



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 26 2000

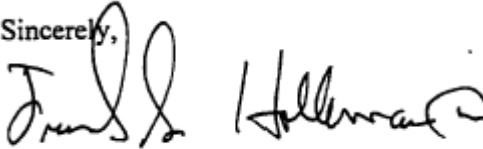
Honorable Peter Hoekstra  
House of Representatives  
Washington, DC 20515

Dear Congressman Hoekstra:

Thank you for your letter of October 4, 2000, regarding implementation of laws and regulations pertaining to the privacy of student records and the testing of students. I am responding on behalf of Secretary Riley. A similar response will be sent to Congressman Schaffer.

The Department takes seriously its responsibilities to ensure the confidentiality of student information. The National Assessment of Educational Progress, and all surveys and information collections conducted by the Department comply with all applicable privacy requirements. In addition, we work to protect the privacy of students through enforcement of the Family Educational Rights and Privacy Act and the Protection of Pupil Rights Amendment, and by monitoring implementation of the Individuals with Disabilities Education Act.

Responses to your specific questions are enclosed. If you have additional questions or need further information, please let me know.

Sincerely,  
  
Frank S. Holleman III

Enclosures



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## **The Family Educational Rights and Privacy Act of 1974 (FERPA)**

As you are aware, FERPA is a Federal law that protects a parent's privacy interest in his or her child's "education records." In particular, FERPA affords parents the right to inspect and review their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is broadly defined as:

[T]hose records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4). See also 34 CFR § 99.3 "Education records." When a student reaches the age of 18 or attends a postsecondary institution at any age, all the rights afforded by FERPA transfer from the parents to the student.

### **1. To what schools does FERPA apply? Does it apply to private schools?**

FERPA applies to educational agencies and institutions to which funds have been made available under any program administered by the Department of Education. 34 CFR § 99.1. Thus, FERPA applies to all public elementary and secondary schools and virtually all -- public and private -- postsecondary institutions. FERPA generally does not apply to private and parochial schools at the elementary and secondary level because Department funds are not generally provided to those schools. However, in a situation where a public school district places a child receiving services under the Individuals with Disabilities Education Act in a private school, the records of that particular student are subject to FERPA and the placing public school district is responsible for complying with the requirements of FERPA relative to that child's records.

### **2. How does FERPA apply to state departments of education?**

Congress amended FERPA in 1994, as part of the Improving America's Schools Act of 1994, to require state educational agencies (SEAs) to provide parents access to education records that the SEAs maintain. Subpart B of the FERPA regulations (§§ 99.10-99.12) implements this change, and these provisions state that if an SEA or its components "maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to [FERPA]" then, upon request, the SEA must provide parents and eligible students with an opportunity to inspect and review any education records on the respective students that it maintains.

As discussed below, we interpret "state educational authorities" to include state departments of education. Therefore, the redisclosure restrictions that apply to "state educational authorities" also apply to a state department of education. Specifically, FERPA provides that information from education records disclosed under 34 CFR § 99.31(a)(3)(iii) must be protected in a manner that does not permit personal identification of individuals by anyone except the officials identified in the section and must be

destroyed when no longer needed for the purposes for which it was collected. 20 U.S.C. § 1232g(b)(3); 34 CFR § 99.35.

**3. How does the Department of Education interpret sections 99.31(a)(3), (a)(5), (a)(6), (a)(10) of the regulations contained in 34 CFR 99, which serve as exceptions to the requirement that parents and students provide consent for the disclosure of information from education records?**

**Section 99.31(a)(3)**

FERPA provides that education records, or personally identifiable information from such records, may be disclosed by educational agencies and institutions only after obtaining prior written consent of the parent, except in statutorily specified circumstances. 20 U.S.C. § 1232g(b)(1) and (d). See also 34 CFR § 99.30. Accordingly, if one or more of the exceptions are met, an educational agency or institution may disclose education records, without prior written consent. 20 U.S.C. § 1232g(b); 34 CFR § 99.31. To date, Congress has provided 15 exceptions to this general consent rule.

One of the exceptions to FERPA's prior consent rule -- § 99.31(a)(3) -- is for disclosures of information from education records to "authorized representatives" of:

- 1) the Comptroller General of the United States;
- 2) the Attorney General of the United States;
- 3) the Secretary of Education; or
- 4) State and local educational authorities.

