

**§ 99.35**

(ii) The annual notification of the agency or institution under § 99.7 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll or is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer;

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

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

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

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

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

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

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59297, Nov. 21, 1996; 73 FR 74854, Dec. 9, 2008]

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

(a)(1) Authorized representatives of the officials or agencies headed by officials listed in § 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs.

(2) Authority for an agency or official listed in § 99.31(a)(3) to conduct an audit, evaluation, or compliance or enforcement activity is not conferred by the Act or this part and must be established under other Federal, State, or local authority.

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

(1) Be protected in a manner that does not permit personal identification of individuals by anyone other than the officials or agencies headed by officials referred to in paragraph (a) of this section, except that those officials and agencies may make further disclosures

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of personally identifiable information from education records on behalf of the educational agency or institution in accordance with the requirements of § 99.33(b); and

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

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

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

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

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

[53 FR 11943, Apr. 11, 1988, as amended at 73 FR 74854, Dec. 9, 2008]

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

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

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

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school 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) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

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

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 61 FR 59297, Nov. 21, 1996; 73 FR 74854, Dec. 9, 2008]

**§ 99.37 What conditions apply to disclosing directory information?**

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

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

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

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

(b) An educational agency or institution may disclose directory information about former students without complying with the notice and opt out conditions in paragraph (a) of this section. However, the agency or institu-

tion must continue to honor any valid request to opt out of the disclosure of directory information made while a student was in attendance unless the student rescinds the opt out request.

(c) A parent or eligible student may not use the right under paragraph (a)(2) of this section to opt out of directory information disclosures to prevent an educational agency or institution from disclosing or requiring a student to disclose the student's name, identifier, or institutional e-mail address in a class in which the student is enrolled.

(d) An educational agency or institution may not disclose or confirm directory information without meeting the written consent requirements in § 99.30 if a student's social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student's records.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))  
[53 FR 11943, Apr. 11, 1988, as amended at 73 FR 74854, Dec. 9, 2008]

**§ 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))

[61 FR 59297, Nov. 21, 1996]

**§ 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 nonforcible sex offenses?**

As used in this part: