

DEPARTMENT OF EDUCATION**34 CFR Part 99**

RIN 1880-AA71

Family Educational Rights and Privacy**AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Family Educational Rights and Privacy Act (FERPA). The amendments are needed to implement section 249 of the Improving America's Schools Act of 1994 (IASA) (Pub. L. 103-382, enacted October 20, 1994), to eliminate unnecessary requirements and reduce regulatory burden, and to incorporate several technical changes.

DATES: Comments must be received on or before May 13, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to LeRoy Rooker, U.S. Department of Education, 600 Independence Avenue, SW., Room 1366, Washington, D.C. 20202-4605. Comments may also be sent through the Internet to FERPA_____Comments@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act of 1995 section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Sharon Shirley, U.S. Department of Education, 600 Independence Avenue, SW., Room 1366, Washington, D.C. 20202-4605. Telephone: (202) 260-3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations have been reviewed and revised in accordance with the Department's "Principles for Regulating," which were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. These

principles advance the regulatory reinvention and customer service objectives of the Administration's National Performance Review II and are essential to an effective partnership with States and localities. The Secretary proposes these regulations because he believes they are necessary to implement the law and give the greatest flexibility to local governments and schools. In addition, the regulations minimize burden while protecting parents' and students' rights.

Summary of Major Provisions

The following is a summary of the regulatory provisions the Secretary proposes as necessary to implement the statute, such as interpretations of statutory text or standards and procedures for the operation of the program. The summary does not address provisions that merely restate statutory language. The Secretary is not authorized to change statutory requirements. Commenters are requested to direct their comments to the regulatory provisions that would implement the statute.

Section 99.1 Applicability

FERPA applies to educational agencies and institutions to which funds are made available under any program which is administered by the Secretary. The proposed clarification of the terms "educational agency" and "educational institution" is necessary to indicate that FERPA does not, as a whole, apply to State educational agencies (SEAs), which provide supervision of, but no administrative control or direction of, public elementary and secondary schools. The proposed clarification of "educational agency" is adapted from the definition of "local educational agency" in 34 CFR 77.1 and is modified, in particular, to reflect that FERPA applies to certain postsecondary administrative agencies, such as those found in university systems. FERPA was amended by the IASA to require SEAs to afford parents access to their children's education records. In general, that right of access to records is the only right parents are afforded by FERPA with regard to education records maintained by SEAs.

Section 99.3 Definitions

The Secretary proposes to amend the definition of the term "record" in the regulations to reflect changing technology and changing modes of maintaining information. The proposed term "computer media" is intended to cover any manner of maintaining information that is stored through and

retrieved by a computer, including information stored on CD-ROM.

Section 99.7 Annual Notification of Rights

The statute requires that educational agencies and institutions effectively inform parents and eligible students of their rights. The statute does not, however, require that educational agencies and institutions adopt a formal written student records policy. The Secretary proposes to remove the requirement in § 99.6 that educational agencies and institutions adopt a formal written student records policy. The Secretary further proposes to amend the regulations so that each educational agency and institution will be required to notify parents and eligible students not only of their basic rights under FERPA but also of how to pursue those rights at that specific agency or institution.

The current regulations require that educational agencies or institutions inform parents and eligible students of their basic rights. The current regulations also require that the procedures for pursuing those rights be set forth in a student records policy, a copy of which parents and eligible students may have upon request. However, the Secretary believes that, based on the nature of recent complaints under FERPA, parents and eligible students rarely seek access to the student records policy and thus remain uninformed of how to pursue their rights at that particular school, such as the appropriate procedure to seek access to education records. The Secretary also believes that removing the requirement for a student records policy and adding additional requirements to the annual notification of rights will lessen burden on institutions and will reduce administrative costs because only one document will be required.

The Secretary believes that implementation of Congress' mandate that students and parents be "effectively" notified of their rights can best be achieved by requiring additional information in the annual notification of rights. In that way, parents and eligible students would receive more effective notification of their rights and how to pursue them. The Secretary further believes that, because many of the items required by current regulations to be in a formal written student records policy are not necessary to implement the law, the removal of the requirements would give educational agencies and institutions greater flexibility. Initially, there may be an additional cost because schools will have to change their annual notifications, but this is outweighed by

the elimination of the student records policy requirement. These two changes together would reduce burden on educational agencies and institutions and would ensure that parents and eligible students are more aware of how to pursue their rights.

The Secretary would allow educational agencies and institutions up to three years to transfer from the current requirements and to implement the new requirements. In order to provide guidance to educational agencies and institutions, the Department would develop a model annual notice that meets the new requirements and will make it available upon publication of the final regulations. Also, for those agencies and institutions that choose to adopt a formal written student records policy, the Department would continue to update and make available its model student records policy.