These officials may have access to education records "in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements, which relate to those programs." See § 99.35(a). As discussed above in the question regarding SEAs, information collected by the authorized representatives listed in § 99.31(a)(3) must not be redisclosed to another party and must be destroyed when no longer needed for the purposes for which it was collected.

*Comptroller General of the United States* -- Schools may disclose, without consent, information from education records to authorized representatives of the Comptroller General for purposes involving auditing or evaluation of Federal or state supported education programs.

*Attorney General of the United States* -- In 1998, the Department of Justice worked with the Department of Education in presenting an amendment to Congress to create a new exception under FERPA for the nonconsensual disclosure of information from education records to authorized representatives of the Attorney General. This new statutory provision, which was passed as part of the Higher Education Amendments of 1998, allows schools to disclose information to authorized representatives of the Attorney General for the purpose of investigating or enforcing specific Federal laws relating to

educational agencies and institutions -- such as Section 504 of the Rehabilitation Act, the Equal Educational Opportunities Act, Title IX of the Education Amendments of 1972, and the Civil Rights of Institutionalized Persons Act.

*Secretary of Education* -- Schools may disclose information to representatives of the Secretary in connection with an audit or evaluation of Federal education programs. In addition, representatives may obtain information from education records, without student consent, in order to enforce or investigate the Federal legal requirements that relate to educational agencies and institutions, such as the legal requirements imposed by Section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972.

*State and local educational authorities* -- Department regulations define “state educational agency” (SEA) as the state board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in the state. “Local educational agency” (LEA) is defined as any public institution or agency that has administrative control and direction of a public elementary or secondary school. See 34 CFR Part 77. However, the statutory phrases -- “state educational authorities” and “state and local educational officials” -- used in 20 U.S.C § 1232g(b)(1)(C) and (b)(5) are not defined in FERPA or elsewhere under Federal law or regulation. The Department interprets the phrases to include not only SEAs and LEAs, which pertain only to the elementary and secondary school level, but also any educational entity with authority and responsibility under state or local law for the administration of educational functions, including supervision, control, direction, or evaluation of educational services and activities at the postsecondary, secondary, or elementary level.

***Section 99.31(a)(5)***

Before 1994, this provision of FERPA was known as the “Grandfather Clause.” Under the previous provision, schools could disclose information pursuant to State laws passed before the enactment of FERPA in 1974. However, Congress overwrote this provision as part of the 1994 Improving America's Schools Act amendments to FERPA. The 1994 amendment allows disclosures to state and local officials to whom such information is specifically allowed to be reported or disclosed pursuant to state statute adopted --

- (i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or
- (ii) after November 19, 1974, if --
  - (I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released, and
  - (II) the officials and authorities to whom such information is disclosed 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. [20 U.S.C. § 1232g(b)(1)(E)]

The Department has interpreted this amendment to allow disclosures pursuant to state law adopted after November 19, 1974, only if the state instituted a “system” comprised of state and local officials, established for the purpose of serving -- prior to adjudication -- students who are at-risk of becoming juvenile delinquents. The Department of Education and the Department of Justice jointly produced a guidebook for school officials regarding this provision, a copy of which is enclosed. See *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs*. To our knowledge, however, only two states -- Florida and Illinois -- have laws which have established such juvenile justice “systems” which comply with FERPA and, therefore, allow schools to disclose information on students to this system or board. Thus, many states have encountered problems in utilizing this exception.

***Section 99.31(a)(6)***

An educational agency or institution may also disclose personally identifiable, nondirectory information, without obtaining prior written consent, to organizations conducting studies for, or on behalf of, the agency or institution in order to:

- (A) Develop, validate, or administer predictive tests;
- (B) Administer student aid programs; or
- (C) Improve instruction.

34 CFR § 99.31(a)(6); 20 U.S.C. § 1232g(b)(1)(F). As with the FERPA provision permitting disclosure of information to state and local educational authorities (§ 99.31(a)(3) discussed above), recipients of information from education records under this provision may not redisclose the information in personally identifiable form and must destroy the information when no longer needed for the purposes for which the study was conducted.

While not stated explicitly, the Department interprets the provision to apply only when the disclosing institution initiates, authorizes, or otherwise has some control over the study. The Department also interprets this provision to apply to specific research studies and projects with a clearly defined beginning and end. Further, the Department has restricted the exception to the subjects specified -- testing, student aid, or the improvement of education.

***Section 99.31(a)(10)***

This provision of FERPA provides that a school may disclose information from a student’s file -- without first obtaining prior written consent -- in connection with a health or safety emergency. Section 99.36 of the FERPA regulations outline the parameters for this disclosure. In relevant part, it states that a school may disclose information from an

education record “to appropriate parties if knowledge of the information is necessary to protect the health or safety of the student or other individuals.” Based on the legislative history of this provision, the regulations stress that this provision shall be “strictly construed.” See 34 C.F.R. § 99.36(a) and (c).

The initial determination of whether a disclosure is necessary to protect the health or safety of a student or other individuals is appropriately made by the local school. However, the Department reserves the right ultimately to determine whether, as a matter of Federal law, the disclosure comes within the exception to FERPA’s usual requirement of prior consent. Within this framework, we have advised schools that disclosure under this provision is appropriate when a situation presents imminent danger or when the situation requires the immediate need for information in order to avert or diffuse certain unusual conditions or disruptions.

We have also advised school officials that, under this provision, they may share relevant information only with appropriate parties, that is, parties whose knowledge of the information is necessary immediately to protect the health or safety of the student or other individuals in the school community. Typically, law enforcement officials and trained medical personnel are the types of parties to whom information is disclosed under the health or safety provision. Additionally, the health and safety emergency exception is not generally applicable in situations where a parent is a participant and able to consent.

#### **4. Under what circumstances may a school disclose information to the local police or a child welfare agency?**

Under FERPA, there is no *specific* exception that permits schools to disclose information to local law enforcement authorities. However, information may be disclosed to the local police under several scenarios: 1) if the disclosure is for the purpose of a health or safety emergency (§§ 99.31(a)(10) and 99.36), as discussed above; 2) if the disclosure is necessary in order to comply with a lawfully issued subpoena or court order (§ 99.31(a)(9)); or 3) if the information is created and maintained by a law enforcement unit for a law enforcement purpose.

Law enforcement records are excepted from the definition of “education records” under FERPA. 34 C.F.R. § 99.3. In 1992, Congress amended FERPA to remove an impediment to the release of records created and maintained by a *law enforcement unit* of an educational agency or institution for a law enforcement purpose. 34 C.F.R. § 99.8. The new provision allows schools to follow their own policies or applicable state law in disclosing information from a record that was created and maintained by the school’s law enforcement unit, if the record meets the definition of “law enforcement unit record” in FERPA.

There is no exception to FERPA’s general prior consent rule that specifically allows schools to disclose information from a student’s education records to a child welfare agency without consent. If a child welfare agency has subpoena power under state law,

FERPA allows a school to comply with any lawfully issued subpoena or court order issued by or on behalf of the welfare agency.

**5. Does FERPA allow schools to disclose student information to child welfare agencies if a student is a suspected victim of child abuse?**

While FERPA does not specifically permit schools to disclose information from a student's education record to a child welfare agency if a student is a suspected victim of child abuse, we have advised schools that they may do so under the Federal Child Abuse Prevention and Treatment Act (CAPTA). Our review of CAPTA indicates that it is a later enacted, more specific Federal statute that conflicts with FERPA regarding the disclosure of information, and that Congress intended to override the privacy protections of FERPA when it enacted CAPTA. As a later enacted and more specific statute, we believe that CAPTA reflected congressional intent that information specified in the statute be reported to child welfare agencies, notwithstanding FERPA's privacy provisions.

**6. FERPA allows schools to determine which information may be disclosed to the public. Can any member of the public request the disclosure of any information covered by FERPA? Further, has the Department issued any guidance to schools regarding the dissemination of such information, including on school Web sites?**

Another exception to FERPA's prior consent rule is the disclosure of information that has been appropriately designated as "directory information" by educational agencies and institutions. FERPA defines directory information as "information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed." 34 CFR 99.3 ("Directory Information"). Directory information includes, but is not limited to, the following items:

student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended.

See Family Educational Rights and Privacy; Final Rule, 65 Fed. Reg. 41853, July 6, 2000.

