

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)/PROTECTION OF PUPIL RIGHTS AMENDMENT (PPRA)

SECTION I: FERPA

These policies and procedures are designed to meet the provisions of the Family Educational Rights and Privacy Act (FERPA) and the Oklahoma Statutes pertaining to student records. The Western Heights District intends to comply fully with these statutes and is committed to implementing these policies and procedures.

The Board of Education authorizes the school superintendent to inform parents, students, and the public of the policy and to exercise his administrative resources to implement the policy as well as to deal with individuals who violate it.

In case a parent of a student, an eligible student, or a citizen of the Western Heights School District believes that the district is violating the FERPA, that person has a right to file a complaint with the Department of Education. The address is:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, D.C. 20202

The complaint procedures as outlined in the FERPA will apply.

Oklahoma Statutes pertaining to student records are as follows:

Oklahoma's Law: (70 O.S. 6-115) "It will be unlawful and a misdemeanor for any teacher to reveal any information concerning any child obtained by him/her in his/her capacity as teacher except as may be required in the performance of his/her contractual duties, except said information may be furnished to the parent or guardian of said child upon request." Federal law governs access to student records by parents, students, and other persons. Non-compliance means loss of funding.

The governing board of each school district in Oklahoma shall require every public school within its jurisdiction to prepare duplicate copies of individual scholastic and other permanent records relating to each pupil enrolled. The duplicate of said records shall be filed in a building separate and apart from the building where the original copy is filed or shall be filed in a fireproof vault designed for the purpose of protecting permanent records. The original copy of said records shall be filed and permanently retained by the respective public schools of this state.

Oklahoma School Law (51-24A.16) Public Education Institutions – Student Records:

- A. Except as set forth in subsection B of this section, public education institutions and their employees may keep confidential:
 - 1. Individual student records;
 - 2. Teacher lesson plans, tests and other teaching material; and
 - 3. Personal communications concerning individual students.
- B. If kept, statistical information not identified with a particular student and directory information shall be open for inspection and copying. "Directory information" includes a student's name, address, telephone listing, 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 awards received, and the most recent previous educational institution attended by the student. Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's or guardian's prior consent or the student's himself if he is eighteen (18) years of age or older.

(Oklahoma Statute 10-7005-1.2)

Family Education Rights and Privacy Act (FERPA): The Western Heights School District established the following procedures to comply with this act.

DEFINITIONS:

For the purpose of this policy, the Western Heights School District has used the following definition of terms:

Student - Any person who attends or has attended a program of instruction sponsored by the Board of Education of the Western Heights School District.

Eligible student - a student or former student who has reached age 18 or is attending a post secondary school.

Parent - either natural parent of a student unless his or her rights under the FERPA have been removed by a court order, a guardian, or an individual acting as a parent or guardian in the absence of the student's parent or guardian.

Education records - any record including but not limited to: handwriting, print, tapes, film, electronic or digital formats, or other medium maintained by the Western Heights School District, an employee of the district, or an agent of the district which is related to a student. The term does not include:

1. Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
2. Records of the law enforcement unit of the Western Heights School District, subject to the provisions of the FERPA (disciplinary records created and/or maintained by Western Heights security personnel regarding student disciplinary matters are part of the student education record).
- 3.(i) Records relating to an individual who is employed by an educational agency or institution that:
 - A. Are made and maintained in the normal course of business;
 - B. Relate exclusively to the individual in that individual's capacity as an employee; and
 - C. Are not available for use for any other purpose.

- (ii) Records relating to an individual in attendance at the Western Heights School District who is employed as a result of his or her status as a student are education records and not excepted under paragraph (3)(i) of this definition.
4. Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:
- (i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
 - (ii) Made, maintained, or used only in connection with treatment of the student; and
 - (iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the Western Heights School District; and
5. Records that only contain information about an individual after he or she is no longer a student at Western Heights School District.

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

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

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

- a) The student's name;
- b) The name of the student's parent or other family member;
- c) The address of the student or student's family;
- d) A personal identifier, such as the student's social security number or student number;
- e) A list of personal characteristics that would make the student's identity easily traceable; or
- f) Other information that would make the student's identity easily traceable.

Other definitions are listed in the FERPA as included at the end of this policy; the Western Heights School District will utilize all definitions as listed therein.

