

NEBRASKA DEPARTMENT OF EDUCATION

ADMINISTRATIVE MEMORANDUM #711

ISSUED: October, 2011

TO: Nebraska Department of Education Staff  
FROM: Roger D. Breed, Commissioner of Education  
SUBJECT: STUDENT AND STAFF DATA PRIVACY AND CONFIDENTIALITY

FOR ASSISTANCE: Contact the General Counsel's office at 471-0310 or the Administrator of the Research and Evaluation team.

PURPOSE

This memorandum provides the Department's rules and procedures, in accordance with state and federal requirements, to be used when staff members are in possession of any type of education record of a student, students, or staff of any educational agency/institution that has federal funds made available to it from the U.S. Department of Education. This would include all public PK-12 and postsecondary schools and many non-public schools.

**A. CONFIDENTIALITY – APPLICATION OF FEDERAL EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) TO NDE RECORDS**

1. DE-IDENTIFIED DATA

The removal of direct identifiers, such as a student's name or student identification number, does not always mean that the information is no longer "personally identifiable". The masking rules still apply to such records before they are released publicly or to a party that is not allowed to see personally identifiable student information without a release under FERPA. Masking rules are found in NDE's Data Access and Use Policy and Procedures available on the A to Z list on the NDE homepage.

De-identified student level data released for purposes of education research may include a re-identification code to each record to allow the recipient to match other information received from the same source. NDE cannot disclose any information about how it generated and assigned a re-identification code or information that would allow a recipient to identify a student based on a re-identification code.

2. PERSONALLY IDENTIFIABLE INFORMATION CONCERNING STUDENTS IN RECORDS OF NDE'S OWN MAKING

If NDE creates and maintains a record that contains personally identifiable information concerning a student attending or having attended an educational agency or institution other than a school operated by NDE, and that record is not just an abstract of records disclosed to it by that educational agency or institution, the disclosure restrictions and requirements of FERPA do not apply. However, nothing requires their disclosure, and state public records law allows NDE the discretion to withhold such records and information. In addition, state law requires NDE to "provide for the confidentiality" of the results of individual students in regard to state assessment and reporting. NDE creates records of student performance that are linked to personally identifiable information through the statewide assessment system.

### 3. SPECIAL EDUCATION RECORDS

The Individuals with Disabilities in Education Act, (IDEA), incorporates and cross-references FERPA. The IDEA provides other confidentiality and record management requirements in addition to FERPA, some specific to state education agencies like NDE. NDE staff persons who handle records and information regarding children with disabilities need to familiarize themselves with the privacy requirements for records concerning such children at 34 CFR 300.560 through 300.577.

Correct handling and disclosure of records concerning children with disabilities subject to the additional requirements of the IDEA which, unlike FERPA alone, provides for a personal private right of legal action (lawsuit by the child's parents/guardians) for money damages against those who violate its provisions.

### 4. POVERTY DATA – ELIGIBILITY FOR FREE AND REDUCED LUNCH

Section 9(b)(6) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(b)(6)) delineates the restrictions on the disclosure and use of information obtained from an application for free and reduced price meals, as well as the criminal penalties for improper release of information. Note that while the law discusses applications, the disclosure requirements also apply to information obtained through the direct certification process.

Part 7 of the Eligibility Manual for School Meals (January 2008 edition) provides specific guidance on applying the statutory and regulatory requirements. The manual may be found at: <http://www.fns.usda.gov/cnd/Governance/notices/iegs/EligibilityManual.pdf>. The following chart may be used as a reference.

