This document provides the public with a single document containing all regulatory provisions pertaining to the Family Educational Rights and Privacy Act. Included is a summary of the major comments received after publication of a notice of proposed rule-making. Each summary of comments is followed by a response that indicates whether or not a change has been made in the regulations. (Author/IRT)
Title 45—Public Welfare
SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION
PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS
Final Rule on Education Records

Notice of proposed rulemaking was published in the Federal Register on January 6, 1976 at 40 FR 1208 setting forth the requirements to be met by educational agencies or institutions to protect the privacy of parents and students under section 438 of the General Education Provisions Act, as amended (added by section 513 of Pub. L. 93-380 and amended by section 2 of Pub. L. 93-568).

Three hundred and twenty-one letters of comment were received during the 60-day public comment period which closed on March 7, 1975. All comments were given consideration during the revision of the regulations, the first segment of which was published in final form on March 2, 1976 at 41 FR 8025. This document supersedes the previously published final regulation. The revoked regulation has been incorporated for republication at subparts B, C, and D (Sections 99.21-23), and E (Sections 99.31 and 36) of this document, in order to provide the public with a single document containing all regulatory provisions pertaining to the Family Educational Rights and Privacy Act.

While the Department unquestionably supports the purpose of the law—to provide greater privacy safeguards to parents and students through the application of fair information practice—during the course of developing this final regulation it became evident that translating this intent into practice might create a number of problems. For our part, there was a conscious effort to mitigate any dislocating effects which the regulations might have and, at the same time, remain consistent with the statute.

We believe that some working experience with this Act will be helpful to the Department in determining whether there is a need to modify this regulation or whether a recommendation for legislative change may be either unnecessary or inappropriate.

As a result, the regulation is being issued in final form, effective upon publication, with the commitment that comments on the regulation and its operation, including its effect on the day-to-day activities of educational agencies and institutions during the 1976-77 school year, will be formally invited for a ninety-day period commencing July 1, 1976. These comments will be used in evaluating this regulation and will be shared with the Congress, as may be necessary, in order to improve the effects and applicability of this regulation and the statute upon which it is based.

In addition to welcoming comments on the substance of these regulations, the Department will also solicit public comment regarding the most appropriate means of enforcing the provisions of the Act. Regarding the means of enforcement, the Department, while educational agencies are accountable for Federal funds they receive and must act in conformity with Federal law, the practice of using the expenditure of Federal funds as leverage to enforce provisions is not the most effective way to accomplish the objectives of this statute. We would be interested in your views as to whether other means appropriate means of enforcement that Federal funds cutoff are or should be available.

ANALYSIS OF EARLIER COMMENTS

A summary of the major comments received follows in order of the sections numbered as in the final regulations. Each summary of comments is followed by a response which indicates whether or not a change has been made in the regulations. Technical changes, such as the renumbering of sections, are listed under other changes at the end of each section or subpart.

SUBPART A—GENERAL

1. Section 99.1 Applicability of part.
   Comment. A commenter suggested that the determination as to whether or not an educational agency or institution would be required to comply with section 438 of the Act and this part should be based on the actual receipt of funds and not on whether funds have been made available under an applicable program.
   Response. Sections 438 (a) (1) (A), (a) (2), (b) (1), and (b) (2) state that "No funds shall be made available under any applicable program to any educational agency or institution..."; therefore, no change has been made in the regulations. However, the term "available" should be read in this context as referring to funds which have been obligated by the U.S. Commissioner of Education.

2. Section 99.2 Definitions.
   Comment. One commenter indicated that it would be helpful to have a list of Federal programs administered by the U.S. Commissioner of Education. One commenter suggested that the list of programs be published as a part of the regulations.
   Response. It was determined that it would not be feasible to publish a list of Federal programs administered by the Commissioner as a part of the regulations because any such list would be subject to change and tend to become out-of-date soon after it is published.

3. Section 99.3 Definitions.
   Comment. Several commenters asked for clarification as to whether directory information included only the enumerated information, or if additional information could be designated as directory information.
   Response. The definition of directory information has been modified to conform with the statutory definition; that is, that it "includes the enumerated information. For guidance as to what further information could be included the phrase "* * * and other similar information" has been added to the definition.

4. Section 99.4 Definitions.
   Comment. Several commenters recommended that the definition of educational records be changed. The single suggestion most often made was that the term "school records" be used in place of "education records," and that school records...
and non-school records be defined by their origin.

Response. Section 438(a)(4)(A) defines education records as "*(1) those records, files, documents, and other materials which contain information directly related to a student; and *(2)* are maintained by an educational agency or institution, or by a person acting for such agency or institution.*" Section 438(a)(4)(B)(i) through (iv) list those records which are not considered to be education records if conditions are adhered to by an educational agency or institution in the maintenance of the records. The statute does not provide for a differentiation between records maintained by an educational agency or institution based on the origin of those records.