ANNUAL NOTIFICATION:

Within the first four weeks of each school year, the Western Heights School District will publish in the Flyer a notice to parents and eligible students of their rights under the FERPA and this policy. The district will also send home with each student a student handbook listing these rights, and the student handbook will be included with a packet of material provided to parents or an eligible student when the student enrolls during the school year.

The notice will include the following:

1. The right of a student's parents and eligible students to inspect and review the student's education records including the procedure to exercise this right;
2. The intent of the Western Heights School District to limit the disclosure of information contained in a student's education records except: (1) by the prior written consent of the student's parent of the eligible student, (2) as directory information, or, (3) under certain limited circumstances, as permitted by the FERPA;
3. The rights of, and procedures for, the parent or an eligible student to seek to amend parts of the student's education record which he or she believes to be inaccurate, misleading, or in violation of student's privacy rights. This right includes the right to a hearing to present evidence that the record should be changed if the district decides not to alter it according to the parent or eligible student's request;
4. The right of the parent or eligible student to file a complaint with the U.S. Department of Education, if the Western Heights School District violates the FERPA;
5. The procedure that a student's parent or an eligible student should follow to obtain copies of this policy and the locations where copies may be obtained; and
6. The definitions of "school official" and "legitimate educational interest" for the purposes of records disclosure without parent or eligible student consent.

The District will provide translations of the annual notification to parents who have a primary language other than English.

Western Heights School District shall give full rights under the FERPA to either parent, unless the District has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation or custody that specifically revokes these rights.

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

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

The FERPA and this part do not prevent the Western Heights School District from giving student rights in addition to those given to parents.

<u>Types</u>	<u>Custodian</u>	<u>Location</u>
Cumulative School Records (Current and former students)	School Principal's Offices	Council Grove Elementary 7721 W. Melrose, OKC 73127
Health Records		
Special Education Records (Current students)		Greenvale Elementary 901 Greenvale Rd., OKC 73127
		John Glenn Elementary 6501 S. Land, OKC 73159
		Winds West Elementary 8300 SW 37th, OKC 73179
		Western Heights Middle School 8435 SW 44th, OKC 73179
		Western Heights High School 8201 SW 44th, OKC 73179
		Western Heights Academy 8005 SW 44th, OKC 73179
School Transportation Records	Director of Transportation	Western Heights Administration 8401 SW 44 th , OKC 73179
Special Education Records (Current and former students)	Assistant Superintendent (Director of Special Education)	Western Heights Administration 8401 SW 44 th , OKC 73179

PROCEDURE TO INSPECT EDUCATION RECORDS:

Parents of students and eligible students may inspect and review the student's education records upon request. In some circumstances, it may be mutually more convenient for the record custodian to provide copies of records. See the schedule of fees for copies below.

Since a student's records may be maintained in several locations, the school principals will offer to collect copies of records or the records themselves from locations other than a student's school, so they may be inspected at one site. However, if parents and eligible students wish to inspect records where they are maintained, school principals will assist the parents in the on-site review by providing a mutually agreed upon time and supervising the inspection. School principals shall also respond to reasonable requests for explanations and interpretations of the records.

Parents of eligible students should submit to the student's school principal a written request which identifies as precisely as possible the record or records he/she wishes to inspect.

The principal (or other custodian) will contact the parent of the student or the eligible student to discuss how access will be best arranged (copies, at the exact location, or records brought to a single site).

The principal (or other custodian) will make the needed arrangements as promptly as possible and notify the parent or eligible student of the time and place where the records may be inspected. This procedure must be completed in 45 days or less from the receipt of the request for access.

If for any valid reason such as working hours, distance between record location sites, or health, a parent or eligible student cannot personally inspect and review a student's education record, the Western Heights School District will arrange for the parent or eligible student to obtain copies of the records. See below for information regarding fees for copies of records.

When a record contains information about students other than a parent's child or the eligible student, the parent or eligible student may not inspect and review the records of the other students.

The Western Heights School District shall not destroy any education records if there is an outstanding request to inspect and/or review the requested records.

FEEES FOR COPIES OF RECORDS:

The Western Heights School District will not deny parents or eligible student any rights to copies of records because of the following published fee. Where the fee represents an unusual hardship, it may be waived in part or entirely by the Superintendent. However, the district reserves the right to make a charge for copies such as transcripts it forwards to potential employers or to colleges and universities for employment or admissions purposes. The school district may deny copies of records (except for those required by the FERPA) in the following situations:

1. The student has an unpaid financial obligation to the school; or
2. There is an unresolved disciplinary action against the student which warrants the denial of copies.