The Department has consistently advised schools and parents that FERPA provides that a school may disclose directory information to third parties if it has given public notice of the types of information which it has designated as "directory information," the parent's right to refuse to let the school designate any or all of the types of information about the student as directory information, and the period of time within which a parent has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." 20 U.S.C. § 1232g(b)(5)(B); 34 CFR



§ 99.37(a). The Department has also consistently advised that social security numbers and other student identifiers cannot be designated as “directory information” because disclosure of such information generally would be considered an invasion of privacy. We have also advised that schools may choose how much directory information from education records they will disclose and to whom. However, some schools have indicated that their states have ruled under state open records law that disclosure of “directory information” is required.

The Department has issued many letters of guidance on the “directory information” provision of FERPA. In addition, we included a discussion of “directory information” in the guidebook jointly produced by this Department and the Department of Justice.

The Department has not issued specific guidance on the dissemination of “directory information” on school Web sites. However, the Department has informally advised school officials that, although FERPA would not prohibit the placing of properly designated directory information on students on the school Web site, due to safety concerns that parents might have, school officials may want to discuss such an endeavor with parents.

**7. How does the Department of Education oversee and enforce FERPA? What office is responsible for enforcing FERPA and how many employees work in this office?**

Pursuant to the requirements of FERPA, the Secretary has designated the Family Policy Compliance Office (FPCO) within the Office of Management as the office in the Department responsible for investigating, processing, and reviewing violations of FERPA and complaints which may be filed concerning alleged violations of the law. See 20 U.S.C. § 1232g(f) and (g); 34 CFR § 99.60. The FPCO has a staff of seven.

In addition to reviewing and investigating complaints of alleged violations of FERPA, which are filed by parents and students, FPCO also provides technical assistance on FERPA to members of Congress and their staff, state department of education officials, university officials such as presidents, deans, registrars, and legal counsel, school superintendents, representatives of the media, and representatives of national associations and special interest groups. The FPCO provides these officials and organizations with oral and written interpretations of FERPA. The FPCO also provides compliance training on FERPA for elementary, secondary, and postsecondary school officials and provides training as part of national and regional educational conferences and meetings.

**d8. Are there any ambiguities or weaknesses in FERPA that need to be improved or amended?**

In July, at the request of the House Committee on Education and the Workforce, the Department provided the following suggestions as amendments to FERPA:

- Restore the “Grandfather Clause” -- 20 U.S.C. § 1232g(b)(1)(E);

- Amend FERPA to permit schools to disclose information in a student’s education records that is relevant and necessary to the adjudication of the issues in a civil action between the school and the student or the parent of the student -- 20 U.S.C. § 1232g(b);
- Amend FERPA to permit schools to disclose information from a student’s education records to other schools or to a certification board in order to correct falsely represented information about a student’s transcript or degree -- 20 U.S.C. § 1232g(b);
- Amend FERPA to permit schools to disclose a student’s immunization record, that is required for the student to attend school in the state, to an immunization registry that is a unit of state or local government or that is authorized to be an immunization registry by a state or local government, a state or local public health agency, or officials auditing compliance with State immunization laws or local immunization ordinances -- 20 U.S.C. § 1232g(b).

The Department has also suggested an amendment to clarify the interplay between the privacy protections of FERPA and disclosure requirements under Title IX. Specifically, the Department’s position is that FERPA prevents a school from disclosing to a victim the sanction or discipline imposed upon the alleged harasser, unless the sanction is directly related to the victim or there is a statutory exception, such as the crime of violence exception in FERPA. The Department recognizes that information about the sanctions enables the victim to determine whether the school responded appropriately to the complaint. Thus, the Department has previously proposed and continues to support a statutory amendment to FERPA to permit this disclosure.

## **The Individuals with Disabilities Education Act (IDEA)**

### **1. What privacy protections exist in the IDEA for students who are receiving special education services?**

In addition to the requirements of FERPA, the Individuals with Disabilities Education Act (IDEA) provides additional privacy protections for students who are receiving special education and related services. The privacy protections under Part B of the IDEA are found at 34 CFR §§ 300.560 through 300.577.

Part B of the IDEA incorporates and cross-references the FERPA. For example, under Part B, the term “education records” means the type of records covered by FERPA as implemented by its regulations at 34 CFR Part 99. Under § 99.3 of FERPA, the term “education records” is broadly defined to mean those records that are related to a student and are maintained by an educational agency or institution.

