


AUSTIN PEAY STATE UNIVERSITY
POLICIES AND PROCEDURES MANUAL

Policy Number: 3:024	Supersedes Policy Number:
Date: August 29, 1988	Dated:
Subject: Confidentiality of Student Records	
Initiating Authority: Dean of Students	SBR Policy/Guideline Reference: 3:02:03:00
Approved:  President	

I. POLICY STATEMENT

It is the policy of the State Board of Regents and Austin Peay State University to comply with the Family Educational Rights and Privacy Act ("Buckley Amendment") and, in so doing, to protect the confidentiality of personally identifiable educational records of students and former students. A copy of the federal regulations, "Privacy Rights of Parents and Students" from 34 CFR Subtitle A Part 99 as developed under the authority of the Family Educational and Privacy Rights Act, and state regulations, "Confidential Records" from T.C.A. Section 10-7-504, are appended to and considered part of this policy (see Attachment A). Each school official (as defined herein) is individually responsible for complying with this policy and all federal and state statutes. Violations shall subject the school official to appropriate disciplinary action. Appropriate references to this policy shall be included in all faculty, staff, and student handbooks and shall be included in orientation sessions for new employees who work with or have access to student records.

Annually, Austin Peay State University Students shall be informed of their rights under the "Buckley Amendment" through the APSU Student Handbook. A complete copy of this policy shall be made available upon request at the Offices of the Dean or Associate Dean of Student Affairs (free of charge) and the University Library (at a nominal per sheet charge).

II. EDUCATIONAL RECORDS

A. Definitions

The following definitions shall apply to this policy. For definitions not included below consult 34 CFR Subtitle A Part 99.3 appended to this policy.

1. Directory Information - This includes the following information relating to a student: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.
2. Disclosure - This means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.
3. Education Records - This means those records which are directly related to a student and are maintained by the University or by a party acting for the University (see 34 CFR Subtitle A Part 99.3 for exceptions). This includes but is not limited to those records listed in section II.B.
4. Legitimate Educational Interest - This is defined as that specific student information which is needed by a school official to fulfill his/her responsibilities to the University and/or to better serve the student's needs.
5. Parent - This means a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian.
6. Record - This means any information or data recorded in any medium, including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.
7. School Official - This is defined as anyone with tort coverage under the Tennessee Commission of Claims and includes, but is not limited to, all paid employees including administrators, clerical and support staff, faculty, plus approved official volunteers whose names are on file with the Personnel Office of the University. Students

employed by the University to work in various offices are also included.

8. Student - This means any individual accepted for admission by the University and who pays the appropriate fees for enrollment. "Eligible student" means a student who has attained eighteen years of age and is attending the University.

B. Records Maintained by the University

The following types of educational records are maintained by Austin Peay State University at the location(s) and under the supervision of the individual(s) as indicated below.

1. Abbreviations Code, Contact Person, and Location

A/R = Admissions and Records, Dean of Admissions and Records, Ellington Student Services Bldg.

Grad Schl = Graduate Programs, Dean of Graduate Programs, Kimbrough Bldg.

VA = Veterans Affairs, Director of Veterans Affairs, Ellington Student Services Bldg.

SFA = Student Financial Aid Office, Director of Student Financial Aid, Ellington Student Services Bldg.

AA/EO = Affirmative Action/Equal Opportunity, Affirmative Action Officer, Browning Bldg.

BO = Business Office, Business Manager, Browning Bldg.

C/T = Counseling and Testing, Director of Counseling and Testing, Ellington Student Services Bldg.

SA = Student Affairs, Dean or Associate Dean of Students, Ellington Student Services Bldg.

DSP = Developmental Studies Program, Director of Developmental Studies Program, Dunn Center.

Ac Dept = Respective Academic Department Chairperson.

Instr = Classroom Instructor

P = Placement Office, Director of Placement, Ellington Student Services Bldg.

SHS = Student Health Services, Director of Student Health Services, Ellington Student Services Bldg.

Pub Saf = Public Safety, Assistant Director of Physical Plant for Public Safety, Shasteen Bldg.

