Recent discussions with campus representatives have revealed a need for an updated advisory regarding compliance with the Family Educational Rights and Privacy Act of 1974 (FERPA), commonly known as the Buckley Amendment. Attached is a copy of this office's August 20, 1976 Memorandum to Presidents (Vol. 76, No. 14). Although there have been few revisions to either the statute or its regulations since 1976, a summary of these changes and relevant court decisions are provided to assist you.

**Summary of Revisions**

A new section was added to the statute in 1979 to provide that State and local educational officials can be provided access to student records without the student's consent when such access is necessary:

"in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program . . ." (20 USC §1232g(b)(5)).

A similar provision still remains in the statute with respect to the requests of Federal and State authorities for information regarding Federally-supported programs (20 USC §1232(g)(b)(3)). The Act still mandates that any disclosure pursuant to this exception be accompanied by a notice that no additional release to other parties is authorized and that the information must be destroyed upon completion of the audit or study.
The regulations promulgated pursuant to the Act in 1976 have only been amended to reflect the creation of the U.S. Department of Education.

Court Decisions

Considering the fact that the Act and its regulations have been in effect for nearly ten years, there have been relatively few court decisions which deal with the Buckley Amendment. The cases to date have predictably involved either challenges to an institution's failure to release information to a student or third parties, or challenges to a release of information without the appropriate consent. The following general conclusions can be reached from a review of these cases:

1. The provisions of FERPA do not currently create the basis for a private cause of action under Federal law. An institution may be vulnerable, however, to a claim in state court by a student or former student alleging a violation of the Act or its regulations on the grounds of a privacy right violation. The primary mechanism for enforcement of the terms of FERPA continues to be an administrative procedure conducted by the U.S. Department of Education for the withdrawal of Federal funding.

2. If a release of personally identifiable information from a student's record is made pursuant to a lawfully issued court order or subpoena, reasonable notice of such release must be made to the student. Any inquiries regarding the validity of subpoenas or other orders for the production of student records should be directed to the Office of University Counsel (518-473-7591).

3. State University's policy of withholding the academic transcripts of students owing non-discharged debts to the University does not violate the terms of FERPA.

4. Directory information policies must be published in order to provide students an opportunity to protest the release of some
or all of the categories of directory information pertaining to them. If this publication step is not followed, the nonconsensual release of information is prohibited by FERPA.

Other Recommendations

Experience over the past several years in achieving compliance with the provisions of the Buckley Amendment has created an awareness of certain critical areas:

1. The provisions of FERPA itself, without reference to any other statute, only mandate disclosure to the student whose education record is involved or to an individual authorized to act on that student's behalf. Although the parents of dependent students may obtain information without the student's consent, the institution is not mandated by FERPA to provide such release. Please note, however, that the interplay between the provisions of New York State's Freedom of Information Law and FERPA may make consultation with counsel desirable before denying access to certain information.

2. Categories of records which are exempted from the student access provisions of FERPA, including law enforcement and medical records, may lose their exempt status if disclosed to third parties, including other institutional officials.

3. As mentioned earlier, directory information policies must be published in order to support a nonconsensual release of information. A sample of a directory information policy suitable for publication in a catalog or student handbook is attached for illustrative purposes.
Memorandum to Presidents
May 29, 1985

Any further questions regarding the Act or its regulations should be directed to the Office of University Counsel.

Sanford H. Levine

cc: Academic Vice Presidents, State-operated Campuses

Copies for information only sent to:

Presidents, Community Colleges
Deans, Statutory Colleges
President Coll
Vice Provost Spencer
SAMPLE DIRECTORY INFORMATION POLICY

The Family Educational Rights and Privacy Act of 1974 protects the rights of students to inspect and review certain education records and prohibits the nonconsensual release of personally identifiable information from such records which is not "directory information." Students currently enrolled at this institution may object to the release of certain categories of "directory information" pertaining to them by providing written notification to __________________________ (campus office, address) within fourteen (14) days following the first day of classes. The categories of "directory information" at this institution are:

1. Name, campus and home addresses, telephone numbers, dates of attendance; and
2. Previous institutions, major field of study, degrees conferred; and
3. Past and present participation in sports and activities, physical factors (height, weight), date and place of birth.