In addition to the FERPA provisions and IDEA-specific provisions that restate the FERPA requirements, the IDEA regulations also include some additional protections tailored to special confidentiality concerns for children with disabilities and their families. Public agencies must inform parents of children with disabilities when information is no longer needed and, except for certain permanent record information,

that information must be destroyed at the request of the parents. 34 CFR § 300.573. If a state transfers the IDEA rights of parents to children at the age of majority, the parents' rights under IDEA regarding educational records also transfer, but the public agency must provide any notice required under the due process procedures of the IDEA to both the student and the parent. 34 CFR § 300.574. The state educational agency must give public notice about the collection of personally identifiable information in the state and a summary of the policies and procedures that public agencies must follow regarding storage, disclosure to third parties, retention and destruction of personally identifiable information. 34 CFR § 300.561. Each public agency must have one official who is responsible for ensuring the confidentiality of any personally identifiable information, must train all persons who are collecting or using personally identifiable information regarding the state's policies regarding confidentiality and FERPA, and must maintain for public inspection a current listing of the names and positions of individuals within the agency who have access to personally identifiable information. 34 CFR § 300.572.

## **2. How do provisions of FERPA apply to all students receiving special education services?**

The provisions of FERPA apply to all students receiving special education and related services under the IDEA. In addition, FERPA serves as the foundation for the additional confidentiality provisions of Part B of the IDEA at 34 CFR §§ 300.560 - 300.577. Moreover, Congress has stressed that the FERPA provisions apply under the IDEA. The Senate and House Committee Report on the 1997 Amendments of the IDEA state that "nothing in this bill shall supersede any parental access rights under the Family Educational Rights and Privacy Act of 1974 or foreclose access to information otherwise available to parties." S. Rep. No. 105-17, p. 27 (1997); H. Rep. No. 105-95, p. 107 (1997).

## **3. Do any provisions of IDEA conflict with FERPA regarding the sharing of information with entities outside of school?**

The Department's Office of Special Education Programs and the FPCO have worked together to ensure that the provisions of the two statutes are interpreted without conflict. In the past when issues arose and there appeared to be a possible conflict between the two statutes, the two offices have worked together to ensure that the privacy rights of parents and students receive full protection under FERPA and IDEA, while ensuring that the other requirements of the IDEA are met.

## **4. Does IDEA apply to private schools?**

The IDEA does not apply to private schools. However, the IDEA does apply to all students with disabilities who are placed in or referred to a private school or facility by a public agency as a means of providing a free appropriate public education. In this situation, the records of such students are protected by FERPA and the placing public school district is responsible for complying with the requirements of FERPA and IDEA relative to these students' records.

The IDEA also applies to the special education and related services that a public agency provides to students with disabilities enrolled by their parent in a private school or facility and who have been chosen by the public agency to receive certain special education and related services. In these situations, the education records of such students that are collected, maintained or used by the public agency are subject to FERPA and IDEA and the public agency is responsible for complying with the requirements of FERPA and IDEA relative to those records.

In addition, the child find provisions of the IDEA -- provisions that require states and school districts to identify, locate and evaluate children who may have disabilities and be in need of special education -- apply to both public and private school children. The provisions of FERPA and IDEA apply to education records of public agencies resulting from child find activities.

### **The Protection of Pupil Rights Amendment (PPRA)**

The PPRA is a Federal law intended to protect the rights of parents and students in two ways:

- It seeks to ensure that schools make all instructional materials available for inspection by parents if those materials will be used in connection with any Department-funded survey, analysis, or evaluation in which their children participate; and
- It seeks to ensure that schools obtain written parental consent before minor students are required to participate in any Department- funded survey, analysis, or evaluation that reveals certain information.

