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

A. Any individual who is, or has been, in attendance at UNC-CH has the right to inspect and review his/her education records. "Education records" are those records directly related to a student that are maintained by an educational institution. The term does not include:

1. Records that are in the sole possession of their maker and are not revealed to anyone else except a temporary substitute;

2. Records created and maintained by the University Police for law enforcement purposes;

3. Records relating solely to an employee of UNC-CH in his/her capacity as an employee that are not available for any other purposes (however, records relating to a UNC-CH student, who is employed as a result of his/her status as a student, are education records);

4. Student medical records created, maintained, and/or used by a medical professional or paraprofessional only in connection with provision of medical
treatment to the student, that are not disclosed to anyone other than the
individuals providing the treatment;3

5. Records that contain only information relating to a person after s/he was no
longer a student, such as alumni records.

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

7. Records maintained in connection with a student’s application for admission
to a UNC-CH School or program in which s/he is not enrolled, unless the
student is accepted and attends that School or program. Additionally, under
N.C. General Statutes 132-1.1(f), admissions records are not public records.

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

1. Financial records and statements of his/her parents;

2. Confidential letters and statements of recommendation that were placed in
his/her education records before January 1, 1975 if they are used only for the
purposes for which they were intended; and

3. Confidential letters and statements of recommendation concerning
admission to an educational institution, an application for employment, or
receipt of an honor that were placed in his/her education records after January
1, 1975 where the student has waived (in writing) his/her right to inspect those
letters and statements.4

4. If the student’s education records contain information on another student,
each student may inspect only his/her own information.

C. A student who wishes to inspect his/her education records must file a written
request to inspect them with the individual who has custody of the records
(University Registrar, Academic Dean, Department Chair, Directory of Housing
and Residential Education, etc.) In some cases the student will be able to review
the records immediately while, in other cases, a certain amount of time will be
needed to assemble the records for inspection, but the student will not be
required to wait more than 45 days after the date of the request before being
allowed to inspect his/her education records. A student who exercises the right
to review his/her education records is also entitled to a response from the
institution to reasonable requests for explanations and interpretations of those records. If a student has asked to inspect or review his/her education records, none of those records shall be destroyed until the student's request to inspect or review has been honored.

D. Normally the University will provide a student with a copy of his/her education records upon request. A student will always be provided with a copy of his/her education records where failure to provide such a copy would effectively prevent exercise of the right to inspect and review education records. The office providing the copies may charge five (5) cents for each copy but will not charge a fee to search for or retrieve the records in question.

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

A student may not receive an official copy of his/her academic transcript if there is a "hold" on that record because of an unpaid account, nor under normal circumstances may s/he receive an official or certified-true copy of a document which exists elsewhere (for example, a photocopied transcript from the student's previous educational institution when a copy of the original transcript may be obtained from that institution).  

University Offices That May Maintain Education Records

E. Education records are maintained by many University offices and officials. The University offices that are most likely to maintain education records are listed below:

1. Academic departments and schools;

2. Alumni Office;

3. Athletic Department;

4. College of Arts and Sciences;

5. Department of Housing and Residential Education;
6. Division of Continuing Education;

7. Faculty members in their roles as advisers and teachers;

8. General College;

9. Graduate School;

10. Human Resources Employee Records Department (for student teaching assistant, research assistant, and graduate assistant records);

11. Office of Scholarships and Student Aid (also for work-study student records);

12. Summer School Office;

13. Office of the University Registrar;

14. Office of the Vice Chancellor for Student Affairs;

15. School of Dentistry;

16. School of Law;

17. School of Medicine;

18. Campus Health Services;

19. University administrative and business offices;

20. University Career Services;

21. Office of Student Accounts and University Receivables;

22. Veterans Services.

Any University office or official may have an education record about a student, including offices not listed above. A student is in the best position to determine which offices are likely to have his/her education records. For example,
if the student never enrolled in a Chemistry course, it is unlikely that the Department of Chemistry would have any of his/her education records.

A complete listing of University offices, faculty, and staff, including addresses and telephone numbers, appears in the UNC-CH Campus Directory. Requests to inspect education records should be addressed to individual faculty members, Deans of schools, Directors of University offices, or Chairs of academic departments, as appropriate.

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

A. A student who believes that information contained in his/her education records is inaccurate or misleading or violates his/her privacy rights may discuss these concerns informally with the custodian of the records in question and may request that they be amended. If the custodian of the records agrees with the request for amendment, the records will be amended. If not, the custodian will notify the student within a reasonable period of time that the records will not be amended and will inform the student of his/her right to a formal hearing. Cases involving enrolled students will be heard by the Student Grievance Committee. Cases involving former students will be heard administratively by UNC-CH officials. In lieu of requesting a formal hearing, if the student and the institution agree that an explanatory statement alone is the appropriate remedy, the student has the right to place a statement in his/her education records commenting on the information in question and/or setting forth any reasons for disagreeing with the records custodian's decision not to amend. Any such statement will be maintained as part of the student's education records as long as the record, or the contested portion of the record, is maintained by the University, and the statement will be disclosed to any party to whom the contested portion of the student's education record is disclosed thereafter.