The failure of any student to specifically object to the release of certain or all categories of directory information within the time indicated will be interpreted at approval.
Memorandum to Presidents

Date: August 20, 1976

From: Office of the University Counsel and Vice Chancellor for Legal Affairs

Subject: Family Educational Rights and Privacy Act of 1974

The Department of Health, Education and Welfare has issued final regulations which define and interpret the Family Educational Rights and Privacy Act of 1974. The final regulations have the force of law and contain a number of significant clarifications which can best be explained by reviewing the Act and Regulations as a whole. Those who wish to review only the recent changes contained in the final regulations should turn to Section III of this memorandum. Two previous Memoranda to Presidents (Volume 74, No. 38 and Volume 75, No. 2) are no longer applicable.

I. Outline of the Act and Final Regulations

The Family Educational Rights and Privacy Act was designed to insure that educational records would be open to inspection and correction and that recorded information would not be made freely available to individuals outside the school without consent. The Act is divided into two basic sections: 438(a) provides students with an opportunity to inspect and challenge their education records, while section 438(b) restricts the release of most records without student consent. Both sections of the Act as well as the interpretative regulations contain numerous additional requirements and exceptions.

The Act and final regulations are attached. Please observe the number and letter divisions of the Act, beginning at 438(a)(1)(A), are different from the regulations, which begin at 99.1.

Both current and former students, including those studying by correspondence, who were or are in attendance at the school are now given a right to inspect and review all records, files, documents and other material directly related to them which are maintained by the school or a person acting for the school.
The school is not required to permit the student to inspect financial records of parents, confidential letters placed in education records before January 1, 1975 (if the confidentiality of such letters can be documented and they are used in the manner for which they were specifically intended) and records of instructional, supervisory and administrative personnel which are in the sole possession of the maker and which are not accessible to or revealed to any other persons except a substitute.

Records maintained by a physician or psychologist or other recognized professional or paraprofessional used solely in connection with the provision of treatment need not be made available. Such records may be reviewed by an appropriate professional of the student's choice. Likewise, records of a law enforcement unit at the school which are used solely for law enforcement purposes, maintained apart from education records, and not disclosed to individuals other than law enforcement officials of the same jurisdiction will not be subject to student inspection as long as the education records maintained by the school are not disclosed to the law enforcement unit.

Applicants or students in attendance at the school may waive the right to inspect confidential letters or statements of recommendation placed in their education records after January 1, 1975. Waivers cannot be required as a condition for admission or the receipt of any other privilege, or benefit offered by the school. Those who sign waivers must, upon their request, be notified of the names of all individuals providing the confidential letters or statements. A student would not be bound by a waiver if the applicable letters or statements were used for purposes other than those originally intended (e.g., letters of reference submitted with an application for admission and used by the school in subsequent years for counseling purposes). A student may revoke a waiver, but the revocation would apply only to materials placed in the education records of the student after the revocation was made.

Consistent with current University policies, extraneous, outdated or inaccurate materials in student files may be destroyed unless there is an outstanding request to examine the files.

Students may ask the school to amend information in their education records. If such a request is refused, the school must so inform the student and provide notice of a right to a hearing. Hearings shall be provided in order to allow students to challenge the contents of their records to insure that information contained therein is not inaccurate, misleading, or otherwise in violation of protected rights.
A hearing should be held within a reasonable time. Students must be given reasonable advance notice of the date, place, and time of the hearing, which may be conducted by any person, including a school official, who does not have a direct interest in the outcome. Students may be assisted or represented at their own expense by an attorney or another individual of their choice. The decision issued by the school after a hearing shall be based solely upon the presented evidence and shall include a written summary of the evidence as well as the reasons for the decision.

The Family Educational Rights and Privacy Act also provides that schools may not permit the release of personally identifiable information from student education records without student consent. Such consent must be signed and dated and shall specify the records to be released, the reasons for release and the party or class of parties to whom the disclosure may be made. Subpoenas, of course, must be obeyed but the school must make a reasonable effort to notify the student of the subpoena.