Spec Ser = Special Services, Director of Developmental Studies Program, Dunn Center.

Pers Off = Personnel Office, Director of Personnel, Browning Bldg.

2. Types of Records Maintained

A/R	Undergraduate admission application plus all supporting documents (including but not limited to high school transcripts, transfer transcripts, admission test scores, assessment test scores, etc.) registration records including course enrollment, grades, names of instructors and advisers, etc.
Grad Schl	Graduate admission application plus supporting documents (including but not limited to undergraduate transcripts, admission test scores, letters of recommendation, etc.).
A/R	Permanent record of all undergraduate and graduate students which includes grade reports and transcripts (permanent academic records).
A/R	Student-athlete eligibility records.
SFA	Student Financial Aid records including, but not limited to, financial aid application, family income support documents, loan/grant/scholarship award documents, certification and verification documents, student payroll records, etc.
VA	Veteran certification documentation.
BO	Student accounts receivable records and NDSL records.
C/T	Counseling records.
P	Student placement credential files including letters of recommendation.
SA	Student disciplinary files.

SHS	Student medical/health records.
DSP	Assessment test scores and supporting documents.
Ac Dept	Academic department or program required tests and/or certification records, academic advisement records.
Instr	Student class attendance records, class assignments and requirements information, and academic advisement records.
Pub Saf	Medical information and other documents used for support as requested for handicap parking decal.
Spec Serv	Test scores, evaluations and other documents.
Pers Off	Student grievances against academic and non-academic personnel.
AA/EO	Affirmative Action information.

III. STUDENT RIGHTS

A. Rights Statement

1. A student's record may not be disclosed to the parent or to anyone else, except as defined in this policy, without prior consent.
2. Prior consent for disclosure of a student's record to the parent is not required if the student is considered a dependent as defined by Section 152 of the Internal Revenue Code of 1954. A dependent is defined as an individual who receives half of his/her support for the calendar year from the taxpayer (parent). Such a request from a parent for disclosure should be forwarded to the Dean of Students for a response.

B. Right to Access

1. Except as provided herein, a student has the right to inspect, review and obtain a copy of his/her education records. The following procedures shall apply:
 - a. A student desiring to inspect, review, and obtain a copy of specific education record(s)

shall contact the office and administrator named in Section II above.

- b. The administrator or his/her designee shall comply with the student's request within five (5) class days but no later than thirty (30) days.
 - c. The cost per page to be charged a student for his/her record shall not exceed \$.10 per page.
 - d. If a student requests an explanation/interpretation of a specific record the administrator or his/her designee shall respond in writing within five (5) class days but not to exceed thirty (30) days.
2. A student's right to access, inspect, review and/or obtain a copy of his/her education records is subject to the following exceptions:
- a. For records pertaining to more than one student, a student may only view the portion of the record pertaining to himself/herself and may not view the portion pertaining to the other student(s).
 - b. A student may not have access to financial records and statements of his/her parents or any information contained therein.
 - c. Students may not have access to confidential letters and confidential statements of recommendation which were placed in the student's records prior to January 1, 1975; provided that:
 - (1) The letters and statements were solicited with a written assurance of confidentiality or were sent and retained with a documented understanding of confidentiality, and
 - (2) The letters and statements are used only for the purposes for which they were specifically intended.
 - d. Students may not have access to confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975 which are either:
 - (1) respecting admission to an educational institution;
 - (2) respecting an application for employment;
or

(3) respecting the receipt of an honor or honorary recognition; provided that the student has waived his/her right to inspect and review the letters/statements in a signed written waiver. A separate waiver must be provided for each category of letters/statements. The waiver may be revoked at any time; however the revocation will not affect the student's rights as to letters previously provided under the waiver. The institution may not require such a waiver of students as a condition or prerequisite to eligibility for a program or service. The letters or statements provided under the waiver may be used only for the purpose designated on the waiver, and the student must be notified of the receipt by the institution of all letters/statements provided under the waiver.