B. A student request for a formal hearing must be submitted within 30 calendar days after the student receives notice from the records custodian that the records will not be amended and that the student has a right to a formal hearing and must be addressed to the Associate University Counsel, CB# 9105, who will promptly refer it to the appropriate person or panel for hearing. The request for hearing must be in writing and signed by the student and must contain:
   1. a statement that the student is alleging a FERPA violation;
   2. a summary of the evidence and arguments the student would present at a hearing;
3. the date the student received the above-referenced notice from the records custodian; and
4. information about the student’s attempts to resolve the matter with the records custodian and the results of these attempts.

C. A hearing will be held on the matter within a reasonable time after receipt of the student's request, and s/he will be given reasonable advance notice of the date, place, and time of the hearing.

D. The student will be afforded a full and fair opportunity to present evidence relevant to the issues raised in the complaint and may be assisted by individuals of the student's choice at his/her own expense, including an attorney.

E. The panel's decision will be based solely on the evidence presented at the hearing and will include a summary of the evidence and the reasons for the decision. The student will be notified in writing of its findings and recommendations within a reasonable period of time after the conclusion of the hearing. If the panel decides the challenged information from the student's education records is inaccurate, misleading or otherwise in violation of the privacy rights of the student, it will recommend that the appropriate University official amend the student's education records accordingly, and that official will inform the student in writing when the amendment has been made.

F. If the panel decides that the challenged information from the student's education records is not inaccurate, misleading or otherwise in violation of the privacy rights of the student, it will inform the student that s/he has the right to place a statement in his/her education records commenting on the information and/or setting forth any reasons for disagreeing with the panel's decision. Any such statement will be maintained and disclosed as set forth in Section II.A. above.

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

A. With certain exceptions, listed in III.C. below, UNC-CH will not disclose personally identifiable information from a student's education records without the student's prior written consent. To be effective the written consent must be signed and dated by the student and must include:

1. A specification of the records to be disclosed;
2. The purpose of the disclosure; and
3. The party or class of parties to whom the disclosure may be made.

B. When personally identifiable information is disclosed from a student's education records pursuant to his/her written consent, the student may also, upon request, obtain a copy of the information so disclosed.

C. UNC-CH may disclose personally identifiable information from a student's education records without his/her prior written consent in the following situations, after using reasonable methods to identify and authenticate the identity of the parties to whom it discloses such information:

1. Disclosure to teachers, officials, and employees of UNC-CH (including employees of the UNC-CH Department of Public Safety); disclosure to contractors of UNC-CH to whom the University has outsourced institutional services or functions (for example, the National Student Clearinghouse, Blackboard, entities providing practical or clinical training for students, and other similar or dissimilar contractors); disclosure to UNC-CH students when they are functioning in an official University capacity (for example, the Honor Court); and disclosure to employees of the General Administration of The University of North Carolina system. In each case disclosure may be made to these individuals and entities only if they have a legitimate educational interest in the information. They are deemed to have a "legitimate educational interest" in the information if it is necessary or desirable for them to obtain it in order to carry out their official duties or their contractual obligations to the University and/or to implement the policies of The University of North Carolina, or if it is in the educational interest of the student in question for such individuals and entities to have the information.

2. Disclosure to officials of another institution in which the student seeks or intends to enroll and disclosure to officials of another institution in which a currently enrolled UNC-CH student is contemporaneously enrolled. The University may also make disclosures to an institution where a former UNC-CH student is already enrolled, as long as the disclosures are for purposes related to the student’s enrollment or transfer. Students are hereby notified that it is the policy of the University of North Carolina at Chapel Hill to forward education records upon request to officials of other schools or school systems in these situations without notifying the student of such transfer of records. Upon request the student will be provided with a copy of the education records so transferred, and may have a hearing as set out in Section II above.
3. Disclosure to authorized representatives of (a) the Comptroller General of the United States, (b) the Attorney General of the United States, (c) the U.S. Secretary of Education, or (d) State and local educational authorities 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 relating to such programs.  

4. Disclosure in connection with financial aid for which a student has applied or which s/he has received. Information may only be disclosed under this section to determine a student's eligibility for financial aid, to determine the amount of the aid, to determine the conditions of the aid, or to enforce the terms and conditions of the aid.

5. Disclosure to State and local officials to whom information is specifically allowed to be disclosed pursuant to State statute adopted  
   (a) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and that system’s ability to serve effectively the student whose records are released, or  
   (b) after November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and that system’s ability to serve effectively, prior to adjudication, the student whose records are released, and if the officials to whom the information is disclosed certify in writing to the University that the information will not be disclosed to any other party without the student’s written consent, except as provided under State law.