Comment. Several commenters asked for clarification regarding what was meant by "institutional" in the definition of education records at section 438(a)(4)(B)(i).

Response. The term "institutional" appeared incorrectly in the copy of section 438 of the Act reprinted as a part of the proposed rules. The correct word is "instructional." The phrase at section 438(a)(4)(B)(i) should have stated "*(1)* records of Instructional, supervisory, and administrative personnel and educational personnel ancillary thereto.*"

Comment. Several commenters asked that the term "substitute" used in the definition of education records be defined.

Response. The term "substitute" in the definition of education records has been defined as "*(1) an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.*"

Comment. Several commenters asked for clarification as to what was meant by "same jurisdiction" in the definition of education records at section 438(a)(4)(B)(ii).

Response. Since the meaning may vary under applicable State law and factual situation, no attempt has been made to define by regulation the term "same jurisdiction.*"

Comment. Several commenters asked that the term "financial aid" be defined in the regulations.

Response. A definition of "financial aid" has been included. The definition states "*(a) payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.*"

Comment. Several commenters asked for clarification regarding who could exercise parental rights and responsibilities on behalf of a student. Particular concern was expressed about whether a foster parent or other individual could act on behalf of a student.

Response. The definition of "parent" has been modified to include, in some instances, an individual who may not be the legal guardian of a student. The definition, as revised states "*Parent includes a parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian; an educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence of a court decree, or a legally binding instrument provides to the contrary.*"

Comment. A commenter suggested that an exception to the definition of "education records" be added for non-academic records kept by seminaries. The commenter indicated that seminaries and schools or departments of divinity or theology which are part of a college or university may maintain records on candidates for the priesthood or ministry, rabbinical, or religious orders. Those records contain information on the spiritual and psychological development of such persons, and pertain to their suitability for the ministry, rabbinical or religious order, rather than to their educational history. The commenter argued that the requirements of the Act should not apply to such records. Additionally, the commenter stated that the regulations should exclude the application of the law when grants to the university complex do not aid the seminary.

Response. As is made clear in the definitions of "education records," "student," and "educational agency or institution" contained in the Act, section 438 applies generally to all records directly relating to a student which are maintained by any part of an educational agency or institution which receives funds from programs for which the Commissioner has administrative responsibility. However, whether section 438 covers the term of record described by the commenter, or applies to the record-keeping policies of schools of divinity or theology which are part of an educational agency or institution, involve complex institutional questions and interpretations of Supreme Court decisions. For this reason, such issues will be considered closely on a case-by-case basis as they arise, but not at this time be addressed by regulation.

Comment. Several commenters asked if the definition of a student was intended to include or exclude certain individuals, such as former students.

Response. A new definition of student is provided which adopts much of the language used in section 438(a)(6). The definition states "*(A) Student includes an individual with respect to whom an educational agency or institution maintains education records.*"

- Other Changes. A definition has been added for "disclosure." The terms "access" and "release" previously used to distinguish between disclosure to a parent or student and disclosure to a third party, respectively, generated confusion and avoided by the use of the new single term to cover both situations.

The definition of "office and review board" has been deleted because the functions are explained under Subpart E—Enforcement.

The definition of "panel" has been modified in order to provide for the inclusion of any conclusion between a panel and the review board: A panel is a subunit of the review board designated to conduct a hearing.

3. Section 99.4 Student rights.

Comment. Several commenters indicated they felt that the notice requirement under section 99.5 of the proposed rules was too burdensome. The commenters, in most cases, did not object to the requirement that notice be provided to parents of students or eligible students, but they did object to the effect of the inclusion of certain items in the notice for clarification.
RULING AND REGULATIONS

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The amount of information required to be given to parents of students and eligible students for annual notification purposes under section 99.5 of the Act has been reduced. A new section 99.6 Annual notification of rights has been added to the regulations.

Comment. A commenter stated that a basic requirement of the regulations should be that each educational agency or institution adopt a policy which is consistent with the requirements of section 438 of the Act and this part. The commenter pointed out that sections (a)(1)(A), (b)(1) and (b)(2) contain explicit references to an educational agency or institution being required to adopt policies, and that sections 438(a)(2), (a)(5)(B), (b)(4)(A), (a)(6) contain implicit references to the need for an educational agency or institution to adopt policies.

Response. New section 99.5 Formulation of institutional policy and procedures requires that each educational agency or institution formulate and adopt policies consistent with the minimum requirements of section 438 of the Act and this part. This policy is to be in writing and copies are to be made available upon request to parents of students or eligible students.

Comment. Several commenters indicated that the requirement under section 99.5(c) of the proposed rules that an educational agency or institution provide the required notification in the language of the parent of a student or an eligible student was, in many cases, inappropriate. Institutions of postsecondary education pointed out that since proficiency in the English language is a condition for admission to postsecondary institutions in the United States the requirement to provide notification to an eligible student in his or her language made little or no sense.