The FERPA requires the school district to provide copies of records:

1. When the refusal to provide copies effectively denies access to the records by a parent or eligible student;
2. At the request of the parent or eligible students when the school district has provided the records to third parties by the prior consent of the parent or eligible student; or
3. At the request of the parent or eligible student when the school district has forwarded the records to another school where the student seeks or intends to enroll.

The fee for copies provided under the FERPA may not include the costs for search and retrieval. This fee will be twenty (20) cents per page.

The fee for all other copies such as copies of records forwarded to third parties with prior consent or those provided to parents as a convenience will be twenty-five (25) cents per page plus postage if that is involved.

USE OF STUDENT EDUCATION RECORDS:

To carry out their responsibilities, school officials will have access to student education records for legitimate educational purposes. The Western Heights School District will use the following criteria to determine who are school officials. An official is:

1. A person certified by the state and appointed by the school board to an administrative or supervisory position;
2. A person certified by the state and under contract to the school board as an instructor;
3. A person employed by or under contract to the school board to perform a special task such as a secretary, a clerk, the school board attorney or auditor for the period of his or her performance as an employee or contractor; or
4. A person duly elected to the school board, when review of the student's records is pertinent to a pending board decision.

School officials who meet the criteria listed above will have access to a student's records if they have a legitimate educational interest in doing so. A "legitimate education interest" is the person's need to know in order to:

1. Perform an administrative task required in the school employee's position description approved by the school board;
2. Perform a supervisory or instructional task directly related to the student's education; or
3. Perform a service or benefit for the student or the student's family such as health care, counseling, student job placement, or student financial aid.

The Western Heights School District will only release information from or permit access to a student's education record with a parent or eligible student's prior written consent, except that the school officials may permit disclosure without prior written consent when:

- (1) The disclosure is to other school officials, including teachers, within the Western Heights School District whom the District has determined to have legitimate educational interests.
- (2) The disclosure is to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.
- (3) The disclosure is, subject to the requirements of the FERPA, to authorized representatives of-
 - (i) The Comptroller General of the United States;

- (ii) The Attorney General of the United States;
 - (iii) The Secretary; or
 - (iv) State and local education authorities.
- (4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:
- A. Determine eligibility for the aid;
 - B. Determine the amount of the aid;
 - C. Determine the conditions for the aid; or
 - D. Enforce the terms and conditions of the aid.
- (ii) As used in paragraph (a)(4)(i) of this section, “financial aid” means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual’s attendance at an educational agency or institution.
(*Authority: 20 U.S.C. 1232 g(b)(1(D))*)
- (5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically-
- A. Allowed to be reported or disclosed pursuant to a State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system’s ability to effectively serve the student whose records are released; or
 - B. Allowed to be reported or disclosed to juvenile justice authorities pursuant to a State statute adopted after November 19, 1974, subject to the requirements of the FERPA.
- (ii) Paragraph (5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.
- (6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:
- A. Develop, validate, or administer predictive tests;
 - B. Administer student aid programs; or
 - C. Improve instruction.
- (ii) The Western Heights School District may disclose information under paragraph (6)(i) of this section only if:
- A. The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and
 - B. The information is destroyed when no longer needed for the purposes for which the study was conducted;
- (iii) If this Office determines that a third party outside the Western Heights School District to whom information is disclosed under this paragraph (6) violates paragraph (6)(ii)(B) of this section, the District may not allow that third party access to personally identifiable information from education records for at least five years.
- (iv) For the purposes of paragraph (6) of this section, the term “organization” includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

- (7) The disclosure is to accrediting organizations to carry out their accrediting functions.
- (8) The disclosure is to parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1986.
- (9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.
 - (ii) The Western Heights School District may disclose information under paragraph (9)(i) of this section only if the District makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with-
 - A. A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or
 - B. Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.
 - (iii) A. If the Western Heights School District initiates legal action against a parent or student, the District may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the District to proceed with the legal action as plaintiff.
 - (iii) B. If a parent or eligible student initiates legal action against the Western Heights School District, the District may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the District to defend itself.
- (10) The disclosure is in connection with a health or safety emergency, and if knowledge of the information is necessary to protect the health or safety of the student or other individuals, subject to the FERPA terms.
- (11) The disclosure is information the Western Heights School District has designated as "directory information," under the conditions described in the FERPA.
- (12) The disclosure is to the parent of a student who is not an eligible student or to the student.

