

Office of the Secretary, Education

§ 99.62

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))

[65 FR 41853, July 6, 2000]

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)

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

§ 99.61 What responsibility does an educational agency or institution, a recipient of Department funds, or a third party outside of 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 must notify the Office within 45 days, giving the text and citation of the conflicting law. If another recipient of Department funds under any program administered by the Secretary or a third party to which personally identifiable information from education records has been non-consensually disclosed determines that it cannot comply with the Act or this part due to a conflict with State or local law, it also must notify the Office within 45 days, giving the text and citation of the conflicting law.

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

[76 FR 75642, Dec. 2, 2011]

§ 99.62 What information must an educational agency or institution or other recipient of Department funds submit to the Office?

The Office may require an educational agency or institution, other recipient of Department funds under any program administered by the Secretary to which personally identifiable information from education records is non-consensually disclosed, or any third party outside of an educational agency or institution to which personally identifiable information from education records is non-consensually disclosed to submit reports, information on policies and procedures, annual notifications, training materials, or other information necessary to carry out the

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Office's enforcement responsibilities under the Act or this part.

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

[76 FR 75643, Dec. 2, 2011]

§ 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, SW., Washington, DC 20202.

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

[65 FR 41854, July 6, 2000, as amended at 73 FR 74854, Dec. 9, 2008]

§ 99.64 What is the investigation procedure?

(a) A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred. A complaint does not have to allege that a violation is based on a policy or practice of the educational agency or institution, other recipient of Department funds under any program administered by the Secretary, or any third party outside of an educational agency or institution.

(b) The Office investigates a timely complaint filed by a parent or eligible student, or conducts its own investigation when no complaint has been filed or a complaint has been withdrawn, to determine whether an educational agency or institution or other recipient of Department funds under any program administered by the Secretary has failed to comply with a provision of the Act or this part. If the Office determines that an educational agency or institution or other recipient of Department funds under any program administered by the Secretary has failed to comply with a provision of the Act or this part, it may also determine whether the failure to comply is based on a policy or practice of the agency or institution or other recipient. The Office also investigates a timely complaint filed by a parent or eligible student, or conducts its own investigation when no complaint has been filed or a complaint has been withdrawn, to de-

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termine whether a third party outside of the educational agency or institution has failed to comply with the provisions of § 99.31(a)(6)(iii)(B) or has improperly redisclosed personally identifiable information from education records in violation of § 99.33.

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

(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(b)(4)(B), (f) and (g))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993; 65 FR 41854, July 6, 2000; 73 FR 74854, Dec. 9, 2008; 76 FR 75643, Dec. 2, 2011]

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

(a) The Office notifies in writing the complainant, if any, and the educational agency or institution, the recipient of Department funds under any program administered by the Secretary, or the third party outside of an educational agency or institution if it initiates an investigation under § 99.64(b). The written notice—

(1) Includes the substance of the allegations against the educational agency or institution, other recipient, or third party; and

(2) Directs the agency or institution, other recipient, or third party to submit a written response and other relevant information, as set forth in § 99.62, within a specified period of time, including information about its policies and practices regarding education records.

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

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

[73 FR 74855, Dec. 9, 2008, as amended at 76 FR 75643, Dec. 2, 2011]

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

(a) The Office reviews a complaint, if any, information submitted by the educational agency or institution, other recipient of Department funds under any program administered by the Secretary, or third party outside of an educational agency or institution, and any other relevant information. The Office may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant, if any, and the educational agency or institution, other recipient, or third party a written notice of its findings and the basis for its findings.

(c) If the Office finds that an educational agency or institution or other recipient has not complied with a provision of the Act or this part, it may also find that the failure to comply was based on a policy or practice of the agency or institution or other recipient. A notice of findings issued under paragraph (b) of this section to an educational agency or institution, or other recipient that has not complied with a provision of the Act or this part—

(1) Includes a statement of the specific steps that the agency or institution or other recipient 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 or other recipient may comply voluntarily.

(d) If the Office finds that a third party outside of an educational agency or institution has not complied with the provisions of § 99.31(a)(6)(iii)(B) or has improperly redisclosed personally identifiable information from education records in violation of § 99.33, the Office's notice of findings issued under paragraph (b) of this section—

(1) Includes a statement of the specific steps that the third party outside of the educational 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 third party may comply voluntarily.

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

[76 FR 75643, Dec. 2, 2011]

§ 99.67 How does the Secretary enforce decisions?

(a) If an educational agency or institution or other recipient of Department funds under any program administered by the Secretary does not comply during the period of time set under § 99.66(c), the Secretary may take any legally available enforcement action in accordance with the Act, including, but not limited to, the following enforcement actions available in accordance with part D 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, other recipient, or third party has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution, other recipient, or third party with written notice of the decision and the basis for the decision.

(c) If the Office finds that a third party, outside the educational agency or institution, violates § 99.31(a)(6)(iii)(B), then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the violation of § 99.31(a)(6)(iii)(B) access to personally identifiable information from education records for at least five years.

(d) If the Office finds that a State or local educational authority, a Federal agency headed by an official listed in § 99.31(a)(3), or an authorized representative of a State or local educational authority or a Federal agency headed by an official listed in § 99.31(a)(3), improperly rediscloses personally identifiable information from education records, then the educational agency or

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institution from which the personally identifiable information originated may not allow the third party found to be responsible for the improper redisclosure access to personally identifiable information from education records for at least five years.

(e) If the Office finds that a third party, outside the educational agency or institution, improperly rediscloses personally identifiable information from education records in violation of §99.33 or fails to provide the notification required under §99.33(b)(2), then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the violation access to personally identifiable information from education records for at least five years.

(Authority: 20 U.S.C. 1232g(b)(4)(B) and (f); 20 U.S.C. 1234c)

[76 FR 75643, Dec. 2, 2011]

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

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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