Prior consent for disclosure is not required if the disclosure is to other employees at the school (who have been deemed by the school to have legitimate educational interests in the information) or to employees at another school in which the student seeks to enroll. Personally identifiable information from education records may also be necessary for such purposes as determination of eligibility, amount or conditions of such aid. Finally, the written consent requirement is not applicable to transfers of information from education records to the State and Federal agencies specified in Sections 99.31(a)(3) and (5) of the regulations, to accrediting organizations in order to carry out their accrediting functions, or to organizations conducting studies for the development of an administration of predictive tests, administering student aid programs, and improving instruction, provided that the organizations adhere to the requirements detailed in section 99.31(a)(6) of the regulations.

Schools are permitted to disclose "directory information" (as defined in Section 99.3 of the regulations) if the school provides public notice of the categories of designated information and informs currently enrolled students of their right to refuse to permit its release. Students must also be told of the period of time within which they must inform the school in writing that the designated information pertaining to them may not be released.
Schools may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. Guidelines for the release of information in an emergency may be found at Section 99.36 of the regulations.

Parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1954, may review personally identifiable information (e.g., grades) from that student's education records without the student's consent.

II. Procedures or Policies Required by the Act

1. Written Policy Required

Schools must adopt a written policy statement specifying procedures to be followed by students who wish to see their education records. The policy statement must contain a listing of the types and locations of records maintained by the school and the titles and addresses of the school officials responsible for them. Schools must also specify in the policy their criteria for determining which individuals are "school officials" and what the school considers to be a "legitimate educational interest" before allowing employees to examine education records without student consent. The policy statement must contain other information which is detailed at Section 99.5 of the Regulations. Various sections in this memorandum may contain language which could be incorporated in a local policy statement.

2. Annual Notice

Schools are required to inform students annually of their rights under the Act. Notice may be contained in college handbooks or catalogs of general circulation which are distributed yearly. One suggested form of notice might appear as follows:

"The Family Educational Rights and Privacy Act permits current or former students to inspect and review their education records. Students are also accorded a right to a hearing in order to question the contents of their education records.

"Written consent from students may be required before personally identifiable information about them will be released from their education records, as provided by law."
[Note: A listing of directory information and the procedures to be followed by students who wish to prohibit release of the information pertaining to them may be provided here; see Regulations at 99.3 and 99.37.]

"Inquiries or complaints may be filed with Family Educational Rights and Privacy Act Office, Department of Health, Education and Welfare, 330 Independence Avenue, S.W., Washington, D.C. 20201.

"Copies of the compliance policy and the Family Educational Rights and Privacy Act are available at _____________________."

3. Requests for Access or Explanation

Eligible students who ask to examine their education records must be given access to them within a reasonable time, but in no event more than forty-five days after the request was made. (99.11)

The school must respond to students who request explanations or interpretations of their records. (99.11(b)(1))

4. Written Consent Forms

Schools may need to develop forms to be used by students who consent to the release of their education records. Students must specify in writing which records are to be released to which party or class of parties and state the purpose of the disclosure. (99.30(c)).

5. Records of Disclosures or Requests for Disclosures

Schools are obligated to maintain a list to be kept with each student's education records of parties who have requested or gained access to the records and of the interest the party may have had in examining them. No listing need be made when students request access to their own records, when the examining party has the specific written consent of the student, when a request is for directory information, or when a school official requests or obtains access for a legitimate educational purpose. Any listing may be inspected by the student or by school officials responsible for the records.


School officials wishing to release directory information as defined in Section 99.3 of the regulations must give public
notice of the categories of information so designated and of the right of students to prohibit the release of any or all directory information pertaining to them. Students must be informed of the period of time within which they must inform the school in writing that such information may not be released. (99.37)

7. Limitations on Redisclosure

Information from the education records of a student shall be released to a third party on condition that the information will not be redisclosed to others without written consent of the student. (99.33(a))

8. Notice of Transfer of Records

If personally identifiable information from student education records is transferred to officials of another school pursuant to 99.31(a)(2) of the regulations, the transferring school must make a reasonable attempt to notify the student at his or her last known address. (99.34(a)(1)) A school may avoid the necessity for such notice by providing a statement in its written policy that it forwards education records upon request to a school in which a student seeks or plans to enroll. (99.34(a)(1)(ii))

9. Release of Information to Parents of Dependent Students

Schools will need to establish a procedure to determine if a student is a dependent as defined by the Internal Revenue Code of 1954 before releasing personally identifiable information to parents without student consent. (99.31(a)(8))

10. Pledges of Confidentiality

Schools should eliminate any pledges of confidentiality in printed forms sent to those writing letters of evaluation. All individuals writing letters of evaluation might be informed of the applicability of the Family Educational Rights and Privacy Act.

11. Comments Requested

School officials are invited to comment on the final regulations issued by the Department of Health, Education and Welfare and should do so during a ninety day period commencing July 1, 1977. The Department would also be interested in determining if methods of enforcement other than a cutoff of funds are or should be available.
IIII. Significant Changes or Clarifications Contained in the Final Regulations

The final regulations issued by the Department of Health, Education and Welfare on June 17, 1976 contain the following clarification or modifications not found in the proposed regulations.

1. Schools must formulate and make available to students a written policy statement described at Section 99.5 of the regulations.

2. A waiver given under Section 99.7 of the regulations may be revoked, but the revocation will be effective only "with respect to any actions occurring after the revocation". (99.7(f))

3. Students are not given a right to inspect letters of reference placed in their education records prior to January 1, 1975, provided the letters were solicited with a written assurance of confidentiality, or sent with a documented understanding of confidentiality. (99.12(a)(2)(i))

4. Students are given a right to a response to reasonable requests for explanations and interpretations of their records and must be given a copy of their records if necessary to enable them to effectively exercise their right of inspection. (99.11(b)(1), (2))

5. A student at one component of the University is not deemed a student at another component until he or she is actually in attendance there. (99.3(b) "Student" defined)

6. New and more detailed regulations concerning the conduct of hearings are specified at Section 99.22(a)-(e) of the regulations.

7. The requirement that students file complaints within 180 days of any alleged violation has been deleted.

8. Former students are not given a right to inspect records which only contain information about them after they left the school. (99.3(b)(5) "Education records" defined)

9. Notification of student rights under the Act need not be sent to former students. (99.6(a))

10. "Directory information" has been expanded to include "other similar information". (99.3 "Directory Information defined)
11. Students may give consent for disclosures from their education records to a "class of parties" as well as a specific individual or institution. (99.30(c)(3))

12. The final regulations impose new restrictions on release of student records without student consent in connection with an application for financial aid. (99.31(a)(4))

13. Schools need only make a "reasonable effort" to notify students of a subpoena in advance of compliance. (99.31(a)(9))

14. Schools may eliminate the need to notify students of a transfer of education records to another school in which the student seeks to enroll by including general notice of such transfer procedures in their policy statements. (99.34 (a)(1)(ii))

15. Schools are no longer obligated to submit assurances of compliance to the Department of Health, Education and Welfare. (Former 99.62 deleted)

16. New Section 99.6 of the regulations has reduced the amount of information which must be included in an annual notice to students.

IV. Responses to Frequent Questions Concerning the Act

1. Rights of Parents

Parents of students attending the University are not given a right to inspect student records (e.g., receive grades) without student consent. The University may provide such access to parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1954. (99.31(a)(8))

Schools are not required to permit students to inspect the financial records or statements of their parents. (99.12(a)(1))

2. Students Under Eighteen Years of Age

The rights accorded to students under the Act and Regulations are not affected by the student's age if the student is attending an institution of post-secondary education. For example, the parents of a sixteen year old college freshman have no additional right of access to their child's records and are not empowered to consent to the release of those records to a third party. (99.4(a))
3. Copies of Records

Current or former students have a right to obtain copies of their education records if a failure to provide the copies would effectively prevent students from exercising their rights of inspection. (99.11(b)(2))

Schools must, upon request, provide students with copies of records which have been released to others with student consent. (99.30(d))