The PPRA statute -- 20 U.S.C. § 1232h(b), as amended, states the following:

- (b) No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning –
- (1) political affiliations;
  - (2) mental and psychological problems potentially embarrassing to the student or his family;
  - (3) sex behavior and attitudes;
  - (4) illegal, antisocial, self-incriminating and demeaning behavior;
  - (5) critical appraisals of other individuals with whom respondents have close family relationships;
  - (6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; or
  - (7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

**1. Congress amended PPRA as part of the “GOALS 2000” legislation in 1994. Have regulations been implemented that address these legislative changes? If not, please explain.**

Congress originally enacted PPRA in 1974 as an amendment to the General Education Provisions Act (GEPA), revising its provisions in 1978 and again in 1994. The current regulations do not reflect amendments made by Congress in 1994 in the Goals 2000: Educate America Act. The Department issued a notice of proposed rulemaking (NPRM) on August 28, 1995. See Protection of Pupil Rights, Proposed Rule, 60 Fed. Reg. 44696 (Aug. 28, 1995). The Department received over 400 comments from the public in response to the NPRM. A majority of the commenters asked for further clarification with regard to the term in the statute which states, “No student shall be required. . . .” The NPRM stated that we had not interpreted “required” because the Department did not want to impose a single rule to address a myriad of situations. Rather, schools would make initial judgments in individual cases as to whether a survey is or has been “required” in its administration. In the event a parent filed a complaint under PPRA, the Department would determine on a case-by-case basis whether a student has been required to submit to a survey. We are working on the final regulations and will issue them as soon as possible.

**2. Much attention has been given to school districts that have used Department of Education funds to issue privacy-invading surveys, particularly in New Jersey and Connecticut. Has the Department issued any guidance in response to these two states through PPRA?**

The Department is currently actively investigating the complaints filed against Ridgewood (NJ) Public Schools. The Department plans to begin a formal investigation into the complaint received from the parent in Connecticut. This investigation will be initiated shortly.

**3. Does PPRA apply to any surveys conducted by the National Center for Education Statistics (NCES) or any other office or activity conducted by the Department?**

PPRA generally applies to any survey that the Department directly contracts for or carries out itself, including surveys conducted by NCES. Whether the specific provisions of PPRA concerning consent apply depends upon whether the survey “required” the participation of students and whether the survey sought information from any of the seven areas enumerated in the statute and regulations. NCES does not ask questions that are judged by reviewers to violate the requirements of PPRA. Reviewers include members of technical review panels, the Department’s Office of the Chief Information Officer (OCIO), and OMB. Draft questionnaires are published for a 60-day period by OCIO as part of their review, and a subsequent 60-day period by OMB to invite public comment. As required under PPRA, NCES survey instruments are available for examination by parents, if requested.

**4. How does the Department of Education oversee and enforce PPRA? What office is responsible for enforcing PPRA and how many employees work in this office?**

Pursuant to the requirements of PPRA, the Secretary has designated the Family Policy Compliance Office within the Office of Management as the office in the Department responsible for investigating alleged violations of PPRA and providing schools with technical assistance on the laws. See 20 U.S.C. § 1232h(e). As previously noted in the discussion on FERPA, the FPCO has a staff of seven. Because of the wider impact of FERPA -- FERPA applies to all public elementary and secondary schools and virtually all private and public postsecondary institutions -- most of the work done by the FPCO is focused on FERPA. The vast majority of the complaints and requests for technical assistance from schools are related to FERPA, rather than PPRA.

**5. Are there any ambiguities in PPRA that need to be improved or amended?**

The Department has not suggested any amendments to PPRA.

**Please provide information regarding the type of information the Department, or any entity under contract or agreement with the Department, collects and maintains on students.**

**1. Which offices in the Department collect and maintain information on students in personally or individually identifiable form?**

Several offices within the Department collect and maintain information on students in personally or individually identifiable form. A chart describing the current systems of records covered by the Privacy Act that either include student information or might include student information is enclosed. The information is collected for activities such as processing payments to individuals, making award determinations regarding fellowships or Presidential scholars, collecting data needed to provide student financial assistance, investigating complaints related to civil rights, FERPA, PPRA, student financial assistance or those reported to the Office of Inspector General Hotline, conducting certain surveys, or if a student files a Freedom of Information Act or Privacy Act inquiry.

**2. Under what specific statutory authority do these offices collect and maintain this information?**

The specific statutory authority that applies to each system of records that includes or may include student information is indicated on the enclosed chart.

**3. Is this information collected and maintained with the express consent of parents of minor students, parents, or students of majority age?**

Most of the systems of records listed in the chart involve information provided voluntarily by parents or students who are applying for or receiving financial assistance, filing complaints, or seeking information. Information collections the Department initiates include surveys, most of which are conducted by NCES. The NCES process is described below.