<b>Recipient of Information</b>	<b>Information that May be Disclosed</b>	<b>Required Notification and Consent</b>
<i>Programs under the National School Lunch or Child Nutrition Act</i>	All eligibility information	Prior notice and consent not required
<i>Federal/State or local means tested nutrition programs with eligibility standards that are comparable to NSLP</i>	Eligibility <b>status</b> only	Prior notice and consent not required
<i>Federal education programs</i>	Eligibility <b>status</b> only	Prior notice and consent not required
<i>State education programs administered by a State agency or local education agency</i>	Eligibility <b>status</b> only	Prior notice and consent not required
<i>Local education programs</i>	NO eligibility information, unless parental consent is obtained	Must obtain parental consent

### 5. SOCIAL SECURITY NUMBERS

The Federal Privacy Act of 1974 provides in part that any state or local government agency that requests a person to disclose their social security number must inform them: (i) whether that disclosure is mandatory or voluntary, (ii) by what legal authority it is solicited, and (iii) what uses will be made of it. With a few exceptions, NDE does not have specific legal authority to *require* the disclosure of social security numbers from individuals. Teacher Certification is one exception

because state statute requires the social security number and federal law requires social security numbers of individuals to be collected and appear on the application for any “professional” or “occupational” license. NDE has assigned a unique identifier number to all staff reported to NDE called the NDE Staff ID. It is used for all staff data collections and is linked to the data in the Teacher Certification system.

Before stating or taking the approach that a person is *required* to provide their social security number to NDE, staff must make certain that this is authorized by a specific law or regulation applying to the program and context in which it is required. *Requesting* a person’s social security number is not unlawful. However, when doing so, the person is to be provided with the information outlined in (i)-(iii) in the first paragraph of this section. This is a prerequisite to their ‘informed consent.’

Even when NDE obtains a person’s social security number by requiring it as authorized by law or after requesting it after making the necessary disclosures outlined in (i)-(iii), further disclosures outside of NDE, such as pursuant to a public records request, normally would require staff to redact that number before disclosing the document *unless* the person was informed when the disclosure was requested that disclosure to this entity or person or this type of entity or person could be made by NDE (i.e., “what uses will be made of the number”).

When NDE staff come into possession of a person’s social security number by way of documents submitted by someone *other than* that individual themselves, it is generally a good practice to redact that number if it is not required to be submitted by law or regulation. If the entity from which the individual’s social security number was received is another governmental entity (school district, state agency, ESU, etc.) usually NDE does not know if that other governmental entity required or requested the individual to provide it the number, nor if it provided the individual the information in (i) – (iii) in the first paragraph. If it is redacted initially by NDE, then further potentially problematic re-disclosures by NDE can be eliminated.

FERPA provides that social security numbers of students are “personally identifiable information.” Thus, the disclosure of these numbers to NDE by schools is subject to the re-disclosure requirements discussed above. Generally, unless a specific programs laws or regulations provide otherwise, NDE has no legal authority to require schools to obtain students’ social security numbers and/or submit them to NDE.

The Federal Privacy Act of 1974 makes it unlawful for any government agency “to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number.” This does not apply when the disclosure is required by law or regulation “adopted before January 1, 1975.”

## **B. SECURITY/INTERNAL ACCESS TO DATA**

Access to data that may directly or indirectly identify an individual is limited only to NDE staff who have a need for such data in order to complete required or assigned tasks. A signed “Access to Data” form must be on file for every NDE staff person who has been given permission by the data system manager. The Access to Data forms should be reviewed annually to ensure that personnel have appropriate access. See sample forms at the end of this guidance. Forms are available on the Inside NDE webpage.

## C. DATA REQUESTS

### 1. STUDENT AND PARENT ACCESS

Under FERPA, either parent of a student, or legal guardian, or an eligible student, is entitled to inspect and review the student's education records, and this right applies when the records are present at NDE even if the records originated at or with a school. Under FERPA, NDE may charge a fee for making and providing a copy of such records, so long as it does not prevent them from actually inspecting and reviewing the records. See Administrative Memo #606 regarding costs and charges for copies of records.

### 2. DATA REQUESTS

All requests for data that require the creation of a report from data stored in electronic form in NDE's databases must be documented and recorded in the Data Request system maintained by the Research and Evaluation (formerly Data Services) team. This includes all student, staff and financial data internal and external requests. The Data Request system maintains a record of the use and value of NDE's data even if no costs are involved. Requests for data that include directly or indirectly identifiable information are considered research and must follow the process defined in the Data Access and Use Policy and Procedures found in the A to Z list on the NDE homepage.

All reports created from data in NDE's databases are considered public records. Reports that include data that may directly or indirectly identify an individual must be approved for re-disclosure. Nebraska law (Section 84-712.01):

Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Two opinions of the Attorney General might apply to data requests. In Op. Att'y Gen. No 91054 (June 17, 1991), the Attorney General indicated that determining the point in time when "draft" documents or work in progress become records must be made on a case-by-case basis. Materials which have been through the formation process within an agency and have left the agency are more obviously "records" or "documents," even though they may require further approval and are arguably in "draft" form. And, Op. Att'y Gen. No 96074 (November 13, 1996) that says: Computer data bases, computer programs, and computer instructions, manipulations and routines, collected, formulated and produced by the Nebraska Department of Education in accordance with the Tax Equity and Educational Opportunities Support Act are public records under the Public Records Statutes. On the other hand, computer "source files" or "dynamic application text files" which contain primarily alphanumeric characters, including punctuation and/or special characters used to control printing are not public records.

Data collected by NDE are audited internally during and after the submissions to ensure data are accurate and complete. This auditing process involves reports created from NSSRS for program staff to review. These reports are not considered data requests and should not be included in the Data Request system.

#### D. DISCLOSURE OF DATA

In performing its work, NDE may come into possession of records that contain personally identifiable information from student records. As NDE is not itself an educational agency or institution, with the exception of the Nebraska Center for the Education of the Blind and Visually Impaired, these records are normally disclosed to NDE by such agencies or institutions (schools/districts) where the students are attending or have attended and where the education records are maintained.

1. When such records disclosed to NDE are records subject to the laws and regulations of FERPA, NDE cannot re-disclose personally identifiable information from such records except in accordance with FERPA. Except as provided in Appendix C, such information from these records and the records themselves cannot be re-disclosed by NDE unless:
  - The student's parent, or, if applicable, the eligible student, provides a signed and dated written consent for NDE to disclose the information that: i) specifies the records that may be disclosed; ii) states the purpose(s) of the disclosure; and iii) identifies the party, parties or class of persons to whom the disclosure may be made. Such a written consent may be in electronic form, e.g. an e-mail that demonstrates it is from the parent or eligible student.
2. Under specific and limited circumstances *under FERPA*, NDE *may* re-disclose personally identifiable student information from an education record provided to it by a FERPA covered educational agency or institution *without* the previously described written consent. Under FERPA, this is *only* permissible when:
  - There is an explicit written understanding at the time the records are disclosed to NDE by the educational agency or institution that NDE may make further disclosure on behalf of that educational agency or institution. This written understanding must include i) the names of the additional parties to which NDE may disclose the information on behalf of the educational agency or institution; and ii) the legitimate interests of the additional party or parties has/have in requesting or obtaining the records; and  
If one or more of the conditions described in Appendix C are met.

Under Section 79-2,104 of Nebraska law, access to public school students' records and files is limited to: the student, the student's parents/guardians, the student's teachers and counselors, school administrators, auditing officials of the U.S. and State government, and state education authorities (NDE) when "necessary in connection with the audit and evaluation of federally supported or state supported education programs or in connection with the enforcement of legal requirements which relate to such programs." Therefore, before any written understanding is entered into between NDE and a public school at the time the records are disclosed to NDE for the re-disclosure by NDE to another entity or person, NDE and the public school should also consider this state law and determine if the recipient of NDE's re-disclosure would be authorized to access the records under its limitations. Contact the General Counsel's office for assistance with re-disclosure issues.

Under FERPA, it is permissible to re-disclose "directory information" without parental consent. However, unless NDE knows (a) that the information it is considering re-disclosing is directory information' under the directory information policy of the district that disclosed it to NDE; and (b) that no parent of any student whose information would be re-disclosed has 'opted-out' of the directory information disclosure practices at the school/district level, then NDE should not re-disclose information that might be

categorized as 'directory information.' As a general practice, NDE does not engage in such an inquiry of schools and districts that disclose student information to NDE, and therefore would not re-disclose such information that may be directory. Persons requesting such information from NDE on the theory it is directory information should be referred to the originating district(s). The following is an example of the Notice of Data Re-disclosure for District Approvers used in NSSRS.

The school district disclosing personally identifiable information from its student records to the Nebraska Department of Education (NDE) for the Nebraska Student and Staff Records System understands that NDE may re-disclose such information to another school to which the student transfers on its behalf. In addition, Neb. Rev. Stat. Section 79-776 required the State Board of Education for the NDE to enter into a memorandum of understanding with the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the Board of Governors of each Nebraska community college area to share student data. Pursuant to Section 79-776, the aforementioned organizations have signed a memorandum of understanding to share student data for the purposes of evaluation of, and research related to, public prekindergarten, elementary, secondary, and postsecondary education, with NDE being the warehouse for such student data, to improve education in Nebraska. The school district understands that NDE may make any student data, whether previously submitted or submitted herein, available to any of the aforementioned organizations for purposes of evaluating and improving education in Nebraska.

The school district understands that it is responsible for requirements regarding notification of parents or eligible students concerning the re-disclosure by NDE of this information in accordance with the Family Educational Rights and Privacy Act (FERPA).

#### **E. NDE DISCLOSURE RECORD KEEPING RESPONSIBILITIES**

NDE staff who receives a request for disclosure of data that directly or indirectly identifies an individual from a student's education record shall notify the Administrator of the Research and Evaluation team. Section 99.32(b)(2) of FERPA requires:

- (i) A State or local educational authority or Federal official or agency listed in Sec. 99.31 (a)(3) that makes further disclosures of information from education records under Sec. 99.33 (b) must record the names of the additional parties to which it discloses information on behalf of an educational agency or institution and their legitimate interests in the information under Sec. 99.31 if the information was received from
  - (a) An educational agency or institution that has not recorded the further disclosures under paragraph (b)(1) of this section; or
  - (b) Another State or local educational authority or Federal official or agency listed in Sec. 99.31(a)(3).
  
- (ii) A State or local educational authority or Federal official or agency that records further disclosures of information under paragraph (b)(2)(i) of this section may maintain the record by the student's class, school, district, or other appropriate grouping rather than by the name of the student.
  
- (iii) Upon request of an educational agency or institution, a State or local educational authority or Federal official or agency listed in Sec. 99.31 (a) (3) that maintains a record of further disclosures under paragraph (b)(2)(i) of this section must provide a copy of the recorded of further disclosures to the educational agency or institution within a reasonable period of time not to exceed 30 days.

The retention of student's education records at NDE is governed by the applicable schedules of the NDE Records Retention Schedule unless FERPA provides otherwise.

## F. MASKING POLICIES

NDE's [Data Access and Use Policy and Procedures](#) contains the masking policies concerning student records and information to prevent the Department from releasing information that could make a student's identity easily traceable, e.g. "personally identifiable." This policy is found in the A to Z list on the NDE homepage and must be used for all NDE's public reporting of data.

## ATTACHMENT A

### DEFINITIONS

Also see the *Family Educational Rights and Privacy Act Regulations*, 34 CFR §99.3, available at <http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferparegs.pdf> and/or *SLDS Technical Brief: Basic Concepts and Definitions for Privacy and Confidentiality in Student Education Records*, available at <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2011601>

#### *Biometric Record*

FERPA regulations define a biometric record as one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

#### *Direct Identifier*

Direct identifiers include information that relates specifically to an individual such as the individual's residence, including for example, name, address, Social Security Number or other identifying number or code, telephone number, e-mail address, or biometric record. See also Indirect Identifier.