6. Disclosure 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. Such studies must be conducted in a way that does not allow the personal identification of parents and students by anyone other than representatives of the organization who have legitimate interests in the information.

The University is not required to initiate such a study of its data or to agree with or endorse the study’s conclusions or results. If it does decide to initiate such a study, the University must first enter into a written agreement with the organization conducting the study. That agreement must
a. specify the purpose, scope and duration of the study or studies and the information to be disclosed;
b. require that the organization use personally identifiable information from education records only to meet the purpose or purposes of the study as spelled out in the agreement;
c. require the organization to conduct the study in such a way that there is no personal identification of parents and students by anyone other than representatives of the organization who have legitimate interests;
d. require the organization to return to the University or destroy the personally identifiable information when it is no longer needed for purposes of the study; and
e. specify the time period within which the organization must either return or destroy the personally identifiable information.

7. Disclosure to accrediting organizations in order to carry out their accrediting functions.

8. Disclosure to a student's parents, if s/he is their dependent for federal income tax purposes. To establish that the student is their dependent for federal income tax purposes, the parents complete a form and submit it to the Office of the University Registrar along with a copy of their federal tax return. This eligibility must be established annually. For more information, see the Registrar’s website, http://regweb.unc.edu/students/tax_qualification_form.php

9. Disclosure pursuant to a judicial order or lawfully issued subpoena. With some exceptions noted in the endnote, UNC-CH will make a reasonable effort to notify the student of the order or subpoena before complying therewith so the student will have the opportunity to seek protective action. If another party receives a court order or lawfully issued subpoena and re-discloses personally identifiable information from education records on the University’s behalf, that party is responsible for making a reasonable effort to notify the student of the order or subpoena before complying with it.

10. If the University initiates legal action against a student or a student’s parent, the University will disclose to the court the student’s relevant education records in connection with the legal action without a court order or subpoena. If the student or his/her parent initiates legal action against the University, the University will disclose to the court, without a court order or subpoena, the student’s relevant education records in order to defend itself.
11. Disclosure of a student’s personally identifiable information to appropriate parties, including the student’s parents, in an emergency, if the information is necessary to protect the health or safety of the student or others. It is the policy of The University of North Carolina at Chapel Hill that only the Dean of Students Office or the Office of University Counsel may determine whether a situation is a health or safety emergency.

When determining whether a health or safety emergency exists, the University considers the totality of the circumstances pertaining to a threat to health or safety of a student or others, and if it determines that there is an articulable and significant threat to their health or safety, it may disclose information from education records to anyone who needs to know the information in order to protect the health or safety of the student or others. In such situations, the University must record (a) the articulable and significant threat to health or safety of a student or others that formed the basis for the disclosure and (b) to whom the University disclosed the information. This record shall be included in the record of disclosures discussed in section III.F. of this policy.

12. Disclosure to the student him/herself.

13. Disclosure of "directory information", which the University defines as: the student's name; address (local and grade/billing address); student e-mail address; telephone listing (local and grade/billing telephone numbers); date and place of birth; major field of study; class (freshman, senior, etc.); enrollment status (full-time, half-time, part-time); person ID number (PID); anticipated graduation date; participation in officially recognized activities and sports; weight and height of members of athletic teams; dates of attendance; degrees and awards received; the most recent previous educational agency or institution attended by the student; and the county, state and/or U.S. territory from which the student entered the University.

*Requesting non-disclosure of directory information*

Students who do not wish to have any or all directory information made public without their prior consent must come in person to the Office of the University Registrar (Suite 3100, SASB North) and fill our a “Requesting FERPA On Student’s Record, Non-Disclosure of Information” form in order to place a FERPA Privacy Flag on their records. Students who complete the form will receive counseling on the effects of placing a FERPA Privacy Flag on their
records. Students who are outside commuting distance to the UNC-CH campus may contact the Records area at 919-962-0495 for further instructions.

If a student chooses to place a FERPA Privacy Flag on his or her records, it will remain in effect until her or she removes it, and the student will not be able to receive any information about his or her records by telephone. Instead, the student must come in person and show photo ID or send a written request acknowledging that he or she has placed a restriction on his or her record but requires specific information.

**Canceling a non-disclosure request**

To remove a FERPA Privacy Flag, a student must come in person to the Registration area of the Office of the University Registrar (Suite 3100, SASB North) and fill out a “Requesting Removal of a Previously Set FERPA Privacy Flag from a Student’s Record, Remove Previously Set Restrictions on Release of Information” form. Students who are outside commuting distance of the UNC-CH campus may contact the Registration area at 919-962-9851 for further instructions.

**Blocking certain information from the directory**

If a student wishes to block certain information from the online campus directory, but does not want to place a FERPA Privacy Flag on his or her record, he or she can do this through the portal (my.UNC.edu), on the “Updating Personal Information” section of the directory. Checking the “Public” box next to an address or phone number would include that item in the directory. Removing the checkmark from the “Public” box would restrict that information from the directory. If a student has questions about restricting information, he or she may contact the Registration area at 919-962-9851.