In all other cases, the Western Heights School District officials may release information from a student's education record if the student's parents or the eligible student gives his prior written consent for the disclosure. The written consent must include at least:

1. A specification of the records to be disclosed;
2. The reason for the disclosure;
3. The name of the person or the organization, or the class of persons or organizations, to whom the disclosure is to be made;
4. The parent or student's signature; and
5. The date of the consent and, if appropriate, a date when the consent is to be terminated.

The student's parent or the student may obtain a copy of any records disclosed under this provision.

The Western Heights School District will not release information contained in a student's education records, except directory information to any third parties except its own officials, unless

those parties agree that the information will not be further disclosed without the parent or eligible student's prior written consent, and only for the purposes which the disclosure was made.

RECORDS OF REQUESTS FOR ACCESS AND DISCLOSURES MADE FROM EDUCATION RECORDS:

The Western Heights School District will maintain an accurate record of all requests for it to disclose information from or to permit access to a student's education records and of information it discloses and access it permits with some exceptions listed below. This record will be kept with, but will not be a part of, each student's cumulative school records. It will be available only to school officials, the eligible student, the parent of the student, or to federal, state, or local officials for the purpose of auditing or enforcing federally supported education programs.

The record will include, at a minimum:

1. The name of the person or agency that made the request;
2. The interest the person or agency had in the information;
3. The date the person or agency made the request; and
4. Whether the request was granted and, if it was, the date access was permitted or the disclosure was made.

The district will maintain this record as long as it maintains the student's education record.

The record will not include requests for access or access granted to parents of the student or to an eligible student, request for access or access granted to school officials of the Western Heights School District who have a legitimate education interest in the student, requests for or disclosures of information contained in the student's education record if the request is accompanied by the prior-written consent of a parent of the student or the eligible student or the disclosure is authorized by such prior consent, requests for, or disclosure of directory information designated for that student, or for requests by official subpoena as described in the FERPA when the issuing agency has ordered that the request not be disclosed.

PROCEDURES TO SEEK TO CORRECT EDUCATION RECORDS:

Parents of students and eligible students have a right to seek to amend any part of the student's record they believe is inaccurate, misleading or in violation of student privacy rights.

To establish an orderly process to review and amend an education record, the following district procedures shall apply:

First level decision - When a parent of a student or an eligible student ("requester") finds an item in the student's education record which he or she believes inaccurate, misleading or in violation of student rights, he or she should immediately ask the school principal to correct it. If the record is incorrect because of an obvious error and it is a simple matter to make the record change at this level, the school principal will authorize the correction.

If the school principal is unable to amend the record to the requester's satisfaction or if the record does not appear to be obviously incorrect, the principal will:

1. Provide the requester with a copy of the questioned record at no cost;
2. Ask the requester to initiate a written request for the amendment; and
3. Follow the procedure for a second level decision.

Second level decision - The written request to amend a student's education record through the procedure at this level should specify the amendment which the requester wishes the district to make. It should at least identify the item the requester believes is incorrect and state whether he or she believes the item:

1. Is inaccurate and why, and/or
2. Is misleading and why, and/or
3. Violates student rights and why.

The request will be dated and signed by the requester.

Within two weeks after the school principal receives a written request, he or she will: study the request, discuss it with other school officials (the person who made the record or those who may have a professional interest in the district's response to the request), make a decision to comply or decline to comply with the request, and complete the appropriate steps to notify the requester or move the request to the next level for a decision.

If, as a result of this review and discussion, the record should be amended, the school principal shall authorize the change and notify the requester in writing that the amendment has been made. Each such notice will include an invitation for the requester to inspect and review the student's education record to make certain the record is in order and the amendment is satisfactory.

If the school principal determines that the record is not in need of amendment(s), he/she will make a written summary of any discussions with other officials and of any findings in the matter. He/she will transmit this summary and a copy of the written request to the school superintendent.

Third level decision - The school superintendent will review the material provided by the school principal, and if necessary discuss the matter with other officials such as the school attorney or the school board (in executive session). He/she will then make a decision concerning the request and complete the steps at this decision level. Ordinarily, this level of the procedure shall be completed within two weeks. If it will take longer, the superintendent will notify the requester in writing of the reasons for the delay and provide a date by when the decision will be made (which in no case shall exceed beyond an additional 30 days).