4. Rights of Employees

Records relating to an employee which are maintained in the normal course of business, related exclusively to the individual as an employee, and are not available for use for any other purpose, need not be made available for inspection, unless the employee is employed as a result of his or her status as a student. (99.3(b)(3)(i), (ii) "Education records" defined)

5. Former Students

Individuals who formerly attended the University are not excluded from coverage under the Act. (99.3(a) "Student" defined)

Former students need not be notified of the categories of directory information which may be revealed about them and have no right under the Act to restrict the publication of directory information. (99.37(b))

Records containing information relating to a person only after that person was no longer a student at the school need not be subject to examination. (99.3(a)(5) "Education records" defined)

Notification of student rights under the Act need not be sent to former students. (99.6(a))

6. Hearing Requirement and Student Grades

The opportunity for a hearing as specified in 99.21 of the regulations should not be construed to apply to questions concerning the underlying reasons for the granting of a particular grade. Instead, a hearing to determine the accuracy of any grade should be confined to the issue of whether or not the recorded grade corresponded to the grade reported by the faculty member.
7. Letters of Reference

The Act does not require that a school employee writing a letter of reference as a private individual (and retaining a copy of the letter in his or her personal file to be used strictly as a personal record) make the letter available for inspection. Such letters sent to other schools may be available for inspection by the student if the student enrolls there.

Faculty members who are concerned that student access to letters of reference may result in an increased danger of a libel judgment against them should be aware that they have a qualified "privilege" to evaluate their students and that plaintiffs have the burden of proving the statements in question were false and motivated by actual malice. Comments concerning sexual impropriety or violations of law remain suspect, however, and might be avoided unless the factual basis for them is readily demonstrable.

8. Record of Disclosure to Other School Officials

No record need be kept in student education records of the names of officials at the student's school who examined the records in compliance with Section 99.31(a)(1) of the Regulations. (99.32(b))

9. Disclosure to Third Parties

The Act does not require a school to disclose information which may be revealed without student consent.

10. Oral Disclosure of Information

Oral disclosures of information from student education records are not excluded from the Act. (99.3 "Disclosure" defined)

This Memorandum addressed to:

Presidents, State-operated Campuses
Presidents, Community Colleges
Deans, Statutory Colleges

Copies for information to:

President Rose - Alfred University
Mr. J. Robert Barlow - Cornell University
education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review any part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(1) financial records of the parents of the student or any information contained therein;

(2) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1977, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(3) if a student has signed a waiver of the student’s right of access under this subsection in accordance with subparagraph (C), confidential recommendations;

(4) respecting admission to or participation in any educational agency or institution;

(5) respecting an application for employment, and

(6) respecting the receipt of an honor or honorary recognition.

(C) A student or a parent applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if the students having such reports, notices, or the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which the students were specifically intended. Such waivers may not be required [sic] as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from any such agency or institution.

No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution have been notified of the opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such school’s education records, in order to ensure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the contents of such records. For the purposes of this section the term “educational agency or institution” means any public or private agency or institution which is the recipient of funds under any applicable program.

(b) The term “educational agency or institution” means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term “education records” means, except as may be provided by paragraph (B), those records, files, documents, and other materials which—

(1) contain information directly related to a student in the educational agency or institution, and

(2) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information) contained therein other than directory information, as defined in paragraph (5) of subsection (a) of students without the written consent of their parents or other individuals, agency or organization, other than to the following—

(A) other school officials, including teachers within the educational agency or institution, and

(Federal Register, Vol. 40, No. 3—Monday, January 6, 1975)
(3) Officials of other schools or school systems in which the student resides, and the official school system to which the student moves, will be notified upon completion of the transfer, and may have an opportunity to challenge the content of the record.

