

NEW INFORMATION FOR LEAs FROM FERPA

The No Child Left Behind Act of 2001 (NCLB) amended the Protection of Pupil Rights Amendment (PPRA) to require that the Department of Education (Department) notify annually each State educational agency (SEA) and each local educational agency (LEA) of their obligations under PPRA and under the Family Educational Rights and Privacy Act (FERPA). This letter serves to provide that notification to the LEA. The general requirements placed on the LEA by each law are discussed separately below.

The Family Educational Rights and Privacy Act (FERPA)

Statute: 20 U.S.C. § 1232g. Regulations: 34 CFR Part 99.

FERPA provides that an LEA that receives Department funds may not have a policy or practice of denying parents the right to:

- Inspect and review education records (34 CFR § 99.10).
- Seek to amend education records (34 CFR §§ 99.20, 99.21, and 99.22).
- Consent to the disclosure of personally identifiable information from education records except as specified by law (34 CFR §§ 99.30 and 99.31).

These rights transfer to the student when he or she turns 18 years of age or enters a postsecondary educational institution at any age ("eligible student").

LEAs must annually notify parents and eligible students of their rights under FERPA. 34 CFR § 99.7. The annual notification must also include:

- The procedure to inspect and review education records;
- The procedure to request amendment of education records;
- A specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest if the agency or institution discloses or intends to disclose personally identifiable information to school officials without consent; and
 - The right of parents to file a complaint with the Family Policy Compliance Office (FPCO) in the Department. (A model FERPA notification for LEAs is enclosed and is also available on FPCO's Web site - <http://www.ed.gov/policy/gen/guid/fpc/index.html>.)

If the LEA or educational institution under the LEA discloses directory information from education records without consent, it is required by 34 CFR § 99.37 to notify parents and eligible students of:

- The types of information the LEA (or institution) has designated as directory information (see 34 CFR § 99.3 "Directory information" for definition);
- The right to opt out of disclosure of directory information. (A model "directory information" notice is enclosed and is also available on FPCO's Web site - www.ed.gov/policy/gen/guid/fpc.)

LEAs must also comply with FERPA's redisclosure and recordation provisions, set forth in 34 CFR §§ 99.32 and 99.33, except for disclosures that are specifically exempted.

Outlined below are changes in the NCLB that do not amend FERPA, but relate to the disclosure of personally identifiable information from students' education records.

Suspension and expulsion disciplinary records:

- Section 4155 of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. § 7165, as amended by the NCLB, requires that each State have "a procedure in place to facilitate the transfer of

disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school" no later than January 8, 2004. LEAs should include a notice in their annual notification of rights under FERPA that they forward education records to other schools that have requested the records and in which the student seeks or intends to enroll (34 CFR §§ 99.7 and 99.34(a)(ii)). (See enclosed model notification of rights.)

· Section 9528 of the ESEA, 20 U.S.C. § 7908, as amended by the NCLB, and 10 U.S.C. 503, as amended by § 544 of the National Defense Authorization Act for Fiscal Year 2002 (Pub.L. No. 107-107), require LEAs to:

- ® give military recruiters the same access to secondary school students as provided to postsecondary institutions or to prospective employers; and
- ® provide students' names, addresses, and telephone listings to military recruiters, when requested, unless a parent has opted out of providing such information. (Military Recruiter Guidance is on FPCO Web site.)

Protection of Pupil Rights Amendment (PPRA)

Statute: 20 U.S.C. § 1232h. Regulations: 34 CFR Part 98.

PPRA governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

1. political affiliations or beliefs of the student or the student's parent;
2. mental or psychological problems of the student or the student's family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or 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;
7. religious practices, affiliations, or beliefs of the student or student's parent; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

PPRA also concerns marketing surveys and other areas of student privacy, parental access to information, and the administration of certain physical examinations to minors.

The rights under PPRA transfer from the parents to a student who is 18 years old or an emancipated minor under State law.