C. Right to Request Amendment

A student may request that an amendment be made to his/her record if he/she feels it is inaccurate, misleading or in violation of his/her rights. The procedures for requesting an amendment shall be as follows:

1. The student shall contact the administrator or his/her designee in charge of the specific record with a written request.
2. The administrator or his/her designee shall meet with the student and review the request.
3. A decision as to whether or not to grant the request shall be made within five (5) class days.
4. The student has a right to appeal the decision provided he/she does so in writing within five (5) class days of the decision. An appeal should be addressed to the senior administrator with overall supervisory responsibility for the specific record.
5. The senior administrator shall respond within five (5) class days by meeting with the student to review his/her request. A decision, once made, shall be delivered to the student in writing.
6. Should the student desire to appeal the senior administrator's decision, a written notification must be sent to the President requesting a hearing. The President shall appoint a senior administrator, other administrator, or faculty member not having a direct interest in the outcome to hear the case.

7. The procedures and rights to be used prior to and during a requested hearing are as follows:
 - a. The student shall receive written notice of the time and place of the hearing at least three (3) class days in advance. A justified delay may be granted.
 - b. The hearing will be held no later than five (5) class days from receipt of the request.
 - c. The student has the right to present evidence in support of his/her appeal.
 - d. The student has the right to be accompanied by an adviser of the student's choice, but such participation shall be limited to advising the student.
 - e. The decision of the hearing officer shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and reasons for the decision.
 - f. The student has a right to be informed in writing of the final decision. Notification shall take place within five (5) class days.
8. If, as a result of the hearing, the request to amend is denied the student has the right to place a statement in the file commenting on the information in the file and setting forth any reasons for disagreeing with the information and/or decision. The statement must be maintained with the record and a copy provided to anyone to whom the record is provided.
9. The hearing procedures and amendment procedures outlined above shall not be used by the student to contest the underlying action taken by the University which has been recorded in the student's record but shall be limited to the issues of whether the record is inaccurate or misleading in recording the underlying action or whether the University's placement of the information in the student's record is in violation of the student's rights.

D. Right to File a Complaint

If a student feels that one or more violations of the Family Educational and Privacy Rights Act has occurred he/she may report these complaints to the Dean of

Students or the University President. Also, complaints of violations by the University may be filed with the Secretary of the U.S. Department of Education.

IV. DISCLOSURE OF RECORDS

Except as is otherwise provided by this policy, all personally identifiable records (by name, identifier or characteristics) directly related to a student or former student shall be kept confidential unless the student signs a consent form similar to that provided in PPM FORM 3:024a. Such confidential records include, but are not limited to, all records listed in Section II above. Disclosure of such records shall be permitted only under one of the exceptions described below.

A. Directory Information

1. Except as provided herein, the University may disclose directory information consistent with this policy to any person requesting such information without the consent of the student. The University publishes in its bulletin and student handbook the information which shall be considered directory information, and is limited to those items identified in Section II and other information of the type specifically approved by the Office of General Counsel to the State Board of Regents as acceptable directory information.
2. The University provides each student the opportunity to refuse to allow disclosure of any designated directory information. The student will be given this opportunity at the beginning of each academic term.

B. Disclosure in Bona Fide Emergency

Disclosure of student records is permitted if necessary to protect the student against threat to his/her safety or health. Such disclosure may be made only in the case of immediate bona fide emergency such that consent cannot be obtained. Such disclosure shall be limited to only necessary information and to those persons in a position to render assistance in the emergency situation.

C. Disclosure Within the Institution

Those school officials and/or persons employed by the University who exhibit a genuine need to know based on

a legitimate educational interest may have access to a student's record.

D. Disclosure With Consent

The University may disclose confidential information with the assigned written consent of the student. The consent form must be dated and must specifically identify the particular records to be disclosed, the purpose of the disclosure and the persons to whom such disclosure is to be made. A copy of the consent must be maintained with the student's record to which it pertains. If information is disclosed pursuant to a consent, a record of the disclosure shall also be maintained and a copy provided to the student upon request. Information disclosed pursuant to a consent shall be accompanied by a statement that the information is provided to the named recipient on the condition that it be used for the purpose designated in the consent (specify purpose). Unless the consent form specifies that the information may be disclosed further, the statement attached to the disclosed information shall also include a warning against further disclosure by the recipient. A sample statement is as follows:

"The education records/information attached have been released by Austin Peay State University with the written consent of the student as provided for under the Family Educational Rights and Privacy Act. This disclosure may only be used by you and shall not be released by you to any other person without the written consent of the student."

E. Disclosure Pursuant to a Subpoena

The University must disclose confidential student records pursuant to a lawfully issued subpoena or judicial order. Upon receipt of such a subpoena or judicial order, the University shall examine the subpoena or order to verify that it has been executed by an officer of the court or other authorized official. (The Office of General Counsel for the State Board of Regents may be contacted for assistance in verification.) Prior to disclosure, the University must use reasonable efforts to notify the student of the receipt of the subpoena or order and of the University's intent to comply. If the institution is unable to contact the student prior to the disclosure, it must do so as soon thereafter as is feasible. Oral notification should be followed by a written confirmation, a copy of which shall be maintained along with a copy of the subpoena and record of the disclosure with the student's record.

F. Other Exceptions for Disclosure Without Prior Consent

Federal regulations (see 34 CFR Subtitle A Part 99.1-99.67) provide for disclosure upon certain other limited circumstances. These exceptions are narrow in scope and are strictly construed. Disclosure pursuant to these exceptions shall not be made unless specifically approved by the appropriate University administrator.

V. RECORD OF REQUESTS AND DISCLOSURES

The University shall retain copies of requests for disclosures and a record of the information disclosed. These items will be retained with the student records for all disclosures made except those for directory information, disclosures made pursuant to consent, and disclosures to other school officials. The record of disclosures may be inspected by the student, the officials responsible for the records and by persons responsible for auditing the records.

AUSTIN PEAY STATE UNIVERSITY

Student Information Disclosure Consent Form

Name _____

S.S.# _____

Permanent Address _____

Description of the Records/Information to be Disclosed:

Purpose for Disclosing Above Records/Information:

Person(s) to Whom Above Described Records/Information are to be Disclosed:

Name _____

Address _____

Name _____

Address _____

I hereby grant consent for the above described records/information to be released by the University to the person(s) names above.

Signature _____

Date _____

ATTACHMENT A

§ 99.1

Sec.
99.12 Limitations on right to inspect and review education records at the postsecondary level.
99.13 Limitation on destruction of education records.

Subpart C—Amendment of Education Records
99.20 Request to amend education records.
99.21 Right to a hearing.
99.22 Conduct of the hearing.

Subpart D—Disclosure of Personally Identifiable Information From Education Records
99.30 Prior consent for disclosure required.
99.31 Prior consent for disclosure not required.
99.32 Record of requests and disclosures required to be maintained.
99.33 Limitation on redisclosure.
99.34 Conditions for disclosure to officials of other schools and school systems.
99.35 Disclosure to certain Federal and State officials for Federal program purposes.
99.36 Conditions for disclosure in health and safety emergencies.
99.37 Conditions for disclosure of directory information.

Subpart E—Enforcement

99.60 Office and review board.
99.61 Conflict with State or local law.
99.62 Reports and records.
99.63 Complaint procedure.
99.64 Termination of funding.
99.65 Hearing procedures.
99.66 Hearing before Panel or a Hearing Officer.
99.67 Initial decision; final decision.

AUTHORITY: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g), unless otherwise noted.
SOURCE: 45 FR 30911, May 9, 1980, unless otherwise noted.

Subpart A—General

899.1 Applicability of part.
(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal program for which the Secretary of the U.S. Department of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.
(b) This part does not apply to an educational agency or institution

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solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section. If no funds under those programs are made available to the agency or institution itself.

(c) For the purposes of this part, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph (a) of this section:

(1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) 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 Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program (Title IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(Authority: 20 U.S.C. 1232g)

(d) Except as otherwise specifically provided, this part applies to education records of students who are or have been in attendance at the educational agency or institution which maintains the records.

Note: This section is based on a provision in the General Education Provisions Act (GEPA), Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of the Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.)