Response. The requirement in section 99.5(c) of the proposed rules has been modified. New section 99.51(c) requires that each agency or institution of elementary and secondary education, when developing a policy of informing parents of students of their rights, provide for the need to effectively notify parents identified as having a primary or home language other than English. The requirement that an institution of postsecondary education provide notification in the language of the eligible student has been deleted from the regulations.

Comment. Several commenters indicated that the requirements in section 99.5(b) of the proposed rules were excessive. The commenters were particularly concerned about the requirement that an educational agency or institution publish the names of the officials who have been designated responsible for each type of education record. They pointed out that the names were likely to change because different individuals would be appointed over a period of time. The commenters also expressed concern about attempting to list the persons who would have access to education records. They stated that it would be difficult, if not impossible, to specify all of the individuals who might have a need for access to education records.

Response. The requirement in section 99.5(b) of the proposed rules regarding the official who has been designated by the educational agency or institution as responsible for each type of record has been modified. New section 99.5(a)(2) requires that the policy adopted by an educational agency or institution includes a specification of the criteria that the agency or institution will use to determine which parties are “school officials” and what is considered to be a “legitimate educational interest.”

Section 99.5 Annual notification of rights and policy.

Comment. Several commenters asked for clarification regarding the means to be used by an educational agency or institution to provide the notification required by section 99.5(a) of the proposed rules. The specific question most often asked was whether notification must be provided on an individual basis to parents of students or to eligible students, or whether the notification could be published in a student handbook, school catalog, school newspaper, or posted on bulletin boards at the school. Two commenters indicated that it was unclear as to whether notification was to be provided to former students as well as to students currently attending the school at an educational agency or institution.

Response. New section 99.6 states that the annual notification of rights and policies shall be by such means as are reasonably likely to inform parents or eligible students. "* * *" The determination as to the actual means to be used is left to the individual educational agency or institution. Some agencies and institutions may decide to provide notification on an individual basis; others may decide to publish the notification in a student handbook, school catalog, or student newspaper, or to post it on bulletin boards at the school. It was felt that the regulations should specify the criteria to be used in selecting a means of notification, but that the actual means of notification since the means may vary from agency to agency and institution to institution. In addition, new section 99.5 states that the notification is to be provided to parents of students in attendance or to eligible students in attendance at an educational agency or institution; therefore, making it clear that the notification of rights and policy need not be mailed to former students or their parents.

Comment. Several commenters indicated they felt that the requirement for an educational agency or institution to provide notification of rights for eligible students was excessive. One commenter suggested that notification should be provided on a one-time basis at the time that a student enrolled in an educational agency or institution.

Response. It was determined that the requirement for an educational agency or institution to provide notification on an annual basis was not excessive. Educational agencies and institutions generally issue or distribute student handbooks or school catalogs at the first of the school year in order to inform them of the school’s policies, or send newsletters or distribute bulletins to parents of students at the end of the school year in order to inform them of the school’s policies. The notification could, in these instances, be included in the school’s or institution’s handbook or catalog. Notification on a one-time basis at the time that a student enrolled in an educational agency or institution was not necessary. Several commenters stated that no change had been made in the requirement.

Comment. Several commenters stated that they felt that the requirement under section 99.5(b)(1) of the proposed rules to provide notification to parents of students or to eligible students as to the types of education records maintained by the educational agency or institution was excessive in that it was not specifically required by section 438 of the Act.

Response. New section 99.5(a) states that an educational agency or institution shall provide notification to parents of students or eligible students which is reasonably likely to inform them of their rights under this part. As was previously stated, the comment section which followed section 99.5 of the proposed rules, it was determined that it was essential to require that each educational agency or institution identify the types of education records maintained by it so that parents of students or eligible students would be able to decide which educational agency or institution the information required under this part, and to seek a complaint with the Department of Health, Education, and Welfare concerning an alleged failure by the agency or
Institution to comply with section 438 of the Act and this part.

Response. The right to file a complaint with the Department of Health, Education, and Welfare concerning an alleged failure by an educational agency or institution to comply with section 438 of the Act is one of the rights established in the Act. Any parent or eligible student may be informed of under section 438(e).

6. Section 99.7 Limitation on waivers.

Comment. A commenter asked for clarification regarding whether or not an eligible student was permitted to waive the right to inspect and review information, other than confidential letters and statements of recommendation, contained in his or her education records.