NCES has two kinds of surveys that include students: household-based and school-based. Those that survey students as part of households (National Household Education Survey and Early Childhood Longitudinal Study: Birth Cohort) get permission from the parent or guardian at the time the household is contacted.

Surveys that sample students as part of a school-based survey (National Education Longitudinal Survey, National Assessment of Educational Progress, and Early Childhood Longitudinal Study: Kindergarten Cohort) follow the school/district/state policy on informed consent of parents. Some schools require that parents actively agree to student participation in a survey, some send home notification and ask parents to respond only if they do not want their child to be included in the survey. For all NCES surveys, information is prepared for the school, parents and students on:

- the purpose of the survey;
- the voluntary nature of participation (from attendance at the survey room or site to leaving any question unanswered);
- what is involved in participating in the survey (how many times they will be followed up in a longitudinal survey, whether testing is included, etc.); and
- how the data will be used.

#### **4. How long is information maintained by Department offices or entities in contract with the Department?**

See the Retention Period on the enclosed chart.

#### **National Assessment of Educational Progress (NAEP)**

##### **1. Does NAEP ask questions that are covered by any of the seven protected areas enumerated in PPRA?**

NAEP does not currently ask students to respond to any questions covered under the seven protected areas enumerated in PPRA and has not asked such questions since the enactment of PPRA.

**2. Does NCES keep data on individual students obtained from state or national NAEP tests in personally or individually identifiable form?**

NAEP does not keep individual student data identifiers, such as name, address, or social security number. However, since it may be possible to trace the identities of some students using the demographic data required by law, NCES has implemented restricted-use licensing procedures for researchers. All researchers are made aware that violation of respondents' confidentiality is a Class E felony. There has never been a breach of data security.

**3. Are NAEP questions ever incorporated into statewide assessments?**

NAEP secure test questions are not permitted to be incorporated into any state or local assessment. However, NAEP routinely releases some cognitive items to the public after each assessment. After their release to the public, some states, such as Georgia and North Carolina, have incorporated NAEP's cognitive test questions into their statewide assessments.

**School-to-Work Program and Workforce Investment Act (WIA)**

**1. Does the Department of Education maintain information in personally or individually identifiable form on students participating in School-to-Work programs?**

The Department does not maintain information in personally or individually identifiable form on students participating in School-to-Work programs.

**2. Is the Department of Education aware of any states collecting or maintaining personally or individually identifiable information on students participating in School-to-Work programs? If yes, please list the states and whether this information is shared with the Department of Education.**

The Department is not aware of any states collecting or maintaining personally or individually identifiable information on students participating in School-to-Work programs. Several States have comprehensive evaluations on School-to-Work, but any and all student information is gathered anonymously and/or in aggregate fashion.

**3. Has the Department of Education received any complaints about School-to-Work programs under FERPA from parents or students? If yes, please indicate the nature of the complaint and the Department's response.**

The Department has not received any complaints from parents alleging violations of privacy under the School-to-Work program.



**4. Section 504 of the Workforce Investment Act stipulates that nothing in the WIA should be construed to supersede the privacy protections of FERPA. How has the Department of Education interpreted FERPA in relation to disclosures of individual student records that might be called for under the WIA?**

The Department faces challenges as we work to develop guidance to address how state education authorities and educational agencies and institutions may meet the data collection and reporting requirements of WIA in a manner that is consistent with the privacy protections of FERPA. The Department has advised that state educational authorities receiving information from student education records under § 99.31(a)(3) and § 99.35 of FERPA may not redisclose that information in personally identifiable form. One issue on which we are working concerns whether a state educational authority may, under FERPA, be permitted to redisclose information on students to a state labor department for accountability reporting purposes under certain education programs. Many states and educational agencies and institutions believe that the only way they can comply with accountability reporting requirements is to share information, such as social security numbers, with other state agencies in order to match information.

We have not yet issued any specific formal guidance on the applicability of FERPA to WIA. However, the Departments of Education and Labor are currently working together in an effort to try and develop guidance that will address how states, local educational agencies, and institutions of higher education may meet the data collection and reporting requirements of WIA, while still complying with FERPA. However, the challenges of reading FERPA and WIA together are such that the Department may need to explore the possibility of legislative clarification.