In order to assure that new students have a meaningful opportunity to request that their directory information not be made public, it is the policy of the University that it will not release directory information on entering undergraduate students until after the last day for late registration for the Fall semester.

14. Disclosure, on request, of the final results of a disciplinary proceeding where a student has allegedly perpetrated a crime of violence or non-forcible sex offense and, has been found, by that conduct, to have violated University
rules or policies. In such a case, the following information will be disclosed: the student’s name; the rule or policy that was violated; any essential findings supporting the conclusion that the violation was committed; the disciplinary sanction imposed; the date the sanction was imposed; and the duration of the sanction. The names of victims, witnesses, or other students will not be disclosed without their prior written consent.

15. Disclosure, on request, to the victim of an alleged crime of violence or non-forcible sex offense of the final results of the campus disciplinary proceeding against the alleged perpetrator, whether or not the alleged perpetrator was found to have committed the violation charged. The following information will be disclosed: the name of the alleged perpetrator; the rule or policy violated, if any; essential findings supporting the conclusion that the violation was committed; the disciplinary sanction imposed, if any; the date any sanction was imposed and its duration. If the alleged victim is deceased as a result of that crime or offense, the victim’s next of kin shall have the right, on request, to receive the information described above.

16. Disclosure of information concerning 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] if the information was provided to the University under that statute and applicable federal guidelines.

17. When a student is found to have violated laws or University policies concerning use or possession of alcohol or a controlled substance, the University reserves the right to disclose this information to the student’s parent or guardian if the student is under the age of 21 at the time the information is disclosed to his or her parent.

As a courtesy to the families of recently-deceased students who were enrolled at the time of death, the University generally will not release information from their education records or one year without the consent of the deceased student’s next-of-kin.

**Release of De-identified Data**

D. The University may release data from education records without the student’s consent if all personally identifiable information is removed before the data is released. Before releasing this de-identified data, the University must make a reasonable determination that a student is not personally identifiable
either through the release in question or multiple releases, and in making that determination, the University must take into account other reasonably available information which, when combined with the de-identified data, might make the data personally identifiable.

The University may release de-identified data from education records for the purpose of education research by attaching a code to each de-identified student record that may allow the recipient to match it with other information received from the University if

(i) the University does not disclose any information about how it generates and assigns the record code or information that would allow the recipient to identify a student based on the record code;

(ii) the record code is only used to identify 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.

Conditions for Re-disclosure

E. When personally identifiable information from education records is disclosed to another party, that party may not further disclose the information without the student's prior written consent, UNLESS

(a) The initial disclosure is made with the understanding that the party receiving the information may re-disclose it to specified individuals or organizations who meet the requirements of III.C. above, and;

(b) The record of disclosures (see III.F. below) includes the names of the additional parties to whom the information may be disclosed or, if the initial disclosure was to a State or local educational authority or Federal official or agency, that authority, official or agency is keeping a record of disclosures as discussed in III. F. below.

When the University discloses information to another party, it will inform that party of the requirements set out in this section. This does not apply to disclosures made under III.C. 8,9,12,13, 14, 16, and 17. It also does not apply to
disclosures to the accuser and accused made under III.C. 15 where the alleged violation is a sex offense as required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act [20 U.S.C. 1092(f)].

If the Department of Education determines that a party to whom such information was released permitted access to the information in violation of this section or failed to provide notice of a subpoena for that information as set out in III.C.9 above, that party may be denied access to information from UNC-CH education records for five years.

Record of Disclosures and Record of Further Disclosures

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

If the disclosure was to a State or local educational authority or a Federal official or agency under III. C. (3) above, the record of disclosures must also include the names of State and local educational authorities and Federal officials and agencies that may re-disclose personally identifiable information from the student’s record without the student’s consent.

A State or local educational authority or a Federal official or agency that re-discloses personally identifiable information from a student’s record without the student’s consent (whether it originally received the information from the University or from another State or local educational authority or Federal official or agency entitled to receive it under III.C. 3 above) must keep a record of the names of the additional parties to whom they disclosed the information and the section of III.C. above under which the information was disclosed to each party (a “record of further disclosures.”)

When a student asks to inspect the University’s record of disclosures, the University must obtain a copy of the record of further disclosures from the applicable State or local educational authorities or Federal officials or agencies so the student may also inspect that record. Once the University requests the record of further disclosures, it must be provided to the University within 30 days.
The record of disclosures will not include:

(1) disclosures to the student,
(2) disclosures to school officials with legitimate educational interests,
(3) disclosures pursuant to the student's written consent,
(4) disclosures of "directory information" as defined in III.C.13 above,
(5) disclosures pursuant to a Federal grand jury’s subpoena or other law enforcement subpoenas where the court or other agency issuing the subpoena has ordered the University not to disclose the existence or contents of the subpoena or the information disclosed in response to it, or
(6) disclosures pursuant to an ex parte court order obtained by the United States Attorney General (or certain designees) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) [federal crime of terrorism] or an act of domestic or international terrorism.