(Authority: 20 U.S.C. 1232g)

[45 FR 30911, May 9, 1980, as amended at 44 FR 86296, Dec. 30, 1980]

899.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and stu-

PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS

Subpart A—General

Sec.
99.1 Applicability of part.
99.2 Purpose.
99.3 Definitions.
99.4 Student rights.
99.5 Formulation of institutional policy and procedures.
99.6 Annual notification of rights.
99.7 Limitations on waivers.
99.8 Fees.

Subpart B—Inspection and Review of Education Records

99.11 Right to inspect and review education records.

dents under section 438 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

§ 99.3 Definitions.

As used in this part:

"Act" means the General Education Provisions Act, Title IV of Pub. L. 90-247 as amended.

"Attendance" at an agency or institution includes, but is not limited to: (a) Attendance in person and by correspondence, and (b) the period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

"Directory information" includes the following information relating to a student: The student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means permitting access or the release, transfer, or other communication of educational records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

(Authority: 20 U.S.C. 1232g(b)(1))

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in § 99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records" (a) means those records which: (1) Are directly related

to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes; and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction. *Provided*, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3) (i) Records relating to an individual who is employed by an educational agency or institution which:

(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) This paragraph does not apply to 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.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student; and

(iii) Not disclosed to anyone other than individuals providing the treatment. *Provided*, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

(Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

"Financial Aid", as used in § 99.31(a) (4), means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

"Institution of postsecondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

"Panel" means the body which will adjudicate cases under procedures set forth in §§ 99.65-99.67.

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the

agency or institution has been provided with evidence that there is a State law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

"Record" means any information or data recorded in any medium, including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education.

(Authority: 20 U.S.C. 1232g)

"Student" (a) includes any individual with respect to whom an educational agency or institution maintains education records.

(b) The term does not include an individual who has not been in attendance at an educational agency or institution. A person who has applied for admission to, but has never been in attendance at a component unit of an institution of postsecondary education (such as the various colleges or schools which comprise a university), even if that individual is or has been in attendance at another component unit of that institution of postsecondary education, is not considered to be a student with respect to the component to which an application for admission has been made.

(Authority: 20 U.S.C. 1232g(a)(6))

§ 99.4 Student rights.

(a) For the purposes of this part, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student.

(b) The status of an eligible student as a dependent of his or her parents for the purposes of § 99.31(a)(8) does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(d))

(c) Section 438 of the Act and the regulations in this part shall not be construed to preclude educational agencies or institutions from according to students rights in addition to those accorded to parents of students.

§ 99.5 Formulation of institutional policy and procedures.

(a) Each educational agency or institution shall, consistent with the minimum requirements of section 438 of the Act and this part, formulate and adopt a policy of—

(1) Informing parents of students or eligible students of their rights under § 99.6;

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with § 99.11, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records.

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by §§ 99.31 and 99.37; the policy shall include, at least:

(i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under § 99.31(a)(1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest"; and

(ii) A specification of the personally identifiable information to be designated as directory information under § 99.37;

(4) Maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained by § 99.32, and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent of a student or an eligible student to place a statement in the education records of the student as provided in § 99.21(c);

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

(Authority: 20 U.S.C. 1232g(e) and (f))

§ 99.6 Annual notification of rights.

(a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

(1) Their rights under section 438 of the Act, the regulations in this part, and the policy adopted under § 99.5; the notice shall also inform parents of students or eligible students of the lo-

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cations where copies of the policy may be obtained; and

(2) The right to file complaints under § 99.63 concerning alleged failures by the educational agency or institution to comply with the requirements of section 438 of the Act and this part.

(b) Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

(Authority: 20 U.S.C. 1232g(e))

§ 99.7 Limitations on waivers.

(a) Subject to the limitations in this section and § 99.12, a parent of a student or a student may waive any of his or her rights under section 438 of the Act or this part. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(b) An educational agency or institution may not require that a parent of a student or student waive his or her rights under section 438 of the Act or this part. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

(c) An individual who is an applicant for admission to an institution of postsecondary education or is a student in attendance at an institution of postsecondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation described in § 99.12(a)(3) except that the waiver may apply to confidential letters and statements only if:

(1) The applicant or student is, upon request, notified of the names of all individuals providing the letters or statements; (2) the letters or statements are used only for the purpose for which they were originally intended; and (3) such waiver is not required by the agency or institution as a condition of admission to or receipt of any other service or benefit from the agency or institution.