Section 99.10 Right To Inspect and Review Education Records

Under section 444(a) of GEPA, SEAs that maintain education records are required to afford parents the right to inspect and review their children's education records. The Secretary believes that this new statutory requirement should be implemented, to the greatest extent possible, in the same manner as the current regulations for educational agencies and institutions to afford parents access to education records. Therefore, the Secretary proposes to amend the access provisions in the current regulations to set forth the new requirements for SEAs to afford parents access to education records. The Secretary proposes to apply to SEAs the same requirement that applies to educational agencies and institutions, i.e., that they provide a parent or eligible student access to education records within 45 days of receipt of a request. The Secretary requests comments regarding whether this time frame for SEAs to retrieve records and provide access to them is reasonable.

The Secretary recognizes that this statutory amendment will impose new burdens for SEAs, and seeks comments in particular from the SEAs as to how this provision can be administered without significantly impeding the duties and day-to-day operations of the SEAs. The Secretary seeks comments on how this provision can be implemented with minimal burden on SEAs while still affording parents their full statutory right of access under FERPA. Finally, the Secretary also seeks comments from the SEAs as to what types of records they maintain that are directly related to students.

Section 99.31(a)(5) Prior Consent Not Required for Disclosure to Juvenile Justice Systems

The proposed regulations implement a new statutory provision that permits, under certain circumstances, the disclosure of education records if allowed by State law and if the disclosure concerns the juvenile justice system's ability to serve, prior to adjudication, the student whose records are released. The Secretary has not proposed to define the terms "juvenile justice system" and "prior to adjudication" to give States flexibility to define these terms consistent with State law and practice. The Secretary is not aware of any advantage or need for a uniform definition.

Section 99.31(a)(9) Prior Consent Not Required for Disclosures Pursuant to Court Orders and Lawfully Issued Subpoenas

The Secretary proposes that educational agencies and institutions shall not be required to notify parents or eligible students prior to disclosures of education records pursuant to a federal grand jury subpoena or a subpoena issued for a law enforcement purpose. The Secretary also proposes a new regulatory provision regarding the disclosure of education records when an educational agency or institution initiates legal action against a parent or student.

The new regulatory provision would clarify that FERPA permits an educational agency or institution to release education records in court without a parent's or eligible student's prior written consent if the educational agency or institution is initiating legal action against the parent or student, and the agency or institution has made a reasonable effort to notify the parent or eligible student of the intent to disclose in advance. The purpose of this notification requirement is to give the parent or eligible student the opportunity to seek a protective order, if the parent or student does not want personally identifiable information disclosed to the public. This new provision will impose a minimal burden on schools; however, the cost of notification to parents is outweighed by the benefit to parents who will be notified prior to the release of their children's education records to a court.

Section 99.36 Disclosure of Information From Disciplinary Records

The statute was amended by the IASA to make explicit that FERPA does not prevent educational agencies and institutions from maintaining records

related to a disciplinary action taken against a student for behavior that posed a significant risk to the student or others or from disclosing this information to school officials who have been determined to have a legitimate educational interest in the behavior of the student. These matters were implicit in the statute prior to the change.

The statutory amendment also permits the disclosure of information regarding disciplinary action to school officials in other schools that have a legitimate educational interest in the behavior of the student. The Secretary interprets the statute to allow a school official to disclose information regarding disciplinary action to school officials in schools where a student is not in attendance. The Secretary believes that officials in other schools have a legitimate educational interest in cultivating a safe school environment.

For example, if a school official knows that a student, who has been disciplined for carrying a weapon, is planning to attend a school-sponsored activity at another high school, FERPA would not prohibit the school official from notifying school officials at the other high school.

The Secretary believes this interpretation is consistent with Congress' intent. The Secretary welcomes comment on this provision. While this provision imposes a potential cost to students and parents, because education records may be released without their consent, that cost is minimal and is outweighed by the interests of others whose safety may be at stake.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary to administer this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has

determined that the benefits of the proposed regulations justify the costs.

To assist the Department in complying with specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

The potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the following topic headings: § 99.7 Annual notification of rights; § 99.10 Right to inspect and review education records; § 99.31 Prior consent not required for disclosure; and § 99.36 Disclosure of information from disciplinary records.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 99.1 *To which educational agencies or institutions do these regulations apply?*) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (Room 5121 FOB-10B), Washington, D.C. 20202-2241.

Regulatory and Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a

significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) receiving Federal funds from the Department. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure that LEAs comply with the educational privacy protection requirements in FERPA.

Paperwork Reduction Act of 1995

Sections 99.7 and 99.32 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Family Educational Rights and Privacy.

SEAs, LEAs, postsecondary institutions, and other recipients may be affected by these regulations. The Department needs and uses the information to ensure compliance with requirements in FERPA. Annual public reporting burden for this collection of information is estimated to be .25 hours per response for 28,075 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 7,018.75 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Wendy Taylor, Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have a practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. This section highlights those issues already discussed in the preamble on which the Secretary would particularly like comment.

The Secretary has attempted to balance a desire to ensure that parents are afforded their rights under the law with a desire to be as flexible as possible in imposing requirements on educational agencies and institutions. The Secretary believes this balance can be achieved through these proposed amendments to the regulations, in particular through the changes to the annual notification of rights and the removal of the requirement to adopt a written student records policy. The Secretary requests specific comments on these proposed changes to the notice, in particular regarding the extent to which they will affect schools and parents and students.