#### *De-identified Data*

De-identified data describes records that have a re-identification code and have enough personally identifiable information removed or obscured so that the remaining information does not identify an individual and there is no reasonable basis to believe that the information can be used to identify an individual. The re-identification code may allow the recipient to match information received from the same source.

#### *Directory Information*

FERPA regulations define directory information as information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information includes, but is not limited to: the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; 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. Directory information does not include a student's: (1) Social security number; or (2) Student identification (ID) number, except when a student ID number, user ID, or other unique personal identifier is used by the student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user.

### *Disclosure*

Under FERPA, disclosure means to permit access to or release, transfer, or other communication of personally identifiable information contained in education records by any means including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record. See also Authorized Disclosure, Identity Disclosure, and Unauthorized Disclosure.

### *Education Agency or Institution*

Under FERPA, education agency or institution refers to any public or private agency or institution to which funds have been made available under any program administered by the Secretary, if the educational institution provides educational services or instruction, or both, to students; or the educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions. This does not apply to an educational agency or institution solely because students attending that agency or institution receive nonmonetary benefits under a program administered by the Secretary, if no funds under that program are made available to the agency or institution. The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-I and IV-B, respectively, of the Higher Education Act of 1965, as amended). Note that if an educational agency or institution receives funds under one or more of the programs covered by this section, FERPA regulations apply to the recipient as a whole, including each of its components (such as a department within a university).

### *Education Records*

FERPA regulations define education records as those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include: (1) records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record; (2) records of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8; (3)(i) records relating to an individual who is employed by an educational agency or institution, that: (A) are made and maintained in the normal course of business; (B) relate exclusively to the individual in that individual's capacity as an employee; and (C) are not available for use for any other purpose. (ii) records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition; (4) records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are: (i) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity; (ii) made, maintained, or used only in connection with treatment of the student; and (iii) disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; (5) records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student; (6) grades on peer-graded papers before they are collected and recorded by a teacher. See also Record.

### *Eligible Student*

FERPA defines an eligible student as a student who has reached 18 years of age or is attending a postsecondary institution at any age. This means that, at the secondary level, once a student turns 18, all the rights that once belonged to his or her parents transfer to the student. However, a secondary school or postsecondary institution may still provide an eligible student's parents with



access to education records, without the student's consent, if the student is claimed as a dependent for IRS tax purposes.

*FERPA*

The Family Education Rights and Privacy Act; governing regulations found at Title 34 Code of Federal Regulations (CFR), Part 99. Violations of FERPA can result in loss of federal funds.

*Identity Disclosure*

Identity disclosure occurs when data in a student level file or aggregate data in tabulations allow the data user to identify a student.

*Indirect Identifier*

Indirect identifiers include information that can be combined with other information to identify specific individuals, including, for example, a combination of gender, birth date, geographic indicator and other descriptors. Other examples of indirect identifiers include place of birth, race, religion, weight, activities,

employment information, medical information, education information, and financial information. See also Direct Identifier.

*Parent*

The natural parent of a student, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

*Personally Identifiable Information (PII)*

Personally identifiable information, as defined in FERPA, includes, but is not limited to:

1. a student's name;
2. the name of the student's parent or other family members;
3. the address of the student or student's family;
4. a personal identifier, such as the student's social security number, student number, or biometric record;
5. other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
6. other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; and
7. information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

*Record*

Any information recorded in any way. It includes not only written material, but also handwriting, video, photos, and audio.

