UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

October 2012

Dear Chief State School Officer:

The Department of Education (Department) is required to notify annually each State educational agency (SEA) and each local educational agency (LEA) of their obligations under the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). This letter serves to provide that notification to the SEA and to provide you general guidance and reference information for each of the laws discussed below. A similar notice has been provided to the larger LEAs in the country. However, because we do not have an email address for all the LEAs, we would appreciate your ensuring that this information is forwarded to the local superintendents in your State.

It is essential that SEA officials who have access to student information understand their roles and responsibilities under FERPA to protect that information and uphold the parent and student's right to privacy under FERPA. Student education records at the SEA contain a large amount of personal and sensitive information, and SEAs should ensure that adequate controls are in place so that the education records of all students are handled in accordance with FERPA's privacy requirements.

Family Educational Rights and Privacy Act (FERPA)

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

Rights of Parents

FERPA applies to an "educational agency or institution" that receives funds under a program administered by the U.S. Department of Education. Educational agencies and institutions subject to FERPA 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); and
- 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").

The Family Policy Compliance Office (FPCO) in the Department has issued guidance documents about FERPA for parents and for eligible students. Those documents are available on FPCO's Web site – http://www2.ed.gov/policy/gen/guid/fpco/ferpa/parents.html and http://www.ed.gov/policy/gen/guid/fpco/ferpa/students.html.

While an SEA may receive funds from the Department, as a practical matter, all of the provisions of FERPA – such as notification requirements and the amendment of records requirements – generally do not apply to an SEA. This is because FERPA defines "education records" as information directly related to a "student," which itself is defined as excluding a person who has not been in attendance at the educational agency or institution. 20 U.S.C. § 1232g(a)(4) and (a)(6); 34 CFR § 99.3. Since students generally are not in attendance at an SEA, it follows that FERPA does not generally apply to the SEA.

However, FERPA does provide parents with the right to inspect and review education records maintained by the SEA within a reasonable period of time, but not more than 45 days after it has received a request. 34 CFR § 99.10(a)(2). This includes, for example, State assessments administered by LEAs and maintained by the SEA. The SEA may make the education records available to the parent either directly, by sending them to the LEA for inspection and review, or making other appropriate arrangements. For more information on this provision, see 34 CFR § 99.10. Additionally, an SEA must protect the education records it receives from schools and may not redisclose personally identifiable information from students' education records unless the disclosure meets one of the exceptions to FERPA's general consent rule and the redisclosure is on behalf of the school from which it received the records.

Regulatory Changes

On December 9, 2008, and again on December 2, 2011, the Department published final regulations in the *Federal Register* amending the FERPA regulations.

Link to 2011 changes:

http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf

Link to 2011 Guidance on Reasonable Methods and Written Agreements:

http://www2.ed.gov/policy/gen/guid/fpco/pdf/reasonablemtd_agreement.pdf

Link to 2008 changes:

http://www2.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf

Permitted Disclosures to SEAs

FERPA permits educational agencies and institutions, such as LEAs and their constituent schools, to disclose education records to SEAs and other State educational authorities without a parent or eligible student's prior consent under certain conditions. For a review of the exceptions to the general prior consent rule in FERPA, see 34 CFR § 99.31. You will find a copy of the FERPA regulations on FPCO's Web site: http://www2.ed.gov/policy/gen/reg/ferpa/index.html. The most common exception that relates to disclosure to a State educational authority is found in 34 CFR § 99.31(a)(3) and § 99.35.

The disclosure must be in connection with:

- An audit or evaluation of Federal or State supported education programs; or
- The enforcement of or compliance with Federal legal requirements relating to such programs.

Information collected under this provision generally must be:

- Protected so that information is not disclosed to anyone other than the authorized representatives of the State educational authority (34 CFR § 99.35(b)(1)); and
- Destroyed when no longer needed for the purposes listed above (34 CFR § 99.35(b)(2)).