As previously stated in the preamble, the Secretary would like comments on whether the proposed regulations regarding the requirement of SEAs to afford access to education records will create significant burden and disruption of operations on the SEAs and any suggestions as to how to minimize any such burdens or disruptions.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 1366, FOB-10B, 600 Independence Avenue, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Information, Privacy, Parents, Records, Reporting and recordkeeping requirements, Students.

Dated: January 11, 1996.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary proposes to amend Part 99 of Title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for Part 99 continues to read as follows:

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

2. Section 99.1 is amended by removing paragraph (b), redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) to read as follows:

§ 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 provides administrative control or direction of, or performs service functions for, public elementary or secondary schools or postsecondary institutions.

* * * * *

§ 99.2 [Amended]

3. Section 99.2 is amended by removing the number “438” and adding, in its place, the number “444”.

4. Section 99.3 is amended by removing in the definition of “Act” the number “438” and adding, in its place, the number “444” and by revising the definitions of “Disclosure” and “Record” to read as follows:

§ 99.3 What definitions apply to these regulations?

* * * * *

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

* * * * *

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.

* * * * *

§ 99.6 [Removed and reserved]

5. Section 99.6 is removed and reserved.

6. Section 99.7 is revised to read as follows:

§ 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 the following:

- (i) The procedure for exercising the right to inspect and review education records.
- (ii) The procedure for—
 - (A) Requesting amendment of records under § 99.20;
 - (B) Obtaining a hearing regarding a denial of a request for amendment of records under §§ 99.21 and 99.22; and
 - (C) Adding a statement to the record under § 99.21.
- (iii) The conditions in § 99.31 under which the educational agency or institution may disclose education records without a parent's or eligible student's prior written consent.

(iv) 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.

(v) If the educational agency or institution has a policy of disclosing education records under § 99.31(a)(11), in accordance with § 99.37, a specification of—

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

(B) A parent's or eligible student's right to refuse to allow the agency or institution to designate specific types of information about the student as directory information; and

(C) The period of time which a parent or eligible student has to notify the agency or institution that he or she does not want the agency or institution to designate specific types of information about the student as directory information.

(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.

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

7. Section 99.10 is amended by adding in paragraphs (c) and (e) “, or SEA or its component” following the word “institution” and by revising paragraphs (a), (b), and (d), and the authority citation to read as follows:

§ 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 shall 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.

(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.

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

§ 99.12 [Amended]

8. Section 99.12 is amended by removing in paragraph (a) the commas after "inspect" and after "review" and by adding after the word "inspect" the word "and" and by revising the authority citation to read as follows:

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

§ 99.20 [Amended]

9. Section 99.20 is amended by removing in paragraph (a) the words "or other rights".

§ 99.21 [Amended]

10. Section 99.21 is amended by removing in paragraphs (a), (b)(1), and (b)(2) the words "or other".

11. Section 99.31 is amended by redesignating paragraph (a)(6)(iii) as paragraph (a)(6)(iv), by adding a new paragraph (a)(6)(iii) and by revising paragraphs (a)(5)(i) and (a)(9) and the authority citation to read as follows:

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

(a) * * *

(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.

* * * * *

(6) * * *

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

* * * * *

(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 unless the disclosure is in compliance with—

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

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

(iii) If the educational agency or institution initiates legal action against a parent or student and has complied with paragraph (a)(9)(ii) of this section, it may disclose education records to the court without a court order or subpoena.

* * * * *

(Authority: 20 U.S.C. 1232g (a)(5)(A), (b)(1), (b)(2), (b)(4)(B), and (f)).

12. Section 99.32 is amended by removing the word "or" following paragraph (d)(3), replacing the period at the end of paragraph (d)(4) with a semicolon and adding the word "or" after the semicolon, adding a new paragraph (d)(5), and revising the authority citation to read as follows:

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

* * * * *

(d) * * *

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

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

13. Section 99.33 is amended by revising paragraphs (c) and (d) and by adding a new paragraph (e) to read as follows:

§ 99.33 What limitations apply to the redisclosure of information?

* * * * *

(c) Paragraph (a) of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas under § 99.31(a)(9), to disclosures of directory information under § 99.31(a)(11), or to disclosures to a parent or student under § 99.31(a)(12).

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

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

14. Section 99.34(a)(1)(ii) is amended by removing the word "policy" and adding, in its place, the words "annual notification".

15. Section 99.36 is amended by revising paragraph (b), adding paragraph (c) and revising the authority citation to read as follows:

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

* * * * *

(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 community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools that have been determined to have legitimate

educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section will be strictly construed.

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

16. A new § 99.38 is added to subpart D to read as follows:

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

(a) If reporting or disclosure allowed by State statute concerns the juvenile

justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under § 99.31(a)(5)(i)(B).

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

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

§ 99.63 [Amended]

17. Section 99.63 is amended by removing the word "person" and adding, in its place, the words "parent or eligible student".

[FR Doc. 96-6034 Filed 3-13-96; 8:45 am]

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