The record of disclosures must be maintained with the student’s education records as long as the records themselves are maintained, and it may be inspected only by the student, the records custodian and his/her assistants, and school or Federal officials auditing the recordkeeping procedures of UNC-CH.

IV. Limit to FERPA Protection of Education Records

FERPA's protection of personally-identifiable information in a student's education records ends at the time of a student's death. Unless it has information to the contrary, 75 years after the date the records were first created, the University will presume that the student is deceased. Thereafter the student's education records will be open.

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

Complaints alleging violations by UNC-CH of the provisions of FERPA or the regulations promulgated thereunder may be submitted in writing to Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202, within 180 days of the date of the alleged violation or the date the complainant knew or reasonably should have known of the alleged violation. The Office may extend the time period if the complainant has a good reason for having missed the deadline.
University faculty and staff may obtain further information on FERPA and the regulations promulgated thereunder by the U.S. Department of Education, from the Office of University Counsel.

NOTES

1 Throughout this document the term "student" shall be understood to refer to both current and former students unless otherwise noted.

2 “Attendance” includes more than traditional in-person classroom presence. In addition it includes such things as correspondence courses, and other distance learning methodologies such as videoconferences, satellite, Internet and other electronic information and telecommunications technologies. It also includes the period when a person is working under a work-study program.

3 While a student may not be able to inspect his/her medical records, these records may be personally reviewed by a physician, or other appropriate professional, of the student's choice.

4 If the student has waived his/her right to inspect, the University, on request, will give the student the names of individuals who provided the recommendations.

5 If failure to provide a copy of the records discussed in this paragraph would effectively prevent the student from exercising his/her right to inspect and review his/her education records, an unofficial copy of these documents, conspicuously labeled as such, will be provided.

6 No UNC-CH official who has a direct interest in the outcome of the hearing shall sit on a panel that hears the case.

7 "Personally identifiable" means that the information includes the name of a student, his/her parent or a member of the student's family; the address of a student or his/her family; or a personal identifier such as the student's social security number; or biometric record. (A biometric record is a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual, for example: fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting.) It also includes indirect identifiers such as date or place of birth and mother’s maiden name and other information that is linked or linkable to a specific student in a way that would allow an ordinary member of the school community to identify the student with reasonable certainty. Information would also be considered “personally identifiable” if the University reasonably believes that the person requesting it knows the identity of the student to whom the education record relates, for example, a request for the grade point averages of all students who won a certain scholarship in a year when only one student won that particular scholarship.

8 “Disclosure” means permitting access to or releasing, transferring or otherwise communicating personally identifiable information in education records by any means, including but not limited to oral, written, or electronic means, to anyone except the party that provided or created the record in question.

9 Unless the collection of personally identifiable information is specifically authorized by Federal law, or the student has consented to it in writing, recipients of personally identifiable information under this section must protect it in such a way that students and their families cannot be identified, by anyone except the listed officials, and personally identifiable data must be destroyed when it is no longer needed. However, these officials and agencies may make further disclosures of personally identifiable information from education records on behalf of the University if they (1) record the names of the additional parties to
whom they release the information and their legitimate educational interests in the information and (2) provide the University, on request, with a copy of that record of further disclosures within 30 days of the request.

10 In the case of a federal grand jury subpoena or any other subpoena issued for a law enforcement purpose, if the court or other issuing agency so orders, the University will not disclose to the student or anyone else the existence or contents of the subpoena or any information furnished in response to the subpoena. If the University receives an ex parte court order obtained by the United States Attorney General (or a designee of the Attorney General not lower than an Assistant Attorney General), and the court order concerns investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) [Federal crime of terrorism] or an act of domestic or international terrorism [18 U.S.C. 2331], the University will not disclose to the student or anyone else the existence or contents of the court order or any information furnished in response thereto.

11 “Final results” is defined as the decision of the initial hearing official or body, regardless of whether the student has filed an appeal of that decision. This provision only applies to final results determined on or after October 7, 1998.

12 Crime of violence” is defined as:
- Arson or attempted arson
- Simple assault
- Aggravated assault
- Intimidation (placing another in reasonable fear of bodily harm through the use of threatening words or other conduct without displaying a weapon or committing a physical attack)
- Burglary
- Negligent manslaughter
- Nonnegligent manslaughter
- Murder
- Destruction/damage/vandalism of property
- Kidnapping/abduction
- Robbery or attempted robbery
- Forcible sex offense

“Non-forcible sex offense” is defined as incest or statutory rape.
§ 99.1 To which educational agencies or institutions do these regulations apply?

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

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

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

(b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive 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)
§ 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 to § 99.2: 34 CFR 300.610 through 300.626 contain requirements regarding the confidentiality of information relating to children with disabilities who receive evaluations, services or other benefits under Part B of the Individuals with Disabilities Education Act (IDEA). 34 CFR 303.402 and 303.460 identify the confidentiality of information requirements regarding children and infants and toddlers with disabilities and their families who receive evaluations, services, or other benefits under Part C of IDEA. 34 CFR 300.610 through 300.627 contain the confidentiality of information requirements that apply to personally identifiable data, information, and records collected or maintained pursuant to Part B of the IDEA.

§ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:


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

Attendance includes, but is not limited to--

(a) Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and

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

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

Authorized representative means any entity or individual designated by a State or local educational authority or an agency headed by an official listed in § 99.31(a)(3) to conduct—with respect to Federal- or State-supported education programs--any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs.

(Authority: 20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5))
Biometric record, as used in the definition of personally identifiable information, means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

(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.

(a) Directory information 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; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; 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.

(b) Directory information does not include a student's--

(1) Social security number; or

(2) Student identification (ID) number, except as provided in paragraph (c) of this definition.

(c) In accordance with paragraphs (a) and (b) of this definition, directory information includes--

(1) A student ID number, user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password or other factor known or possessed only by the authorized user; and

(2) A student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.
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 by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

Early childhood education program means--

(a) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(b) A State licensed or regulated child care program; or

(c) A program that--

(1) Serves children from birth through age six that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and

(2) Is--

(i) A State prekindergarten program;

(ii) A program authorized under section 619 or part C of the Individuals with Disabilities Education Act; or

(iii) A program operated by a local educational agency.

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

Education program means any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or
institutions.

(Authority: 20 U.S.C. 1232g(b)(3), (b)(5))

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 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 attend-
ance as a student.

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

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

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

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

Institution of postsecondary education means an institution that provides education to stu-
dents 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

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.

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

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

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

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

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

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

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

§ 99.4 What are the rights of parents?

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

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

§ 99.5 What are the rights of students?

(a)(1) 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.

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

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

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

§ 99.6 [Reserved]

§ 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)).

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

(a)(1) Law enforcement unit means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to--

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.
(b)(1) Records of a law enforcement unit means those records, files, documents, and other materials that are--

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean--

(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of § 99.30, while in the possession of the law enforcement unit.

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

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

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

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

(a) Except as limited under § 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to--
(1) Any educational agency or institution; and

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

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

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

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

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

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

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

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

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

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

(Authority: 20 U.S.C. 1232g(a)(1)(A) and (B))
§ 99.11 May an educational agency or institution charge a fee for copies of education records?

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

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

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

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

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

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

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

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

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

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

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

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.
(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under § 99.21.

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

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

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

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

(i) Amend the record accordingly; and

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

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

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

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

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

(Authority: 20 U.S.C. 1232g(a)(2))
§ 99.22 What minimum requirements exist for the conduct of a hearing?

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

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

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

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

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

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

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

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

Subpart D. May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

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

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

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and
(3) Identify the party or class of parties to whom the disclosure may be made.

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

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

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

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))

§ 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.

(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.

Note: Section 4155(b) of the No Child Left Behind Act of 2001, 20 U.S.C. 7165(b), requires each State to assure the Secretary of Education that it has a procedure in place to facilitate the transfer of disciplinary records with respect to a suspension or expulsion of a student by a local educational agency to any private or public elementary or secondary school in which the student is subsequently enrolled or seeks, intends, or is instructed 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 State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of § 99.38.

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

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

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

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) 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 agree-
ments with organizations conducting studies under paragraph (a)(6)(i) 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 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 any act of domestic or international terrorism as defined in 18 U.S.C. 2331.

(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.

(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 au-
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.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b), (h), (i), and (j)).

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution must maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student, as well as the names of State and local educational authorities and Federal officials and agencies listed in § 99.31(a)(3) that may make further disclosures of personally identifiable information from the student's education records without consent under § 99.33(b).

(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.

(4) An educational agency or institution must obtain a copy of the record of further disclosures maintained under paragraph (b)(2) of this section and make it available in response to a parent's or eligible student's request to review the record required under paragraph (a)(1) of this section.

(5) An educational agency or institution must record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception in § 99.31(a)(10) and § 99.36:

(i) The articulable and significant threat to the health or safety of a student or other indi-
viduals that formed the basis for the disclosure; and

(ii) The parties to whom the agency or institution disclosed the information.

(b)(1) Except as provided in paragraph (b)(2) of this section, if an educational agency or institution discloses personally identifiable information from education records with the understanding authorized under § 99.33(b), the record of the disclosure required under this section must include:

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

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

(2)(i) A State or local educational authority or Federal official or agency listed in § 99.31(a)(3) that makes further disclosures of information from education records under § 99.33(b) must record the names of the additional parties to which it discloses information on behalf of an educational agency or institution and their legitimate interests in the information under § 99.31 if the information was received from:

(A) An educational agency or institution that has not recorded the further disclosures under paragraph (b)(1) of this section; or

(B) Another State or local educational authority or Federal official or agency listed in § 99.31(a)(3).