Redisclosure and Recordation

Please note that, over the last few years, several changes were made to the FERPA regulations that impact SEAs. Specifically, the FERPA regulations published in December 2008 modified FERPA's prohibition on redisclosure of education records (as noted above) by State and local educational authorities, including SEAs. Under the regulations, State and local educational authorities, as well as the Secretary of Education and other Federal officials and agencies that are listed in § 99.31(a)(3), may redisclose personally identifiable information on behalf of educational agencies and institutions in accordance with the longstanding requirements in § 99.33(b) that require recordation of further disclosures that could be made by other parties that received education records. The December 2011 changes modified and expanded upon the redisclosure changes contained in § 99.35. The regulations on the FPCO Web site contain the latest changes to §§ 99.35. *See* http://www2.ed.gov/policy/gen/reg/ferpa/index.html.

Section 99.33(b) also requires the educational agency or institution to comply with § 99.32(b) and record the names of the additional parties to which the receiving party may make further disclosures and their legitimate interests under § 99.31. The regulations require a State education official that rediscloses education records on behalf of an educational agency or institution to comply with this recordation requirement, if the educational agency or institution where the education records originated does not make the recordation of the redisclosure by the SEA. 34 CFR § 99.32(b)(2)(i)(A). An educational agency or institution is required to obtain a copy of the SEA's record of further disclosures and make it available in response to a parent's or eligible student's request to review the student's record of disclosures. 34 CFR § 99.32(a)(4). The SEA must make its record showing its redisclosures available to an educational agency or institution upon request within a reasonable period of time not exceeding 30 days. 34 CFR § 99.32(b)(2)(iii). The regulations permit the SEA to maintain the record by the student's class, school, district, or other grouping rather than by the name of the student. 34 CFR § 99.32(b)(2)(ii).

Safeguarding Recommendations

The 2008 regulations contain helpful recommendations for handling and protecting education records. *See* pages 74843-74844 of the *Federal Register* notice, *Department Recommendations for Safeguarding Education Records*.

ESEA Provision Affecting FERPA

Section 4155(b) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, 20 U.S.C. § 7165(b), requires a State that receives funds under the ESEA to assure the Secretary that it "has 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." Section 99.31(a)(2) of the FERPA regulations provides specifically that an educational agency or institution may disclose education records, without parental consent, to a school in which the student seeks or intends to enroll, subject to conditions set forth in 34 CFR § 99.34. FERPA also allows disclosure of appropriate information regarding specified disciplinary actions to teachers and school officials, including those in other schools, who have legitimate educational interests in the behavior of the student. See 34 CFR § 99.36(b).

Protection of Pupil Rights Amendment (PPRA)

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

PPRA applies to the programs and activities of an SEA, LEA, or other recipient of funds under any program funded by the U.S. Department of Education. It 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.

LEAs must provide parents and eligible students effective notice of their rights under PPRA. The notice must explain that an LEA is required to obtain prior written consent from parents before students are required to submit to a survey that concerns one or more of the eight protected areas listed above, if the survey is funded in whole or in part by Department funds. For surveys that contain questions from one or more of the eight protected areas that are not funded in whole or in part with Department funds, LEAs must notify a parent at least annually, at the beginning of the school year, of the specific or approximate date(s) of the survey and provide the parent with an opportunity to opt his or her child out of participating. LEAs must also notify parents that they have the right to review, upon request, any instructional materials used in connection with any survey that concerns one or more of the eight protected areas and those used as part of the educational curriculum. Please see the notice to local superintendents for additional requirements under PPRA.

Please feel free to contact FPCO with any questions you may have, as well as any requests for FERPA compliance training. The address and telephone number for FPCO are:

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

Informal inquiries may be sent to FPCO via the following email addresses: FERPA@ED.Gov and PPRA@ED.Gov. Requests for FERPA compliance training may be sent to FERPA.Client@ED.Gov. The FPCO Web site address is: www.ed.gov/fpco.

Sincerely,

/s/

Dale King
Director
Family Policy Compliance Office

Enclosures