Response. Section 438(a)(1)(C) states that "A student or person applying for admission may waive his right of access to educational agency or institution to comply with section 438 of the Act or this part." For the reasons stated in the Department's response to earlier comments, the student or person applying for admission may not waive his or her right to inspect and review confidential letters and statements of recommendation provided for a specific purpose, if these letters and statements were subsequently used for a different purpose. This restriction is to ensure that no additional waiver provided for a specific purpose if these letters and statements were subsequently used for a different purpose. This restriction is to ensure that no additional waiver provided for a specific purpose if these letters and statements were subsequently used for a different purpose.

Comment. Several commenters objected to the right to inspect and review confidential letters and statements of recommendation. The Joint Statement explained that the right to inspect and review confidential letters and statements of recommendation provided for a specific purpose, and that these letters and statements of recommendation are subsequently used for a different purpose, the waiver would be considered void, and the eligible student would have the right to inspect and review the letters and statements of recommendation.

Other Changes. Section 99.6 of the proposed rules has been renumbered section 99.7.

7. Section 99.8 Fees.

Comment. Several commenters asked if an educational agency or institution could charge a fee for copies of education records.

Response. New section 99.8 states that an educational agency or institution may charge a reasonable fee for copies of education records, but additional waiver provisions were added.
Comment. Several commenters asked for clarification regarding whether or not an applicant for admission to an educational agency or institution has a right to be notified of any education records.

Response. The right to inspection and review education records is provided to the parent of a student or an eligible student. An applicant, for admission to an educational agency or institution, may not be considered a student for purposes of section 438 of the Act or this part. The definition of student at section 438 (a)(5) states in part: " ... student does not include a person who has not been in attendance at such agency or institution."

10. Section 99.13 Limitation on destruction of education records.

Comment. A commenter stated that the implement of a policy of providing notification to parents and eligible students 60 days in advance of the destruction of any education records be provided for notification to parents and eligible students within a reasonable period of time.

Response. Generally, educational agencies or institutions are not required to provide notification to parents and eligible students. In some instances, determined under applicable State law or agency or institutional regulations. No change has been made in the regulations.

Comment. A commenter recommended that each educational agency or institution be required to provide notification to parents and eligible students 60 days in advance of the destruction of any education records.

Response. Nothing in section 438 of the Act and this part would preclude an educational agency or institution adopting a policy of providing notification to parents and eligible students prior to the destruction of any education records. Such a requirement might work an undue burden on educational agencies or institutions; however, there may be a policy of destroying certain materials, purge records or a day-to-day basis rather than on a fixed schedule. No change has been made in the regulations.

Other Changes. Section 99.14 of the proposed rules has been renumbered section 99.13. Section 99.15 of the proposed rules has been deleted because it was redundant. Sections 99.13 (c) and (d) were redesignated sections 99.11 (b) (1) and (b) (2). The other paragraphs in section 99.13 have been deleted because they were redundant.

SUBPART C - AMENDMENT OF EDUCATIONAL RECORDS

11. Section 99.20 Request to amend education records.

Comment. Several commenters indicated they were concerned that an educational agency or institution might use the informal proceedings under section 99.21 to delay in providing the parent or student with an opportunity for a hearing to seek the correction of education records.

Response. Section 99.21 of the proposed rules has been added. New section 99.20 states that if a parent or student believes that information in the education records of a student is inaccurate or misleading, or otherwise in violation of the rights of the student, the parent, or the eligible student may request that the educational agency or institution amend the records within a reasonable period of time. The amendment must be made within a reasonable period of time. If the educational agency or institution decides to refuse to amend the education records within a reasonable period of time, the parent or student may appeal the denial of the request to the educational agency or institution.

In addition, the fact that the right is provided to parents of students who "have been in attendance" or "who are in attendance" at a school of such agency or such institution makes the opportunity for a hearing not available to the parents of students who have not been in attendance. The purpose of the hearing is to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained in the education records of a student regardless of whether the information was entered in the education records.

Comment. A commenter recommended it be made clear that an educational agency or institution must not correct or delete from the education records.

Response. New section 99.21 states that if a student's grades or other record is not an accurate representation of the student's achievement, the student or an eligible student may request that the educational agency or institution amend the education records of a student accordingly, and so inform the parent of the student or the student in writing.

Comment. A commenter requested clarification regarding whether or not a hearing could be requested by a parent or student of an eligible student or an employee of an educational agency or institution.

Response. A hearing may not be requested by a parent or student of a student or an eligible student to contest the assignment of a grade; however, a hearing may be requested by a parent or student of an eligible student or an employee of an educational agency or institution to contest the assignment of a grade.

Other Changes. Section 99.20 of the proposed rules has been renumbered section 99.21.

12. Section 99.21 Right to a hearing.

Comment. A commenter suggested that the amendment to section 99.20 should also include the amendment to section 99.21.