(d) All waivers under paragraph (c) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.

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(e) A waiver under this section may be made with respect to specified classes of: (1) Education records, and (2) persons or institutions.

(f) (1) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(2) A revocation under this paragraph must be in writing.

(3) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

(Authority: 20 U.S.C. 1232g(a)(1) (B) and (C))

§ 99.8 Fees.

(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; *Provided*, That the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

Subpart B—Inspection and Review of Education Records**§ 99.11 Right to inspect and review education records.**

(a) Each educational agency or institution, except as may be provided by § 99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to

reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(c) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

§ 99.12 Limitations on right to inspect and review education records at the post-secondary level.

(a) An institution of postsecondary education is not required by section 438 of the Act or this part to permit a student to inspect and review the following records:

(1) Financial records and statements of their parents or any information contained therein;

(2) Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; *Provided, That:*

(i) The letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality; and

(ii) The letters and statements are used only for the purposes for which they were specifically intended;

(3) Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975:

(i) Respecting admission to an educational institution;

(ii) Respecting an application for employment; or

(iii) Respecting the receipt of an honor or honorary recognition; *Provided, That* the student has waived his or her right to inspect and review

those letters and statements of recommendation under § 99.7(c).

(Authority: 20 U.S.C. 1232g(a)(1)(B))

(b) If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

(Authority: 20 U.S.C. 1232g(a)(1)(A))

§ 99.13 Limitation on destruction of education records.

An educational agency or institution is not precluded by section 438 of the Act or this part from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under § 99.11;

(b) Explanations placed in the education record under § 99.21 shall be maintained as provided in § 99.21(d), and

(c) The record of access required under § 99.32 shall be maintained for as long as the education record to which it pertains is maintained.

(Authority: 20 U.S.C. 1232g(f))

Subpart C—Amendment of Education Records

§ 99.20 Request to amend education records.

(a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution decides to refuse to amend the education records of the student

in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under § 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

§ 99.21 Right to a hearing.

(a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with § 99.22.

(b) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

(c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(d) Any explanation placed in the education records of the student under paragraph (c) of this section shall:

(1) Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution; and

(2) If the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party, the explanation shall also be disclosed to that party.

(Authority: 20 U.S.C. 1232g(a)(2))

§ 99.22 Conduct of the hearing.

The hearing required to be held by § 99.21(a) shall be conducted according to procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

(b) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under § 99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

Subpart D—Disclosure of Personally Identifiable Information From Education Records

§ 99.30 Prior consent for disclosure required.

(a)(1) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in § 99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not

an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

- (1) A specification of the records to be disclosed.
- (2) The purpose or purposes of the disclosure, and
- (3) The party or class of parties to whom the disclosure may be made.
- (d) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(2)(A))

§ 99.31 Prior consent for disclosure not required.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is—

- (1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests;
- (2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in § 99.34;
- (3) Subject to the conditions set forth in § 99.35, to authorized representatives of:

(i) The Comptroller General of the United States.

(ii) The Secretary, or

(iii) State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received; *Provided*, That personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid.

(ii) To determine the amount of the financial aid.

(iii) To determine the conditions which will be imposed regarding the financial aid, or

(iv) To enforce the terms or conditions of the financial aid.

(5) To State and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This paragraph applies only to statutes which require that specific information be disclosed to State or local officials and does not apply to statutes which permit but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this paragraph.

(6) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; *Provided*, That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations.

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(9) To comply with a judicial order or lawfully issued subpoena; *Provided*, That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith; and

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in § 99.36.

(b) This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1))

§ 99.32 Record of requests and disclosures required to be maintained.

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(2) The legitimate interests these parties had in requesting or obtaining the information.

(b) Paragraph (a) of this section does not apply:

(1) To requests by or disclosure to a parent of a student or an eligible student;

(2) To requests by or disclosures to school officials under § 99.31(a)(1);

(3) If there is written consent of a parent of a student or an eligible student, or

(4) To requests for or disclosure of directory information under § 99.37.