If the superintendent decides that the record is in need of amendment, he/she will advise the school principal to make the changes. The school principal shall advise the requester of the change using the procedures outlined in the second-level decision procedures.

If the superintendent decides the record is not in need of amendment, he/she will prepare a certified letter to the requester which shall include:

1. The school district's decision, that the record is correct and the basis for the decision;
2. A notice to the requester that he or she has a right to ask for a hearing to present evidence that the record is in need of amendment and an assurance that the district will grant such a hearing;
3. Instructions for the requester to contact the superintendent, or a designee, to discuss impartial hearing officers, convenient times, and a satisfactory site for the hearing. (The district will not be bound by the requester's positions on these items but will, to the extent possible, arrange the hearing accordingly; and.
4. Advise that the requester may be represented or assisted in the hearing by other parties, including an attorney, at the requester's expense.

Fourth level decision (Final) – Within seven days of the completion of all third-level decision procedures, the superintendent shall provide the requester with notice of the hearing date/time/location and the name of the designated hearing officer.

At the hearing, the hearing officer shall provide the requester with a full and reasonable opportunity to present material evidence and testimony to demonstrate that the questioned part(s) of the student's education record is in need of amendment as documented in the second level.

Within one week after the hearing, the hearing officer shall submit to the school superintendent a written summary of the evidence submitted at the hearing. Along with the summary, the hearing officer shall submit his or her recommendation, based solely on the evidence presented at the hearing, that the record should be amended or remain unchanged.

The school superintendent will render the district's final decision within two weeks of the hearing. That decision will be based on the summary of the evidence presented at the hearing and the hearing officer's recommendation. However, the district's decision will be based solely on the evidence presented at the hearing. Therefore, the superintendent may overrule the hearing officer if he believes the hearing officer's recommendation is not consistent with the evidence presented. As a result of the district's decision, the superintendent will take one of the following actions:

1. If the decision is that the district will amend the record, the superintendent will instruct the school principal to amend the record. The principal shall correct the record and notify the requester as outlined in the second-level decision procedures.
2. If the decision is that the district will not amend the record, the superintendent will prepare a written notice to the requester which will include:
 - a) The school district's decision that the record is not inaccurate, misleading, or in violation of the student's privacy rights and that it will not be changed,
 - b) A copy of the hearing officer's summary of evidence presented at the hearing and a written statement of the reasons for the district's decision, and.
 - c) Advice to the requester that he or she may place in the student's education record an explanatory statement which states the reasons he or she disagrees with the school district's decision and/or the reasons he or she believes the record is in need of amendment.
3. If the requester prepares a statement as listed in #2c above, the district shall:
 - a) Maintain the statement with the contested part of the record for as long as the record is maintained; and
 - b) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

DIRECTORY INFORMATION:

The Western Heights Public School District proposes to designate the following personally identifiable information contained in a student's education record as "directory information," and it will disclose that information without prior written consent.

1. The student's name.
2. The student's class designation (i.e., first grade, tenth grade).
3. The student's extracurricular participation.
4. The student's achievement awards or honors.
5. The student's weight and height if a member of an athletic team.
6. The student's photographs or film footage taken at school or school related events.

Every parent/eligible student will be notified of such "directory information" content immediately upon initial enrollment in the district and then on an annual basis at the beginning of each school year. After the parents or eligible students have been so notified, they will have two (2) weeks to advise the district, in writing, of any or all of the items above which they refuse to permit the district to designate as directory information about that student.

(NOTE: The FERPA allows an educational agency or institution to disclose directory information about former students without meeting the other conditions of this section as listed above.)

ADDITIONAL PROVISIONS OF FERPA:

Section 9528 of the ESEA, 20 U.S.C. § 7908, as amended by the NCLB, and 10 U.S.C. 503, as amended by §544 of the *National Defense Authorization Act for Fiscal Year 2002*, require local educational agencies (LEAs) to:

- Give military recruiters the same access to secondary school students as provided to postsecondary institutions or to prospective employers; and
- Provide students' names, addresses, and telephone listings to military recruiters, when requested, unless a parent has opted out of providing such information. The Western Heights School District will provide written notice (annually) to all parents, with the procedures and forms for opt-out included.

All specific requirements, conditions/provisions, and limitations/exceptions of the FERPA, as detailed in 34CFR Part 99, shall apply to this District policy. A full text of the FERPA regulations is included as a part of this policy as it appears below (Pages 14 – 37).

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT REGULATIONS

34 CFR Part 99

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Section

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- 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?
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- 99.67 How does the Secretary enforce decisions?