(ii) A State or local educational authority or Federal official or agency that records further disclosures of information under paragraph (b)(2)(i) of this section may maintain the record by the student's class, school, district, or other appropriate grouping rather than by the name of the student.

(iii) Upon request of an educational agency or institution, a State or local educational authority or Federal official or agency listed in § 99.31(a)(3) that maintains a record of further disclosures under paragraph (b)(2)(i) of this section must provide a copy of the record of further disclosures to the educational agency or institution within a reasonable period of time not to exceed 30 days.

(c) The following parties may inspect the record relating to each student:
(1) The parent or eligible student.

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

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

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

(1) The parent or eligible student;

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

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

(4) A party seeking directory information; or

(5) A party seeking or receiving records in accordance with § 99.31(a)(9)(ii)(A) through (C).

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

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

§ 99.33 What limitations apply to the redisclosure of information?

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

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

(b)(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 re-
ceiving the information may make further disclosures of the information on behalf of the 
educational agency or institution if--

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

(ii)(A) The educational agency or institution has complied with the requirements of § 
99.32(b); or

(B) A State or local educational authority or Federal official or agency listed in § 
99.31(a)(3) has complied with the requirements of § 99.32(b)(2).

(2) A party that receives a court order or lawfully issued subpoena and rediscloses person-
ally identifiable information from education records on behalf of an educational agency or 
institution in response to that order or subpoena under § 99.31(a)(9) must provide the noti-
ification required under § 99.31(a)(9)(ii).

(c) Paragraph (a) of this section does not apply to disclosures under §§ 99.31(a)(8), (9), (11), 
(12), (14), (15), and (16), and to information that postsecondary institutions are required to 
disclose under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime 
Statistics Act, 20 U.S.C. 1092(f) (Clery Act), to the accuser and accused regarding the out-
come of any campus disciplinary proceeding brought alleging a sexual offense.

(d) An educational agency or institution must inform a party to whom disclosure is made of 
the requirements of paragraph (a) of this section except for disclosures made under §§ 
99.31(a)(8), (9), (11), (12), (14), (15), and (16), and to information that postsecondary insti-
tutions are required to disclose under the Clery Act to the accuser and accused regarding the 
outcome of any campus disciplinary proceeding brought alleging a sexual offense.

(e) [Reserved by 76 FR 75642]

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

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

(a) An educational agency or institution that discloses an education record under § 
99.31(a)(2) shall:
(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

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

(ii) The annual notification of the agency or institution under § 99.7 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll 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:

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

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

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

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

(a)(1) Authorized representatives of the officials or agencies headed by 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 that relate to those programs.

(2) The State or local educational authority or agency headed by an official listed in § 99.31(a)(3) is responsible for using reasonable methods to ensure to the greatest extent practicable that any entity or individual designated as its authorized representative--

(i) Uses personally identifiable information only to carry out an audit or evaluation of Fed-
eral- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements related to these programs;

(ii) Protects the personally identifiable information from further disclosures or other uses, except as authorized in paragraph (b)(1) of this section; and

(iii) Destroys the personally identifiable information in accordance with the requirements of paragraphs (b) and (c) of this section.

(3) The State or local educational authority or agency headed by an official listed in §99.31(a)(3) must use a written agreement to designate any authorized representative, other than an employee. The written agreement must--

(i) Designate the individual or entity as an authorized representative;

(ii) Specify--

(A) The personally identifiable information from education records to be disclosed;

(B) That the purpose for which the personally identifiable information from education records is disclosed to the authorized representative is to carry out an audit or evaluation of Federal- or State-supported education programs, or to enforce or to comply with Federal legal requirements that relate to those programs; and

(C) A description of the activity with sufficient specificity to make clear that the work falls within the exception of §99.31(a)(3), including a description of how the personally identifiable information from education records will be used;

(iii) Require the authorized representative to destroy personally identifiable information from education records when the information is no longer needed for the purpose specified;

(iv) Specify the time period in which the information must be destroyed; and

(v) Establish policies and procedures, consistent with the Act and other Federal and State confidentiality and privacy provisions, to protect personally identifiable information from education records from further disclosure (except back to the disclosing entity) and unauthorized use, including limiting use of personally identifiable information from education records to only authorized representatives with legitimate interests in the audit or evalu-
ation of a Federal- or State-supported education program or for compliance or enforcement of Federal legal requirements related to these 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 other than the State or local educational authority or agency headed by an official listed in § 99.31(a)(3) and their authorized representatives, except that the State or local educational authority or agency headed by an official listed in § 99.31(a)(3) may make further disclosures of personally identifiable information from education records on behalf of the educational agency or institution in accordance with the requirements of § 99.33(b); 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)(1)(C), (b)(3), and (b)(5))

§ 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, 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.