(c) The record of requests and disclosures may be inspected:

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in, and under the conditions set forth in § 99.31(a) (1) and (3).

(Authority: 20 U.S.C. 1232g(b)(4)(A))

§ 99.33 Limitation on redisclosure.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under § 99.31 with the understanding that the information will be redisclosed to other parties under that section; *Provided*, That the recordkeeping requirements of § 99.32 are met with respect to each of those parties.

(c) An educational agency or institution shall, except for the disclosure of directory information under § 99.37, inform the party to whom a disclosure is made of the requirement set forth in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

§ 99.34 Conditions for disclosure to officials of other schools and school systems.

(a) An educational agency or institution transferring the education records of a student pursuant to § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:

(i) When the transfer of the records is initiated by the parent or eligible

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student at the sending agency or institution, or

(11) When the agency or institution includes a notice in its policies and procedures formulated under § 99.5 that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer.

(2) Provide the parent of the student or the eligible student, upon request, with a copy of the education records which have been transferred; and

(3) Provide the parent of the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; *Provided*, That the disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

§ 99.35 Disclosure to certain Federal and State officials for Federal program purposes.

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in § 99.31(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with the Federal legal requirements which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under § 99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in § 99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or

enforcement of or compliance with Federal legal requirements. 20 U.S.C. 1232g(b)(3)).

§ 99.36 Conditions for disclosure in health and safety emergencies.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(1)(I))

§ 99.37 Conditions for disclosure of directory information.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in § 99.3) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section.

(c) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

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(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(3) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))

Subpart E—Enforcement

§ 99.60 Office and review board.

(a) The Secretary is required to establish or designate an office and a review board under section 438(g) of the Act. The office will investigate, process, and review violations, and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act and the regulations in this part. The review board will adjudicate cases referred to it by the office under the procedures set forth in §§ 99.65–99.67.

(b) The following is the address of the office which has been designated under paragraph (a) of this section: The Family Educational Rights and Privacy Act Office (FERPA), Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. (Authority: 20 U.S.C. 1232g(g))

§ 99.61 Conflict with State or local law.

An educational agency or institution which determines that it cannot comply with the requirements of section 438 of the Act or of this part because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part shall so advise the office designated under § 99.60(b) within 45 days of any such determination, giving the text and legal citation of the conflicting law.

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(Authority: 20 U.S.C. 1232g(f))

§ 99.62 Reports and records.

Each educational agency or institution shall (a) submit reports in the form and containing such information as the Office of the Review Board may require to carry out their functions under this part, and (b) keep the records and afford access thereto as the Office or the Review Board may find necessary to assure the correctness of those reports and compliance with the provisions of sections 438 of the Act and this part.

(Authority: 20 U.S.C. 1232g (f) and (g))

§ 99.63 Complaint procedure.

(a) Complaints regarding violations of rights accorded parents and eligible students by section 438 of the Act or the regulations in this part shall be submitted to the Office in writing.

(b)(1) The Office will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the agency or institution under paragraph (b)(1) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

(c)(1) The Office will investigate all timely complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation the Office will provide written notification of its findings and the basis for such findings, to the complainant and the agency or institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (c)(2) of this section, the specific steps which must be taken by the agency or educational institution to bring the agency or institution into compliance. The notification shall also set forth a reasonable period of time,

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given all of the circumstances of the case, for the agency or institution to voluntarily comply.

(d) If the educational agency or institution does not come into compliance within the period of time set under paragraph (c)(3) of this section, the matter will be referred to the Review Board for a hearing under § 99.64-99.67, inclusive.

(Authority: 20 U.S.C. 1232g(f))

§ 99.64 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (a) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act, or the regulations in this part, and (b) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in § 99.1(a) shall be made available to that educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is no longer any such failure to comply.

(Authority: 20 U.S.C. 1232g(f))

§ 99.65 Hearing procedures.

(a) *Panels.* The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under § 99.64. Each Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) *Procedural rules.* (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference

before the Panel which shall afford each party:

(A) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (B) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition to provisions required by paragraph (1)(ii) of this paragraph (b), provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceedings.