Response. The statute does not provide for such a time limitation. Section 99.20 (2) states that: the parent of a student who has been in attendance at a school of such agency or such institution must provide an opportunity for a hearing. ... to challenge the content of such student's education records, in order to assure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students. If the educational agency or institution must inform the parent of the student or the eligible student of the right to a hearing. If concerned that the educational agency or institution is utilizing informal attempts to reconcile differences, as a delaying tactic, the parent or eligible student may request an opportunity to present evidence without benefit of the decision from any informal proceeding.

13. Section 99.22 Conduct of the hearing.

Comment. Several commenters expressed concern that the standards for the conduct of hearings did not adequately satisfy due process requirements.

Response. There has been much concern that the standards for the conduct of a hearing did not adequately satisfy due process requirements. The commenters recommended the inclusion of additional requirements to protect parents and students such as: (1) specifying the period of time within which educational agencies or institutions must hold a hearing; (2) requiring that the hearing be held at a time and place convenient for the parent or student; (3) permitting the parent or student to be assisted during the hearing by or other representative of his or her choice; (4) providing the parent or student with an opportunity to present evidence relevant to the issues; (5) requiring that the hearing be conducted by an official who is not an employee of the school, agency, or institution; and (6) requiring that the hearing be conducted and the decision based on evidence presented at the hearing.

Comment. New section 99.22 includes many of the requirements, including those of due process. The comments recommended. Some sections of the proposed rules have been modified. Section 99.22 (a) states that the hearing shall be conducted by an official who is not an employee of the school, agency or institution. (b) requiring that the hearing be conducted and the decision based on evidence presented at the hearing.
the hearing in a manner that will not effectively prevent the exercise of the parents’ or students’ rights.

Section 99.22(c) states that a parent of a student or an eligible student may be assisted or represented by an individual of his or her choice at his or her own expense, including an attorney.

Section 99.22(e) states that the decision of an educational agency or institution shall be based solely upon the evidence presented at the hearing. In addition, the decision must include a summary of the evidence and the reasons for the decision.

It was determined that it was not feasible to set a specific period of time within which each educational agency or institution must hold a hearing. It was felt that the requirement under section 99.22(a) that a hearing be held within 30 days of the request would be burdensome. A parent or eligible student to whom information from the education records of a student has been disclosed may be assisted or represented by an individual of his or her choice at his or her own expense.

Section 99.22(c) states that a parent of a student or an eligible student may be assisted or represented by an individual of his or her choice at his or her own expense, including an attorney.

Section 99.22(e) states that the decision of an educational agency or institution shall be based solely upon the evidence presented at the hearing. In addition, the decision must include a summary of the evidence and the reasons for the decision.

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Section 99.22(c) states that a parent of a student or an eligible student may be assisted or represented by an individual of his or her choice at his or her own expense, including an attorney.

Section 99.22(e) states that the decision of an educational agency or institution shall be based solely upon the evidence presented at the hearing. In addition, the decision must include a summary of the evidence and the reasons for the decision.
Response. Section 938(b)(1)(H) permits, but does not require, an educational agency or institution to disclose information from the education records of a student to a parent if the eligible student is a dependent as defined in the Internal Revenue Code of 1954. If the student is a dependent or institution decides to adopt a policy of disclosing information from the education records of a dependent eligible student, the agency or institution will need to establish a procedure for informing the parent when or if the education records of a student are not to be disclosed or if not the eligible student is a dependent as defined by the Internal Revenue Code.

Some educational agencies or institutions may decide to ask an eligible student at the time of registration whether or not he or she is a dependent of his or her parents; other educational agencies or institutions may decide to require that a parent submit an affidavit stating that the eligible student is a dependent for income tax purposes. Nothing in section 938 of the Act or this part requires that a particular procedure be adopted for the purpose of establishing dependency.

Comment. Several commenters indicated that in many instances it would be more practical for an educational agency or institution to notify a parent of a student or an eligible student, particularly the parent of a former student or a former eligible student, of the receipt of a judicial order or subpoena in advance of compliance with the judicial order or subpoena. Two commenters suggested that the requirement be that an educational agency or institution make a reasonable effort to provide the notification in advance of complying with the judicial-order or subpoena.

Response. New section 9331(a)(9) states that an educational agency or institution must make "...a reasonable effort to notify the parent of a student or the eligible student of the order or subpoena in advance of compliance with the judicial order or subpoena.

Comment. Several commenters asked for clarification as to whether an educational agency or institution make a reasonable effort to provide the notification in advance of complying with the judicial order or subpoena.

Response. New section 9331(b) states that "This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student in those cases where the information could be disclosed without the written consent of a parent of a student or an eligible student."

Response. New section 93(b)(1) states that "The statute requires that a record be maintained of a disclosure of information to a parent of a student or an eligible student of information contained in the education records of the student."

Response. New section 9332(a) (replacing proposed section 93.38) has been modified to make it clear that an educational agency or institution must maintain a record of a disclosure of information to a parent or an eligible student of information from the educational records of the student.

