

U.S. Department of Education  
Office of Communications & Outreach, Press Office  
400 Maryland Ave., S.W.  
Washington, D.C. 20202

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Contact: Jim Bradshaw or Samara Yudof

202-401-1576, jim.bradshaw@ed.gov or samara.yudof@ed.gov

## FINAL REGULATIONS PUBLISHED ON FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

Schools Given Greater Flexibility to Address Health or Safety  
Emergencies

Following the tragic April 2007 shootings at Virginia Tech, the U.S. Department of Education published in today's Federal Register final regulations to clarify and give schools greater flexibility in making determinations about disclosures of information from students' education records in order to address threats to the health or safety of students or other individuals. The department published draft regulations March 24.

These changes to the Family Educational Rights and Privacy Act (FERPA) regulations are in response to the June 2007, "Report to the President on Issues Raised by the Virginia Tech Tragedy," written after U.S. Secretary of Education Margaret Spellings, U.S. Secretary of Health and Human Services Mike Leavitt and former U.S. Attorney General Alberto Gonzalez conducted a listening tour across the nation. The report concluded that additional guidance needed to be developed regarding when and how information can be shared in an emergency, especially with regard to the parents of college students. The new regulations provide that guidance and clarify that colleges may share information with students' parents in many circumstances.

"These changes and clarifications will help school officials respond to emergencies more quickly and effectively," said U.S. Secretary of Education Margaret Spellings. "The regulations balance student privacy with school safety while facilitating research to ultimately improve education."

The final regulations include changes and clarifications as a result of public comments on the proposed rules that prompted comments from more than 100 individuals and organizations. The regulations will take effect on Jan. 8, 2009.

Among the highlights:

#### SCHOOL SAFETY

-- In order to provide more flexibility to school administrators, language was removed requiring strict construction of the provision in FERPA that permits disclosure of education records, without consent, in order to deal with health or safety emergencies. Now, in making a determination concerning disclosures, a school may take into account the totality of the circumstances pertaining to a threat to the safety or health of the student or other individuals.

-- The school must record the significant threat that formed the basis for the disclosure and the parties to whom the information was disclosed. If there is a rational basis for the determination, the Education Department will not substitute its judgment for that of the educational agency or institution in deciding to release the information.

-- The final regulations clarify the Education Department's longstanding interpretation that "appropriate parties" to whom schools may disclose in a health or safety emergency include "parents of an eligible student."

#### DISCLOSURES TO PARENTS

-- The final regulations clarify that even after the rights under FERPA have transferred from parents to an eligible student (a student who is at least 18 years of age or attending a postsecondary institution), an educational agency or institution may still disclose education records to the student's parents without consent under several existing provisions of the act.

-- FERPA permits postsecondary institutions to disclose any and all information from a student's education records, without consent, to that student's parents if the student is a dependent for tax purposes under IRS rules.

-- As explained above, FERPA allows institutions to disclose information to appropriate officials in a health or safety emergency, including parents if the emergency involves their child. Parents are often in the best position to help their children during these crises.

-- FERPA permits a postsecondary institution to tell parents of students under the age of 21 when the student has violated any law or policy concerning the use or possession of alcohol or a controlled substance.

## IMPROVING RESEARCH AND ACCOUNTABILITY

--The final regulations permit state educational agencies and other state educational authorities to implement K-16 accountability systems and facilitate the transfer of students' education records.

-- The final regulations make other changes and clarifications to facilitate the use of "de-identified" data and personally identifiable information for research, as appropriate.

## SAFEGUARDING PRIVACY

-- The final regulations contain important recommendations to help educational agencies and institutions meet the challenges of safeguarding education records, especially records contained in electronic data systems.

-- The final regulations update the definition of "personally identifiable information."

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The final regulations are available at  
<http://edocket.access.gpo.gov/2008/pdf/E8-28864.pdf>.

The June 2007 "Report to the President on Issues Raised by the Virginia Tech Tragedy" is available at  
<http://www.hhs.gov/vtreport.html#critical>.

For more information about FERPA, see  
<http://www.ed.gov/policy/gen/guid/fpco/index.html>.

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