AUTHORITY: 20 U.S.C. 1232g unless otherwise noted.

PART 99 – FAMILY EDUCATIONAL RIGHTS AND PRIVACY

The authority citation for part continues to read as follows:

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

Subpart A – General

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

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

- (1) The educational institution provides educational services or instruction, or both, to students; or
- (2) The educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.

(b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(c) The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs referenced in paragraph (a) of this section –

- (1) Are provided to the agency or institution by grant, cooperative agreement, contract, sub grant, or subcontract; or (2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

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

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

§ 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 444 of the General Education Provisions Act, as amended.

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

NOTE: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.

§ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

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

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

“Attendance” includes, but is not limited to:

- (a) Attendance in person or by correspondence; and
- (b) The period during which a person is working under a work-study program.

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

“Dates of attendance”

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

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

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

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

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

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

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

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

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

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

“Education records”

(a) The term means those records that are:

- (1) Directly related to a student; and
- (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Party” means an individual, agency, institution, or organization.

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

“Personally identifiable information” includes, but is not limited to:

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

- (a) The student’s name;
- (b) The name of the student’s parent or other family member;
- (c) The address of the student or student’s family;
- (d) A personal identifier, such as the student’s social security number or student number;
- (e) A list of personal characteristics that would make the student’s identity easily traceable; or
- (f) Other information that would make the student’s identity easily traceable.

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

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

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

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

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

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

§99.4 What are the rights of parents?

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

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

§ 99.5 What are the rights of students?

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

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

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

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

§ 99.7 What must an educational agency or institution include in its annual notification?

(a)(1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.

(2) The notice must inform parents or eligible students that they have the right to -

(i) Inspect and review the student's education records;

(ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

(iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and § 99.31 authorize disclosure without consent; and

(iv) File with the Department a complaint under §§ 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of the act and this part.

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

(i) The procedure for exercising the right to inspect and review education records.

(ii) The procedure for requesting amendment of records under § 99.20.

(iii) If the educational agency or institution has a policy of disclosing education records under § 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

(b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

(2) An agency or institution of elementary or secondary education, shall effectively notify parents who have a primary or home language other than English.

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

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

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

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

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

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

(2) A component of an educational agency or institution does not lose its status as a "law enforcement unit" if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceeding against the student.

(b)(1) Records of law enforcement unit means those records, files, documents, and other materials that are –

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of law enforcement unit does not mean –

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

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

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

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

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

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

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

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

(a) Except as limited under § 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to –

(1) Any educational agency or institution; and

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

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

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

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

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

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

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

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

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

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

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

§ 99.11 May an educational agency or institution charge a fee for copies of education records?

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

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

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

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

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

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

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

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

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

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

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

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

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

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

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

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

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

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

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

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

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

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

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

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

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under § 99.21.

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

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

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

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

(i) Amend the record accordingly; and

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

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

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

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

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

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

§ 99.22 What minimum requirements exist for the conduct of a hearing?

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

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

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

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

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

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

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

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

Subpart D – May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

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

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

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

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

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

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

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

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

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

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

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

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

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The Secretary; or

(iv) State and local educational authorities.

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

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

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

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

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

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

(A) Allowed to be reported or disclosed pursuant to a State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

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

(ii) Paragraph (a)(5)(1) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

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

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

(B) Administer student aid programs; or

(C) Improve instruction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Paragraph (a) of this section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally

identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11), (13), (14), and (15) of this section.

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

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under § 99.33(b), the record of the disclosure required under this section must include:

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

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

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

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

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

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

(1) The parent or eligible student;

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

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

(4) A party seeking directory information; or

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

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

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

§ 99.33 What limitations apply to the redisclosure of information?

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

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

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

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

(2) The educational agency or institution has complied with the requirements of § 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures made to parents of dependent students under § 99.31(a)(8), to disclosures made pursuant to court orders, lawfully issued subpoenas, or litigation under § 99.31(a)(9), to disclosures of directory information under § 99.31(a)(11), to disclosures made to a parent or student under § 99.31 (a)(12), to disclosures made in connection with a disciplinary proceeding under § 99.31(a)(14), or to disclosures made to parents under § 99.31(a)(15).

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

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

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

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

(a) An educational agency or institution that discloses an education record under § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

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

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

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

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

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

§ 99.37 What conditions apply to disclosing directory information?