Comment. Several commenters requested clarification as to whether or not an educational agency or institution is required to maintain a record of the disclosure of directory information.

Response. Section 9332(a) makes it clear that an educational agency or institution is not required to maintain a record of the disclosure of directory information.

Comment. Two commenters asked for clarification regarding how long the record of disclosures of information contained in the education records of a student must be retained by an educational agency or institution.

Response. The record of disclosures of information contained in the education records of a student is considered to be a part of the education records of a student; therefore, the record of disclosures must be retained as long as the education records of a student to which they relate are maintained by an educational agency or institution.

Other Changes. Section 9338 Record of access of the proposed rules has been renumbered and restated by section 93.32 Record of disclosures required to be maintained.

16. Section 93.33 Limitations on re-disclosure.

Response. Section 9333(a)(proposed 93.39) makes it clear that when information contained in the education records of a student is disclosed to an institution, agency, or organization the information may be used by its officers, employees, and agents: but only for the purpose for which the disclosure was made.

Comment. A commenter requested for clarification regarding whether information disclosed-from the education records of a student to a third party before the effective date of the Act could be redisclosed without the written consent of a parent or an eligible student.

Response. Section 9333(b) which provides a procedure to meet the requirement of section 938(b)(4)(B) requires that each educational agency or institution adopt a policy of requiring a written assurance from third parties before releasing information from the education records of a student. The condition cannot, therefore, be imposed with respect to information released prior to the effective date of the Act.

Comment. A commenter suggested that an educational agency or institution be required to obtain a written assurance from a third party before releasing information from the education records of a student without the written consent of a parent or an eligible student. However, nothing in section 938 of the Act or this part would preclude an educational agency or institution from adopting a policy of requiring a written assurance from third parties before releasing information from the education records of a student.

Response. Section 9333(b) which provides a procedure to meet the requirement of section 938(b)(4)(B) requires that each educational agency or institution adopt a policy of requiring a written assurance from third parties before releasing information from the education records of a student.

10. Section 93.34 Conditions for disclosure to officials of other schools and school systems.

Response. Several commenters indicated that if we did not address the concern: for an educational agency or institution to notify a parent of a student or an eligible student of the transfer of the education records of a student to another agency or institution, because usually the educational agency or institution did not have a new address for the parent or eligible student.

Response. New section 9334(a) requires that each educational agency or institution transferring the education records of a student make a reasonable effort to notify a parent of a student or an eligible student of the receipt of the record. Under the revised regulations, this requirement is met if the agency or institution includes a notice in the records that the records are to be transferred under Section 93.5 that it forwards education records to a school on request.
in which the student seeks or intends to enroll. The requirement would also be met if a letter is sent to the last known address of the parent or eligible student.

An educational agency or institution may disclose the records of a student without the written consent of a parent or an eligible student if a letter is sent to the last known address of the parent or eligible student informing the parent or eligible student that he or she has received the notification. The sending school is not required to further notify a parent or eligible student in those cases in which the transfer of the records is initiated by the parent or eligible student or in those cases in which the student is sending school.

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

Comment. A commenter asked for clarification regarding whether Federal officials, other than those Federal officials listed in Section 438(b)(3), could obtain information from the education records of a student without the written consent of a parent or an eligible student.

Response. Section 438(b)(3) enumerates the purposes for which certain Federal officials may obtain information from the education records of a student without the written consent of the parent of a student or an eligible student under Section 438 of the Act and this part. It does not represent an attempt at an exhaustive listing of all the specific authorized representatives of those officials who might have responsibility for performing the functions described in 438(b)(3).

Other Changes. Section 99.35 Release to Federal and State officials of the proposed rules has been renumbered and retitled Section 99.35 Disclosure to certain Federal and State officials for Federal program purposes.


Comment. Two commenters recommended that the regulations specify that the regulations may be required by the office or institution which has followed the procedures set forth in section 99.64. Several commenters indicated they felt that the procedures for a waiver of the requirements to avoid some paperwork burdens on the educational community. The assurance requirement for subgrants and subcontracts has, likewise, been deleted.


Comment. Several commenters indicated they felt that there should be restrictions on the directory information by an educational agency or institution.

Response. An educational agency or institution which has followed the procedures set forth in section 99.37 may disclose directory information to any member of the public. Nothing in section 438 of the Act or this part would preclude an educational agency or institution adopting a more restrictive policy regarding the disclosure of directory information.

23. Assurances required—general.

Comment. Two commenters suggested that each educational agency or institution be required to submit copies of the policies and procedures it has implemented in order to comply with section 438 of the Act and this part either in place of or in addition to the required assurance.

Response. Submission of copies of policies and procedures adopted by educational agencies or institutions is not considered to be an effective means of monitoring compliance with section 438 of the Act and this part, since it is an institution's practice which is of primary importance. However, the policies and procedures formulated and adopted by an educational agency or institution will be maintained by the office established under section 99.60 as a part of its investigative function.