(b) Nothing in this Act or this part shall prevent an educational agency or institution from--

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school com-
munity;

(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) 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. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

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

§ 99.37 What conditions apply to disclosing directory information?

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

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

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

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

(b) An educational agency or institution may disclose directory information about former
students without 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.

(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.

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

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

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under § 99.31(a)(5)(i)(B).
(Authority: 20 U.S.C. 1232g(b)(1)(J))

§ 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?

As used in this part:

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

Arson

Assault offenses

Burglary

Criminal homicide--manslaughter by negligence

Criminal homicide--murder and nonnegligent manslaughter

Destruction/damage/vandalism of property

Kidnapping/abduction

Robbery

Forcible sex offenses.

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

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

Sanction imposed means a description of the disciplinary action taken by the institution, the date of its imposition, and its duration.
Violation committed means the institutional rules or code sections that were violated and any essential findings supporting the institution's conclusion that the violation was committed.

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

Subpart E. What Are the Enforcement Procedures?

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

(a) For the purposes of this subpart, “Office” means the Family Policy Compliance Office, U.S. Department of Education.

(b) The Secretary designates the Office to:

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term applicable program is defined in section 400 of the General Education Provisions Act.

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

§ 99.61 What responsibility does an educational agency or institution, 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.

(Authority: 20 U.S.C. 1232g(f))
§ 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.

(Authority: 20 U.S.C. 1232g(b)(4)(B), (f), and (g))

§ 99.63 Where are complaints filed?

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

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

§ 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.

(Authority: 20 U.S.C. 1232g(b)(4)(B), (f) and (g))

§ 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.

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

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

(a) The Office reviews a complaint, if any, information submitted by the educational agency or institution, other recipient of Department funds under any program administered by the Secretary, or third party outside of an educational agency or institution, and any other relevant information. The Office may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant, if any, and the educational agency or institution, other recipient, or third party a written notice of its findings
and the basis for its findings.

(c) If the Office finds that an educational agency or institution or other recipient has not complied with a provision of the Act or this part, it may also find that the failure to comply was based on a policy or practice of the agency or institution or other recipient. A notice of findings issued under paragraph (b) of this section to an educational agency or institution, or other recipient that has not complied with a provision of the Act or this part--

(1) Includes a statement of the specific steps that the agency or institution or other recipient 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 or other recipient may comply voluntarily.

(d) If the Office finds that a third party outside of an educational agency or institution has not complied with the provisions of § 99.31(a)(6)(iii)(B) or has improperly disclosed personally identifiable information from education records in violation of § 99.33, the Office's notice of findings issued under paragraph (b) of this section--

(1) Includes a statement of the specific steps that the third party outside of the educational 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 third party may comply voluntarily.

(Authority: 20 U.S.C. 1232g(b)(4)(B), (f), and (g))

§ 99.67 How does the Secretary enforce decisions?

(a) If an educational agency or institution or other recipient of Department funds under any program administered by the Secretary does not comply during the period of time set under § 99.66(c), the Secretary may take any legally available enforcement action in accordance with the Act, including, but not limited to, the following enforcement actions available in accordance with part D 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, other recipient, or third party has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution, other recipient, or third party with written notice of the decision and the basis for the decision.

(c) If the Office finds that a third party, outside the educational agency or institution, violates § 99.31(a)(6)(iii)(B), then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the violation of § 99.31(a)(6)(iii)(B) access to personally identifiable information from education records for at least five years.

(d) If the Office finds that a State or local educational authority, a Federal agency headed by an official listed in § 99.31(a)(3), or an authorized representative of a State or local educational authority or a Federal agency headed by an official listed in § 99.31(a)(3), improperly rediscloses personally identifiable information from education records, then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the improper redisclosure access to personally identifiable information from education records for at least five years.

(e) If the Office finds that a third party, outside the educational agency or institution, improperly rediscloses personally identifiable information from education records in violation of § 99.33 or fails to provide the notification required under § 99.33(b)(2), then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the violation access to personally identifiable information from education records for at least five years.

(Authority: 20 U.S.C. 1232g(b)(4)(B) and (f); 20 U.S.C. 1234c)


**Appendix A to Part 99--Crimes of Violence Definitions**

**Arson**

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

**Assault Offenses**

An unlawful attack by one person upon another.
Note: By definition there can be no “attempted” assaults, only “completed” assaults.

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

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

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

   Note: This offense includes stalking.

Burglary

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

Criminal Homicide--Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide--Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

Destruction/Damage/Vandalism of Property

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

Kidnapping/Abduction

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

   Note: Kidnapping/Abduction includes hostage taking.

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

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

Sex Offenses, Forcible

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

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

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

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

Note: An “object” or “instrument” is anything used by the offender other than the offender's genitalia. Examples are a finger, bottle, handgun, stick, etc.

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

Note: Forcible Fondling includes “Indecent Liberties” and “Child 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)