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

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

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

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

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

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

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

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

(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))

§ 99.39 What definitions apply to the nonconsensual disclosure of records by postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or non-forcible sex offenses?

As used in this part:

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

Arson
 Assault offenses
 Burglary
 Criminal homicide – manslaughter by negligence
 Criminal homicide – murder and nonnegligent manslaughter
 Destruction/damage/vandalism of property
 Kidnapping/abduction
 Robbery
 Forcible sex offenses.

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

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

“Sanction imposed” means a description of the disciplinary action taken by the institution, the date of its imposition, and its duration.

“Violation committed” means the institutional rules or code sections that were violated and any essential findings supporting the institution’s conclusion that the violation was committed.

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

Subpart E – What Are the Enforcement Procedures?**§ 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?**

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

(b) The Secretary designates the Office to:

- (1) Investigate, process, and review complaints and violations under the Act and this part; and
- (2) Provide technical assistance to ensure compliance with the Act and this part.

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

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

§ 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

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

§ 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

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

§ 99.63 Where are complaints filed?

A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-4605.

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

§ 99.64 What is the complaint procedure?

(a) A complaint filed under § 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office may extend the time limit in this section for good cause shown.

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

§ 99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under § 99.64(b). The notice to the educational agency or institution –

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of § 99.64.

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

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

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section:

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

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

§ 99.67 How does the Secretary enforce decisions?

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

(1) Withhold further payments under any applicable program;

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

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

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

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

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

Appendix A to Part 99 – Crimes of Violence Definitions

Arson

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

Assault Offenses

An unlawful attack by one person upon another.

(NOTE: By definition there can be no “attempted” assaults, only “completed” assaults.)

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

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

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

(NOTE: This offense includes stalking.)

Burglary

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

Criminal Homicide – Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide – Murder and Nonnegligent Manslaughter

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

Destruction/Damage/Vandalism of Property

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

Kidnapping/Abduction

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

(NOTE: Kidnapping/Abduction includes hostage taking.)

Robbery

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

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

Sex Offenses, Forcible

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

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

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

(c) *Sexual Assault With An Object*. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of

giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

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

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

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

Nonforcible Sex Offenses

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

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

(b) *Statutory Rape*. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

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

SECTION II: PPRA

These policies and procedures are designed to meet the provisions of the Protection of Pupil Rights Amendment (PPRA) and all applicable Oklahoma Statutes. The Western Heights District intends to comply fully with these statutes and is committed to implementing these policies and procedures.

(Statute: 20 U.S.C. § 1232h. Regulations: 34 CFR Part 98)

DEFINITION OF SOME TERMS USED IN THE PPRA:

“Instructional Material” - instructional material that is provided to a student, regardless of format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.

“Invasive Physical Examination” – any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

“Personal Information” - individually identifiable information including –

- (1.) a student’s or parent’s first and last name;
- (2.) a home or other physical address (including a street name and the name of a city or town);
- (3.) a telephone number; or
- (4.) a social security number.

For purposes of this policy, “District” shall mean the Western Heights School District and any/all of its school sites, departments, employees, and contracted service providers.

GENERAL PROVISIONS:

PPRA governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

1. Political affiliations or beliefs of the student or the student’s parent;
2. Mental or psychological problems of the student or the student’s family;
3. Sex behavior or attitudes;
4. Illegal, anti-social, self-incriminating, or demeaning behavior;
5. Critical appraisals of other individuals with whom respondents have close family relationships;
6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. Religious practices, affiliations, or beliefs of the student or student’s parent; or
8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

The PPRA also concerns marketing surveys and other areas of student privacy, parental access to information, and the administration of certain physical examinations to minors.

The rights under the PPRA transfer from the parents to a student who is 18 years old or an emancipated minor under State law.

The following procedures have been developed, in consultation with parents, regarding the requirements and provisions of the PPRA.