Comment. A commenter recommended that the regulations specify that a notification to a parent of a student or an eligible student is not required if the notification would be considered to be an effective means of monitoring compliance with section 438 of the Act and this part.

Response. The requirement that each educational agency or institution submit an assurance that it is in compliance and will continue to comply with section 438 of the Act and this part be deleted because it has no statutory basis.

Comment: Several commenters indicated they felt that the procedures for a waiver of the requirements to avoid some paperwork burdens on the educational community. The assurance requirement for subgrants and subcontracts has, likewise, been deleted.

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Comment. Several commenters recommended that section 99.65(b) of the proposed rules was established a 180-day limitation for the filing of complaints be deleted because it was inappropriate.

Response. Section 99.65(b) has been deleted.

Comment. A commenter suggested that the complaint procedures specify the information which is to be contained in a complaint.

Response. It was felt that most complaints will contain the minimal information which is necessary to begin an investigation of a complaint of an alleged violation of section 428 of the Act or this part. It is the responsibility of the office, as a part of its investigative function, to obtain additional information from the concerned complainant and educational agency or institution. No change has been made in this regulation.

Effective date. These regulations shall be effective on June 17, 1976.

Dated: June 8, 1976.

DAVID MARQUIS,
Secretary of Health,
Education, and Welfare.

Subpart A-General

§ 99.1 Applicability of part.

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

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

(c) For the purposes of this part, funds may be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph (a) of this section: (1) Are provided to the agency or institution by the secretary of education; (2) are provided by grant, contract, or subgrant, or subcontract, or (3) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program. (Title IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1232g)

(d) Except as otherwise specifically provided, this part applies to education records of students who are or have been in any educational agency or institution which maintains the records.

(20 U.S.C. 1232g)

§ 99.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 428 of the General Education Provisions Act, as amended.

(20 U.S.C. 1232g)

§ 99.3 Definitions.

(a) "Adequacy" means the General Education Provisions Act, Title IV of Pub. L. 90-247, as amended.

(b) "Compliance" means the U.S. Commissioner of Education.

(20 U.S.C. 1232g)

(d) "Directory information" includes the following information relating to a student: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

(20 U.S.C. 1232g(a)(8)(A))

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

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

"Educational institution," or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under section 99.1(a). The term includes a college, university, school, or the like, including all of its components (such as schools, school systems, or academic programs), and does not include any person or organization acting outside those components in a wholly independent capacity.

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

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

(b) The term does not include:

(i) Records of instructional, supervisory, and administrative personnel and educational personnel-ancillary thereto which:

(A) Are in the sole possession of the maker thereof, and

(B) Are not accessible or revealed to any other individual except a substitute for the purpose of this definition, a "substitute" means an individual who is employed, on a temporary basis, by the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record.

(ii) Records of a law enforcement unit or an educational agency or institution which are:

(A) Maintained apart from the records described in paragraph (a) of this definition:

(B) Maintained solely for law enforcement purposes, and

(C) Not released to individuals other than law enforcement officials of the same jurisdiction: Provided, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3)(1) Records relating to an individual who is employed by an educational agency or institution which:

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

§ 99.5 Formulation of institutional policy and procedures.

(a) Each educational agency or institution shall, consistent with the minimum requirements of § 99.48 of this part, formulate and adopt a policy of—

(1) Informing parents of students or eligible students of their rights under § 99.6;

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

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

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

(iii) A schedule of fees for copies, and

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

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

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

(II) A specification of the personally identifiable information to be designated as directory information under § 99.37;

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

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent or an eligible student to place a statement in the education records of the student as provided in § 99.21(c);

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

§ 99.6 Annual notification of rights.

(a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution...
§ 99.8 Fees.
(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; Provided, That the fee for the first request is not to include the parents and students from exercising their right to inspect and review those records. (b) An educational agency or institution may not charge a fee for search or for to review the education records of a student.

§ 99.11 Right to inspect and review education record.
(a) Each educational agency or institution, except as may be provided by § 99.18, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education record of the student. The agency or institution shall permit a request within a reasonable period of time, but in no case more than 45 days after the request has been made.
(b) The right to inspect and review education records under paragraph (a) of this section includes: (1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and (2) The right to obtain copies of the records from the educational agency or institution where failures of the agency or institution to provide the copies would effectively prevent a parent of an eligible student from exercising the right to inspect and review the education records. (c) Each educational agency or institution may presume that either parent of the student has authority to inspect and review the education record of the student. (d) The educational agency or institution may provide that either parent of the student is subject to the following exceptions: (1) The agency or institution may not destroy any education record if there is an outstanding request to inspect and review them under § 99.11; (2) Explanations placed in the education record under § 99.21 shall be maintained as provided in § 99.31 (d); and (e) The record of access required under § 99.21 shall be maintained for as long as the education record to which it pertains is maintained.