General Notification - LEAs must provide parents and students effective notice of their rights under PPRA. In addition, the NCLB amendments to PPRA require that LEAs provide for reasonable notice of the adoption or continued use of the policies described on page four. The LEA must provide such notice at least annually, at the beginning of the school year, and after any substantive change in such policies. This new notification requirement may be included in the PPRA general notification.

The general notification must indicate that PPRA applies to surveys that contain questions about one or more of the eight protected areas listed above. The notification must explain that for surveys that contain questions about one or more of the eight protected areas and that are funded in whole or in part by Department funds, the LEA must obtain prior written consent from parents before students are required to submit to the survey.

The general notification must also indicate that, for surveys that contain questions from one or more of the eight protected areas but are not funded in whole or part by Department funds, the LEA will notify the parent, at least annually at the beginning of the school year, of the specific or approximate dates during the school year when it will administer the survey(s) and provide an opportunity for the parent to opt his or her child out of participating.

In addition, LEAs must notify parents that they have the right to review, upon request, any survey that concerns one or more of the eight protected areas, any instructional materials used in connection with any survey that concerns one or more of the eight protected areas, and any instructional material used as part of the educational curriculum for the student. (A model PPRA general notification for use by LEAs is attached and may also be obtained on FPCO's Web site.)

Section 1061 of NCLB amended PPRA to give parents more rights with regard to the surveying of minor students, the collection of information from students for marketing purposes, and certain non-emergency medical examinations. Here are some of the changes made to PPRA by NCLB:

- An eighth category of protected information was added to PPRA. See No. 7 above, "religious practices, affiliations, or beliefs of the student or student's parent."

- The following new provisions apply to educational agencies and institutions that receive funds from any Department program.

A. LEAs are required to develop and adopt policies - in consultation with parents - regarding the following:

- 1) The right of parents to inspect, upon request, a survey created by a third party before the survey is administered or distributed by a school to students.
- 2) Arrangements to protect student privacy that are provided by the LEA in the event of the administration of a survey to students containing one or more of the eight protected items of information noted above (including the right of parents to inspect, upon request, a survey that concerns one or more of the eight protected items of information).
- 3) The right of parents to inspect, upon request, any instructional material used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access.
- 4) The administration of physical examinations or screenings that the school may administer to students.
- 5) The collection, disclosure, or use of personal information (including items such as a student's or parent's first and last name, address, telephone number or social security number) collected from students for the purpose of marketing or selling, or otherwise providing the information to others for that purpose, including the LEA's arrangements for protecting student privacy in the event of collection, disclosure, or use.
- 6) The right of parents to inspect, upon request, any instrument used in the collection of personal information, as described above in paragraph 5, before the instrument is administered or distributed to a student and the LEA's procedure for granting a parent's request.

B. Specific Notification - An LEA must "directly" notify, such as through U.S. Mail or email, parents of students who are scheduled to participate in the specific activities or surveys noted below and must provide an opportunity for the parent to opt his or her child out of participation in the specific event or survey. An LEA may make this notification to parents at the beginning of the school year if the LEA has identified the specific or approximate dates of the activities or surveys at that time. Thereafter, parents should be provided reasonable notification of the planned activities and surveys and be provided an opportunity to opt their child out, as well as an opportunity to review any pertinent surveys. A model specific notification for use by LEAs is attached and may also be obtained on the Web site noted at the end of this guidance. LEAs must offer an opportunity for parents to opt their child out of participating in the following activities:

® Activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information, or otherwise providing that information to others for that purpose.

® Any non-emergency, invasive physical examination or screening that is:
1) required as a condition of attendance; 2) administered by the school and scheduled by the school in advance; and 3) not necessary to protect the immediate health and safety of the student, or of other students.

® The administration of any survey containing one or more of the eight protected areas of information listed above and that is not funded in whole or in part by Department funds. (LEAs must obtain active consent, and may not use an opt-out procedure, if the survey is funded in whole or in part with Department funds.)