PARENT RIGHTS UNDER THE PPRA:

Parents will be informed of specific PPRA provisions, including:

- 1.) The right of parents to inspect, upon request, a survey created by a third party before the survey is administered or distributed by the District to students.
- 2.) Arrangements to protect student privacy will be provided by the District in the event of the administration of a survey to students containing one or more of the eight protected items of information noted above (including the right of parents to inspect, upon request, a survey that concerns one or more of the eight protected items of information).
- 3.) The right of parents to inspect, upon request, any instructional material used as part of the educational curriculum for students. Parents should contact the school principal to make arrangements to inspect any and all instructional/curriculum materials used with their student.
- 4.) Advance notice will be given to parents before the administration of physical examinations or screenings that the school may administer to students.
- 5.) The collection, disclosure, or use of personal information (including items such as a student's or parent's first and last name, address, telephone number or social security number) collected from students for the purpose of marketing or selling, or otherwise providing the information to others for that purpose, including the District's arrangements for protecting student privacy in the event of collection, disclosure, or use. Whenever applicable, only "directory information" will be shared with others for this purpose. Specific "directory information" used by the Western Heights School District is listed in the FERPA section of this policy.
- 6.) The right of parents to inspect, upon request, any instrument used in the collection of personal information, as described above in paragraph 5, before the instrument is administered or distributed to a student. Parents should contact the school principal to make arrangements to inspect any and all such instruments prior to their use.

ANNUAL NOTIFICATION:

Within the first four weeks of each school year, the Western Heights School District will publish in the *Flyer*, a notice to parents and eligible students of their rights under the PPRA and this policy. The District will also send home with each student a student handbook listing these rights, and the student handbook will be included with a packet of material provided to parents or an eligible student when the student enrolls during the school year. Subsequent notices will also be distributed if substantive changes to the policy are made during the school year.

The notice will include the following:

1. General Notifications:
 - A. The PPRA applies to surveys that contain questions about one or more of the eight protected areas listed above. The notification will explain that for surveys that contain questions about one or more of the eight protected areas and that are funded in whole or in part by Department funds, the District must obtain prior written consent from parents before students are required to submit to the survey.
 - B. The notification will also indicate that, for surveys that contain questions from one or more of the eight protected areas but are not funded in whole or part by Department funds, the District will notify the parent, at least annually at the beginning of the school year, of the

- specific or approximate dates during the school year when it will administer the survey(s) and provide an opportunity for the parent to opt his or her child out of participating.
- C. The District shall notify parents that they have the right to review, upon request, any survey that concerns one or more of the eight protected areas, any instructional materials used in connection with any survey that concerns one or more of the eight protected areas, and any instructional material used as part of the educational curriculum for the student.
- D. The notification will also include the name and address of the government agency for filing a complaint if parents believe their rights have been violated under the PPRA.

2. Specific Notifications:

Whenever applicable, the District shall offer an opportunity for parents to opt their child out of participating in the following activities:

- Activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information, or otherwise providing that information to others for that purpose.
- Any non-emergency, invasive physical examination or screening that is: 1) required as a condition of attendance; 2) administered by the school and scheduled by the school in advance; and 3) not necessary to protect the immediate health and safety of the student, or of other students.
- The administration of any survey containing one or more of the eight protected areas of information listed above and that is not funded in whole or in part by Department funds. (The District shall obtain active consent, and may not use an opt-out procedure, if the survey is funded in whole or in part with Department funds.)

If applicable, the District shall “directly” notify, such as through U.S. Mail or email, parents of students who are scheduled to participate in the specific activities or surveys noted above and will provide an opportunity for the parent to opt his or her child out of participation in the specific event or survey. The District may make this notification to parents at the beginning of the school year if the District has identified the specific or approximate dates of the activities or surveys at that time. Thereafter, parents shall be provided reasonable notification of the planned activities and surveys and be provided an opportunity to opt their child out, as well as an opportunity to review any pertinent surveys.

The District will provide translations of the annual notification to parents who have a primary language other than English.

Western Heights School District shall give full rights under the PPRA to either parent, unless the District has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation or custody that specifically revokes these rights.

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

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

OTHER PROVISIONS:

1. The requirements concerning activities involving the collection and disclosure of personal information from students for marketing purposes do not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for or to students or educational institutions, such as the following:
 - a) College or other postsecondary education recruitment, or military recruitment.
 - b) Book clubs, magazines, and programs providing access to low-cost literary products.
 - c) Curriculum and instructional materials used by elementary schools and secondary schools.
 - d) Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students.
 - e) The sale by students of products or services to raise funds for school-related or education-related activities.
 - f) Student recognition programs.
2. This law does not preempt applicable provisions of State law that require parental notification.
3. This law does not apply to any physical examination or screening that is permitted or required by State law, including physical examinations or screenings permitted without parental notification.

Adopted: 06-03-93

Revised: 07-11-94

Revised: 12-05-94

Revised: 06-25-97

Revised: 07-22-04

Revised: 07-11-11