Subpart C—Amendment of Education Records

§ 99.20 Request to amend education records.
(a) The parent of a student or an eligible student, who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student, may request that the educational agency or institution which maintains the records amend them.
(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.
(c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under § 99.32.

20 U.S.C. 1232g(a)(3)
§ 99.21 Right to a hearing.

(a) An educational agency or institution in which a student is enrolled, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with § 99.22.

(b) 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 or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

(c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(d) Any explanation placed in the education records of the student under paragraph (c) of this section shall:

1. Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

2. If the education records of the student or the contested portion thereof are disclosed by the educational agency or institution to any party, the explanation shall also be disclosed to that party.

[20 U.S.C. 1232g(a) (3)]

§ 99.22 Conduct of the hearing.

The hearing required to be held by § 99.21(a) shall be conducted according to the procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

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

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under § 99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

[20 U.S.C. 1232g(a) (3)]

Subpart D—Disclosure of Personally Identifiable Information From Education Records

§ 99.30 Prior consent for disclosure required.

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

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

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

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

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

(2) The purpose or purposes of the disclosure, and

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

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

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

§ 99.31 Prior consent for disclosure not required.

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

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

2. To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in § 99.34;

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

(i) The Comptroller General of the United States,

(ii) The Secretary,

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

(iv) State educational authorities,

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

(i) To determine the eligibility of the student for financial aid;

(ii) To determine the amount of the financial aid;

(iii) To determine the conditions which will be imposed regarding the financial aid,

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

5. To State and local officials or authorities with whom the school is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This subparagraph applies only to statutes which require that specific information be disclosed to State or local officials and does not apply to statutes which permit, but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this subparagraph.

6. To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; Provided, That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations;

7. To accrediting organizations in order to carry out their accrediting functions;

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

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

10. To appropriate parties in a health or safety emergency subject to the conditions set forth in § 99.36.
§ 99.32 Record of disclosures required to be maintained.

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which includes: (1) The parties who have requested or obtained personally identifiable information from the education records of the student, and (2) The legitimate interests these parties had in requesting or obtaining the information.

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

(c) The record of disclosures may be inspected:

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in, and under the conditions set forth in, §§ 99.31(a)(1) and (3).

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

§ 99.33 Limitation on redisclosure.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not permit the designation of any or all of the categories of personally identifiable information which is disclosed to the party to refuse to disclose information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency, or organization may be used by its officers, employees and agents, only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under § 99.31 with the understanding that the information will be redisclosed to other parties under that section; Provided, That the recordkeeping requirements of § 99.32 are met with respect to each of those parties.

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

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

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

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

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

(2) When the agency or institution includes a notice in its policies and procedures that it will make such an attempt.

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

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

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

(b) Except when the consent of the parent of a student or an eligible student has been obtained under § 99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in § 99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with Federal legal requirements.

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

§ 99.36 Conditions for disclosure in health and safety emergencies.

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

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

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

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

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

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

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

§ 99.37 Conditions for disclosure of directory information.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in § 99.3) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the requirements under paragraph (c) of this section.

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

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

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

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

(20 U.S.C. 1232g(a)(6)(A) and (B))
§ 99.60 Office and review board.

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

The office will investigate, process, and review violations, and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act, or the regulations in this part.

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

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

§ 99.61 Conflict with State or local law.

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

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

§ 99.62 Reports and records.

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

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

§ 99.63 Complaint procedure.

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

(b) (1) The Office will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

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

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

(2) Following its investigation the Office will provide written notification of its findings and the basis for such findings, to the complainant and the agency or institution.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (c) of this section, the specific steps which shall be taken by the agency or educational institution to bring the agency or institution into compliance.

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

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

§ 99.64 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (1) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act, or the regulations in this part, and that such failure cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in § 99.1 are to be made available to that educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is no longer any such failure to comply.

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

§ 99.65 Hearing procedures.

(a) Panels. The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under § 99.64. Each Panel shall consist of not less than three members.

(b) Procedural rules. (1) With respect to hearings involving the failure to comply, and to any other hearing involving the failure to comply, the Panel shall prepare an initial decision; final decision. (2) With respect to hearings involving the failure to comply, and to any other hearing involving the failure to comply, the Panel shall afford each party an opportunity, which shall include, in addition to provisions required by subparagraph (1)(i) of this paragraph, provisions designed to assure to each party the following:

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

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

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

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

§ 99.66 Hearing before Panel or a Hearing Officer.

A hearing pursuant to § 99.65(b) (2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a homemaker who is appointed as a hearing examiner under 5 U.S.C. 3105.

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

§ 99.67 Initial decision; final decision.

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

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

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

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

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

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

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