(C) Authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) the administrative head of an education agency (as defined in section 408(e) of this Act), or (iv) State educational authorities, under the conditions set forth in paragraph (9) of this subsection; and

(D) in connection with a student's applications for, or receipt of, financial aid

(2) State and local officials or authorities to which such information is required to be reported or disclosed pursuant to State statutes adopted prior to November 19, 1974;

(3) Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purposes of developing, validating, or administering predictive tests, administering student aid programs, and improving student achievement, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such agencies and such information will be destroyed when no longer needed for the purpose for which it is used;

(4) Accrediting organizations in order to carry out their accrediting functions;

(5) Parents of a dependent student of such parents, as defined in section 132 of the Internal Revenue Code of 1954; and

(6) Subject to regulations of the Secretary in connection with a TRANSFER OF RECORDS AND ACCESS TO RECORDS (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena unless a condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (a) the Comptroller General of the United States, (b) the Secretary, (c) administrative head of an education agency or (d) State educational authorities from having access to student's information, as defined in this section, when necessary in connection with the audit and evaluation of Federally supported education programs, or to have access to information collected under the provisions of this Act by State or local authorities, and complaints which may be necessary to the enforcement of Federal legal requirements which relate to such programs. Provided that except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data is destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4) Each educational agency or institution shall maintain a record, kept with the education records of each student, which shall include all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, to persons or organizations authorized in, under the conditions set forth in clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(5) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parent of the student.

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any survey or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection may include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) For the purposes of this section, whenever a student has attained eighteen years of age or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parent of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency, shall take appropriate action to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds that there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.
RULES AND REGULATIONS

}\textbf{Article: Sec. 432, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g) unless otherwise noted.}

\textbf{Subpart A—General}

§ 99.1 Applicability of part.

(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal program for which the U.S. Commissioner of Education has administrative responsibility, as specified by law, or by delegation of authority pursuant to law.

(b) This part does not apply to an educational agency or institution solely because students attending that nonmonetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section, if no funds under those programs are made available to the agency or institution itself.

(c) For the purposes of this part, funds will be considered to have been made available to an agency or institution when 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, 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 Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program (Titles IV-A and IV-E, respectively, of the Higher Education Act of 1965, as amended).

§ 99.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

§ 99.3 Definitions.

As used in this Part:


"Attendance" at an agency or institution includes, but is not limited to: (a) attendance in classes and by correspondence, and (b) the period during which a person is working under a work-study program.

"Commissioner" means the U.S. Commissioner of Education.

"Directory information" includes the following information relating to a student:

- the student’s name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and other academic awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in § 99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components, (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

"Education records" (a) means those records which: (1) Are directly related to a student and (2) are maintained by an educational agency or institution or by a party acting on behalf of an educational agency or institution.

(b) The term does not include:

- (1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:
  (i) Are in the sole possession of the maker thereof, and
  (ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

- (2) Records of a law enforcement unit of an educational agency or institution which:
  (i) Maintained apart from the records described in paragraph (a) of this definition;
  (ii) Maintained solely for law enforcement purposes, and
  (iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; Provided, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

- (3) (i) Records relating to an individual who is employed by an educational agency or institution which:
  (A) Are made and maintained in the normal course of business;

\textbf{Subpart B—Inspection and Review of Education Records}

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§ 99.47 Initial decision; final decision.
(a) Each educational agency or institution shall, consistent with the minimum requirements of section 433 of Act and this part, formulate and adopt a policy of

(i) Informing parents of students or eligible students of their rights under § 99.5;

(ii) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with § 99.11, including at least:

(A) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(B) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational or institutional agency or institution and the titles and addresses of the officials responsible for those records;

(2) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by § 99.31 and 99.37; the policy shall include, at least:

(A) A statement of whether the educational agency or institution will release personally identifiable information from the education records of a student under § 99.31 (a) (1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest," and

(B) A specification of the personally identifiable information to be designated as a "legitimate educational interest" under § 99.37;

(3) Maintaining the privacy of disclosures of personally identifiable information from the education records of a student required to be maintained by § 99.32, and permitting a parent or an eligible student to inspect that record:

(a) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent of a student or an eligible student to place a statement in the education records of the student as provided in § 99.46;

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

§ 99.6 Annual notification of rights.

(a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution
An educational agency or institution may charge a fee for copies of educational records as the parents of students, students, and eligible students under section 438 of the Act and this part; Provided, That the fee does not effectively prevent the parents and student from exercising their right to inspect and review those records.