*Student*

FERPA regulations define student as any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

*Unauthorized Disclosure*

Unauthorized disclosure occurs when personally identifiable information from a student's education

record is made available to a third party who does not have legal authority to access the information. Such an unauthorized disclosure can happen inadvertently, as occurs when information about an individual is unintentionally revealed through, for example, a security breach of the electronic system that is used to maintain and access the education records or when a teacher or administrator accidentally leaves paper reports that include personally identifiable information in an unsecured location. See also Authorized Disclosure, Disclosure, and Identity Disclosure.

### **ATTACHMENT B (FERPA at 34 CFR 99.3)**

#### EDUCATION RECORDS DO NOT INCLUDE:

- (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
- (2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of 34 CFR Sec. 99.8.
- (3)
  - (i) Records relating to an individual who is employed by an educational agency or institution, that:
    - (A) Are made and maintained in the normal course of business;
    - (B) Relate exclusively to the individual in that individual's capacity as an employee; and,
    - (C) Are not available for use for any other purpose.
  - (ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) above.
- (4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:
  - (i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
  - (ii) Made, maintained, or used only in connection with treatment of the student; and
  - (iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and
- (5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

### **ATTACHMENT C (from FERPA at 34 CFR 99.31)**

Under what conditions can NDE disclose personally identifiable information from a student's education record without a written consent?

- (A) NDE may disclose personally identifiable information from an education record of a student without written consent if the disclosure meets one or more of the following conditions:
- (1) The disclosure is to other school's officials, including teachers, within that agency or institution whom the agency or institution has determined to have legitimate educational interests.
  - (2) The disclosure is, subject to the requirements of 34 CFR Sec. 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.
  - (3) The disclosure is, subject to the requirements of 34 CFR Sec. 99.35 (see below), to authorized representatives of—
    - (i) The Comptroller General of the United States;
    - (ii) The Attorney General of the United States;
    - (iii) The Secretary; or
    - (iv) State and local educational authorities.
  - (4) (i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:
    - (A) Determine eligibility for the aid;
    - (B) Determine the amount of the aid;
    - (C) Determine the conditions for the aid; or
    - (D) Enforce the terms and conditions of the aid.
    - (ii) As used in paragraph (a)(4)(i), financial aid means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.
  - (5) (i) The disclosure is to State and local officials or authorities to whom this information is specifically—
    - (A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or
    - (B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of Sec. 99.38.
    - (ii) Paragraph (a)(5)(i) does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.
  - (6) (i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

- (A) Develop, validate, or administer predictive tests;
  - (B) Administer student aid programs; or
  - (C) Improve instruction.
- (ii) The agency or institution may disclose information under paragraph (a)(6)(i) only if:
- (A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and
  - (B) The information is destroyed when no longer needed for the purposes for which the study was conducted.
- (iii) If the U.S. Department of Education determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B), the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.
- (iv) For the purposes of paragraph (a)(6), the term organization includes, but is not limited to, Federal, State, and local agencies, and independent organizations.
- (7) The disclosure is to accrediting organizations to carry out their accrediting functions.
- (8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.
- (9) (i) The disclosure is to comply with a judicial order or lawfully issued subpoena.
- (ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with—
- (A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or
  - (B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.
- (iii) (A) If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order or subpoena, the education

records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

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

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in 34 CFR Sec. 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in 34 CFR Sec. 99.37.

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

(13) The disclosure, subject to the requirements in 34 CFR Sec. 99.39, is to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense. The disclosure may only include the final results of the disciplinary proceeding conducted by the institution of postsecondary education with respect to that alleged crime or offense. The institution may disclose the final results of the disciplinary proceeding, regardless of whether the institution concluded a violation was committed.

(14) (i) The disclosure, subject to the requirements in 34 CFR Sec. 99.39, is in connection with a disciplinary proceeding at an institution of postsecondary education. The institution must not disclose the final results of the disciplinary proceeding unless it determines that-

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

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

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

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

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

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

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

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

(b) Paragraph (a) of this section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11), (13), (14), and (15).

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

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

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

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

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

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

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

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