C. An LEA is not required to develop and adopt new policies if the SEA or LEA has in place, on the date of enactment (January 8, 2002) of the NCLB, policies covering the requirements set forth in this law; however, the LEA must still provide annual notice of these policies to parents.

D. The requirements concerning activities involving the collection and disclosure of personal information from students for marketing purposes do not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for or to students or educational institutions, such as the following:

- 1) College or other postsecondary education recruitment, or military recruitment.
- 2) Book clubs, magazines, and programs providing access to low-cost literary products.
- 3) Curriculum and instructional materials used by elementary schools and secondary schools.
- 4) Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students.
- 5) The sale by students of products or services to raise funds for school-related or education-related activities.
- 6) Student recognition programs.

E. This law does not preempt applicable provisions of State law that require parental notification.

F. This law does not apply to any physical examination or screening that is permitted or required by State law, including physical examinations or screenings permitted without parental notification.

G. An SEA or LEA may use funds provided under part A of title V of the ESEA to enhance parental involvement in areas affecting the in-school privacy of students, such as reimbursement for costs associated with this direct notification.

Definition of some terms used in PPRA:

"Instructional Material" - instructional material that is provided to a student, regardless of format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.

"Invasive Physical Examination" - any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

"Personal Information" - individually identifiable information including -

- (1) a student's or parent's first and last name;
- (2) a home or other physical address (including a street name and the name of a city or town);
- (3) a telephone number; or
- (4) a social security number.

The Department will issue regulations to reflect the changes in FERPA and PPRA. The Family Policy Compliance Office (FPCO) in the Department administers both FERPA and PPRA.

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5920
(202) 260-3887

Informal inquiries may be sent to FPCO via the following email addresses: FERPA@ED.Gov and PPRA@ED.Gov.

The FPCO Web site address is: www.ed.gov/policy/gen/guid/fpc/index.html.

PPRA MODEL NOTICE AND CONSENT/OPT-OUT FOR SPECIFIC ACTIVITIES

LEAs should adopt the following model form as appropriate

The Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h, requires [School District] to notify you and obtain consent or allow you to opt your child out of participating in certain school activities. These activities include a student survey, analysis, or evaluation that concerns one or more of the following eight areas ("protected information surveys"):

1. Political affiliations or beliefs of the student or student's parent;
2. Mental or psychological problems of the student or student's family;
3. Sex behavior or attitudes;
4. Illegal, anti-social, self-incriminating, or demeaning behavior;
 5. Critical appraisals of others with whom respondents have close family relationships;
 6. Legally recognized privileged relationships, such as with lawyers, doctors, or ministers;
 7. Religious practices, affiliations, or beliefs of the student or parents; or
 8. Income, other than as required by law to determine program eligibility.

This requirement also applies to the collection, disclosure or use of student information for marketing purposes ("marketing surveys"), and certain physical exams and screenings.

Following is a schedule of activities requiring parental notice and consent or opt-out for the upcoming school year. This list is not exhaustive and, for surveys and activities scheduled after the school year starts, the [School District] will provide parents, within a reasonable period of time prior to the administration of the surveys and activities, notification of the surveys and activities and be provided an opportunity to opt their child

out, as well as an opportunity to review the surveys. (Please note that this notice and consent/opt-out transfers from parents to any student who is 18 years old or an emancipated minor under State law.)

Date: On or about October 15, 2003

Grades: Five and Six

Activity: ABC Survey of At-Risk Behaviors.

Summary: This is an anonymous survey that asks students questions about behaviors such as drug and alcohol use, sexual conduct, violence, and other at-risk behaviors. The survey also asks questions of a demographic nature concerning family make-up, the relationship between parents and children, and use of alcohol and drugs at home.

Consent [for ED funded, protected information surveys only]: A parent must sign and return the attached consent form no later than [insert return date] so that your child may participate in this survey.

Opt-out [for any non-ED funded protected information survey]: Contact [school official] at [telephone number, email, address, etc.] no later than [date] if you do not want your child to participate in this activity.