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

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

Subpart B—Inspection and Review of Education Records

§ 99.11 Right to inspect and review education records.

(a) Each educational agency or institution, except as may be provided by § 99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(d) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student or that the student has reached legal majority and given evidence that there is a legally binding instrument, such as divorce, separation or custody, which provides for the contrary.

§ 99.12 Limitations on right to inspect and review education records at the postsecondary level.

(a) An institution of postsecondary education is not required by section 433 of the Act or this part to provide a student with access to and review the following records:

(1) The records and statements of the parents or any information contained therein:

(2) Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; Provided, That:

(1) The letters and statements were solicited with a written assurance of confidentiality and retained with a documented understanding of confidentiality, and

(2) The letters and statements are used only for the purposes for which they were specifically intended;

(2) Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975; Provided, That:

(1) Respecting admission to an educational institution;

(ii) Respecting an application for employment; or

(iii) Respecting the receipt of an honor or honorary recognition; Provided, That the student has waived his or her right to inspect and review those letters and statements of recommendation under § 99.7(d).

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

(20 U.S.C. 1232g(a)(1)(A))

§ 99.13 Limitation on destruction of education records.

An educational agency or institution is not precluded by section 438 of the Act or this part from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under § 99.11:

(b) Explanations placed in the education record under § 99.11 shall be maintained as provided in § 99.1(d), and

(c) The record of access required under § 99.32 shall be maintained for as long as the education record to which it pertains is maintained.

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

Subpart C—Amendment of Education Records

§ 99.20 Request to amend education records.

(a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under § 99.21.

(20 U.S.C. 1232g(a)(2))
§ 99.21 Right to a hearing.

(a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to the extent permitted by law. The hearing shall be conducted in accordance with § 99.30.

(b) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, the hearing shall be conducted in accordance with § 99.30.

(c) If, as a result of the hearing, the educational agency or institution finds that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, the hearing shall be conducted in accordance with § 99.30.

(d) If, as a result of the hearing, the educational agency or institution finds that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, the hearing shall be conducted in accordance with § 99.30.

§ 99.30 Prior consent for disclosure required.

(d) (1) An educational agency or institution shall obtain the written consent of the parent or the eligible student, before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in § 99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may assume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been proved with evidence that there is a legally binding instrument or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving consent and shall include:

(1) A specification of the records to be disclosed.

(2) The purpose or purposes of the disclosure.

(3) The school or other entity to whom the disclosure may be made.

(4) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and the student who is not an eligible student if so requested by the student's parents.

§ 99.31 Prior consent for disclosure not required.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent or the eligible student if the disclosure is—

(1) To other school officials, including teachers, within the educational institution or local educational agency who have been designated by the agency or institution to have legitimate educational interests;

(2) To officials of another school or education agency in which the student seeks or intends to enroll, subject to the requirements set forth in § 99.34;

(3) Subject to the conditions set forth in § 99.35, to authorized representatives of—

(i) The Comptroller General of the United States.

(ii) The Secretary.

(iii) The Commissioner, the Director of the National Institute of Education, or the Assistant Secretary for Education, or

(iv) State educational authorities.

In connection with financial aid for which a student has applied or which a student has received; Provided, That personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(1) To determine the eligibility of the student for financial aid.

(2) To determine the amount of the financial aid.

(3) To determine the conditions which shall be imposed regarding the financial aid.

(4) To enforce the terms or conditions of the financial aid.

(5) To State and local officials or other persons whom the State or local education agency is required to notify as a part of the process of making the education records required by Title IV, Part A of the Elementary and Secondary Education Act of 1965, or any amendments thereto.

(6) To educational and other institutions to whom disclosures are made under this section for the further limiting the number or type of State or local officials to whom disclosures are made under this section.

(7) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction.

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9) To comply with a judicial order or a lawfully issued subpoena. Provided, That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therefor.

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in § 99.36.
(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student maintain a record kept with the education records of the student which includes:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student;

(2) The legitimate interests these parties had in requesting or obtaining the information;

(b) Paragraph (a) of this section does not apply to disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student unless the consent is specific with respect to the party or parties to whom the disclosure is to be made, to disclosures to school officials under § 99.31(a)(1), or to disclosures of directory information under § 99.37.

