicly, or to disclose **a student ID card or badge** that exhibits information that may be designated as directory information under § 99.3 and that has been properly designated by the educational agency or institution as directory information in the public notice provided under paragraph (a)(1) of this section.

22 <https://www.law.cornell.edu/cfr/text/34/99.35>

23 <https://www.law.cornell.edu/cfr/text/34/99.36>

(d) In its public notice to parents and eligible students in attendance at the agency or institution that is described in paragraph (a) of this section, an educational agency or institution may specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both. When an educational agency or institution specifies that disclosure of directory information will be limited to specific parties, for specific purposes, or both, the educational agency or institution must limit its directory information disclosures to those specified in its public notice that is described in paragraph (a) of this section.

(e) An educational agency or institution may not disclose or confirm directory information without meeting the written consent requirements in § 99.30 if a student's social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student's records.

34 CFR § 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.

34 CFR § 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 non-forcible sex offenses?

This regulation authorizes the nonconsensual disclosure of records about alleged crimes of violence, as defined in the regulation. It is not included here.

34 CFR Part 99, Subpart E - What Are the Enforcement Procedures?

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

The Office of the Chief Privacy Officer, USDOE, is authorized to "Investigate, process, and review complaints and violations under the Act and this part . . . [and provide] technical assistance to ensure compliance with the Act and this part." The Office of Administrative Law Judges to act as the Review Board to enforce the Act with respect to the applicable agencies. FERPA does not provide a private right of action with citizens to enforce violations. The regulation is not included here.

34 CFR § 99.61 What responsibility does an educational agency or institution, a recipient of Department funds, or a third party outside of 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 must notify the Office within 45 days, giving the text and citation of the conflicting law. If another recipient of Department funds under any program administered by the Secretary or a third

party to which personally identifiable information from education records has been non-consensually disclosed determines that it cannot comply with the Act or this part due to a conflict with State or local law, it also must notify the Office within 45 days, giving the text and citation of the conflicting law.

34 CFR § 99.62 What information must an educational agency or institution or other recipient of Department funds submit to the Office?

The Office may require an educational agency or institution, other recipient of Department funds under any program administered by the Secretary to which personally identifiable information from education records is non-consensually disclosed, or any third party outside of an educational agency or institution to which personally identifiable information from education records is non-consensually disclosed to submit reports, information on policies and procedures, annual notifications, training materials, or other information necessary to carry out the Office's enforcement responsibilities under the Act or this part.

34 CFR § 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, SW., Washington, DC 20202.

34 CFR § 99.64 What is the investigation procedure?

(a) A complaint **must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.** A complaint does not have to allege that a violation is based on a policy or practice of the educational agency or institution, other recipient of Department funds under any program administered by the Secretary, or any third party outside of an educational agency or institution.

(b) The Office **investigates a timely complaint filed by a parent or eligible student,** or conducts its own investigation when no complaint has been filed or a complaint has been withdrawn, to determine whether an educational agency or institution or other recipient of Department funds under any program administered by the Secretary has failed to comply with a provision of the Act or this part. **If the Office determines that an educational agency or institution or other recipient of Department funds under any program administered by the Secretary has failed to comply with a provision of the Act or this part,** it may also determine whether the failure to comply is based on a policy or practice of the agency or institution or other recipient. The Office also investigates a timely complaint filed by a parent or eligible student, or conducts its own investigation when no complaint has been filed or a complaint has been withdrawn, to determine whether a third party outside of the educational agency or institution has failed to comply with the provisions of § 99.31(a)(6)(iii)(B) or has improperly redisclosed personally identifiable information from education records in violation of § 99.33.

(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.

34 CFR § 99.65 What is the content of the notice of investigation issued by the Office?

(a) The Office notifies in writing the complainant, if any, and the educational agency or institution, the recipient of

Department funds under any program administered by the Secretary, or the third party outside of an educational agency or institution if it initiates an investigation under § 99.64(b). **The written notice -**

- (1) **Includes the substance of the allegations** against the educational agency or institution, other recipient, or third party; **and**
 - (2) **Directs the agency** or institution, other recipient, or third party **to submit a written response** and other relevant information, as set forth in § 99.62, within a specified period of time, including information about its policies and practices regarding education records.
- (b) The Office notifies the complainant if it does not initiate an investigation because the complaint fails to meet the requirements of § 99.64.

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

“The Office reviews a complaint . . . provides to the complainant [and educational agency] . . . a written notice of its findings and the basis for its findings . . . [and] includes a statement of the specific steps that the agency or institution or other recipient must take to comply.” The full regulation is not included here.

34 CFR § 99.67 How does the Secretary enforce decisions?

“If an educational agency . . . does not comply during the period of time set under § 99.66(c), the Secretary may . . . withhold further payments . . . issue a cease and desist order; or . . . [t]erminate eligibility to receive funding.” The full regulation is not included here.

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