§ 99.33 Limitation on redisclosure.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student 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 written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under § 99.31 with the understanding that the information will be redisclosed to other parties under section 9231.

§ 99.34 Conditions for disclosure to officials of other schools and school systems.

(a) An educational agency or institution transferring the education records of a student pursuant to § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records as the last known address of the parent or eligible student, except:

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice in its policies and procedures formulated under § 99.35 that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;

(2) Provide the parent of the student, the eligible student, upon request, with a copy of the education records which have been transferred; and

(3) Provide the parent of the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one agency, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student, as required in § 99.31. That the disclosure meets the requirements of paragraph (a) of this section.

§ 99.35 Disclosure to certain Federal and State officials for Federal program purposes.

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in § 99.31(a)(3) from having access to student records and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with laws which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under § 99.31, when the collection of personally identifiable information is specifically authorized by Federal law, or when the information is listed in § 99.31(a)(3), it shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for the audit, evaluation, or enforcement of or compliance with Federal legal requirements.

§ 99.36 Conditions for disclosure in health and safety emergencies.

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

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.

§ 99.37 Conditions for disclosure of directory information.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in § 99.33) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is not in attendance at the agency or institution without following the procedures under paragraph (c) of this section.

(c) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The rights of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student; and

(3) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information shall not be designated as directory information with respect to that student.
§ 99.60 Office and review board.

(a) The Secretary is required to establish or designate an office and a review board under section 438(g) of the Act.

(b) The following is the address of the office which has been designated under paragraph (a) of this section: The Family Educational Rights and Privacy Act Office (FERPA), Department of Health, Education, and Welfare, 330 Independence Ave. SW, Washington, D.C. 20201.

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

§ 99.61 Conflict with State or local law.

An educational agency or institution which determines that it cannot comply with the requirements of section 438 of the Act or of this part because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part shall so advise the office designated under § 99.60(b) within 45 days of any such determination, giving the text and legal citation of the conflicting law.

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

§ 99.62 Reports and records.

Each educational agency or institution shall (a) submit reports in the form and containing such information as the Office of the Review Board may require to carry out their functions under this part, and (b) keep the records and afford access thereto as the Office or the Review Board may find necessary to assure the correctness of those reports and compliance with the provisions of sections 438 of the Act and this part.

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

§ 99.63 Complaint procedure.

(a) Complaints regarding violations of rights accorded parents and eligible students by section 438 of the Act or the regulations in this part shall be submitted to the Office in writing.

(b) (1) The Office will notify each complainant and the educational agency or institution upon which the complaint is filed, of the results of its investigation within 60 days of the receipt of the complaint.

(2) The notification to the agency or institution under paragraph (b)(1) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

(c) (1) The Office will investigate all complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(d) If the educational agency or institution does not come into compliance within the period set under paragraph (c) of this section, the matter will be referred to the Review Board for hearing under §§ 99.64–99.67, inclusive.

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

§ 99.64 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (1) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act or this part, and (2) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in § 99.3 shall be made available to the educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is evidence of such failure to comply.

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

§ 99.65 Hearing procedures.

(a) Panels. The Chairman of the Review Board shall designate Hearing Examiners to conduct hearings under § 99.64. Each Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) Procedural rules. (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact, the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity to present his case at the hearing, whether in writing or in oral argument before the Panel which shall afford each party: (A) Sufficient notice of the issues of the case to be considered (where possible, orally by telephone), and (B) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition to provisions designed to assure each party the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

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

§ 99.66 Hearing before Panel or a Hearing Officer.

A hearing pursuant to § 99.65(b) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.

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

§ 99.67 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Secretary with a notice affording the party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless within 25 days after the expiration of the time for comments, the Secretary advises the Review Board in writing of his determination to review the decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification or reversal, which shall promptly be filed with the Review Board.

(e) Review of any initial decision by the Secretary shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceeding.

(f) No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney.

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

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