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(Authority: 20 U.S.C. 1232g(g))

§ 99.66 Hearing before Panel or a Hearing Officer.

A hearing pursuant to § 99.65(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.

(Authority: 20 U.S.C. 1232g(g))

§ 99.67 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Secretary with a notice affording the party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

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(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review the decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification.

(e) The initial decision of the Panel shall be filed with the Review Board.

(f) Review of any initial decision by the Secretary shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceedings.

(g) No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney.

(Authority: 20 U.S.C. 1232g(g))

NOTES TO DECISIONS

ANALYSIS

1. Limits on access.
2. Applications for school superintendent.
3. Broad construction.
4. Police records.
5. Public hospital records.

1. Limits on Access.

Section 10-7-505 does not limit the scope of this section, nor does it give the courts leeway to exempt records from public inspection. *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986).

2. Applications for School Superintendent.

Applications of those seeking the position of school superintendent are records which are open to public inspection. *Board of Educ. v. Memphis Publishing Co.*, 585 S.W.2d 629 (Tenn. Ct. App. 1979).

3. Broad Construction.

This section should be construed to be broad enough to encompass § 10-7-501. *Cleveland Newspapers, Inc. v. Bradley County Mem. Hosp. Bd. of Dirs.*, 621 S.W.2d 763 (Tenn. Ct. App. 1981).

4. Police Records.

A closed investigative file of a municipal police department is available for inspection by the media and the public. *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986).

5. Public Hospital Records.

Records of public hospital which claimed governmental immunity in tort actions and met all of the criteria necessary to be considered an arm of the state carrying on a governmental function were encompassed within the provisions of this section and subject to public inspection. *Cleveland Newspapers, Inc. v. Bradley County Mem. Hosp. Bd. of Dirs.*, 621 S.W.2d 763 (Tenn. Ct. App. 1981).

10-7-504. Confidential records. — (a)(1) The medical records of patients in state hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, shall be treated as confidential and shall not be open for inspection by members of the public. Any records containing the source of body parts for transplantation or any information concerning persons donating body parts for transplantation shall be treated as confidential and shall not be open for inspection by members of the public.

(2) All investigative records of the Tennessee bureau of investigation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, and all files of the drivers' license issuance division of the department of safety relating to bogus drivers' licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record; however, such investigative records of the Tennessee bureau of investigation shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except those directly involved in the investigation in the Tennessee bureau of investigation itself and the governor himself. Provided that the bureau, upon written request by an authorized person of a state governmental agency, is authorized to furnish and disclose to the requesting agency the criminal history, records and data from its files, and the files of the federal government and other states to which it may have access, for the limited purpose of determining whether a license or permit should be issued to any person, corporation, partnership or other entity, to engage in an autho-

rized activity affecting the rights, property or interests of the public or segments thereof.

(3) The records, documents and papers in the possession of the military department which involve the security of the United States and/or the state of Tennessee, including but not restricted to national guard personnel records, staff studies and investigations, shall be treated as confidential and shall not be open for inspection by members of the public.

(4) The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or his parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian of a minor student attending any institution of elementary or secondary education, except as otherwise provided by law or regulation pursuant thereto and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the state department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

(5)(A) The following books, records and other materials in the possession of the office of the attorney general and reporter which relate to any pending or contemplated legal or administrative proceeding in which the office of the attorney general and reporter may be involved shall not be open for public inspection:

(i) Books, records or other materials which are confidential or privileged by state law;

(ii) Books, records or other materials relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law;

(iii) The work product of the attorney general and reporter or any attorney working under his supervision and control;

(iv) Communications made to or by the attorney general and reporter or any attorney working under his supervision and control in the context of the attorney-client relationship; or

(v) Books, records and other materials in the possession of other departments and agencies which are available for public inspection and copying pursuant to §§ 10-7-503 and 10-7-506. It is the intent of this section to leave subject to public inspection and copying pursuant to §§ 10-7-503 and 10-7-506 such books, records and other materials in the possession of other departments even though copies of the same books, records and other materials which are also in the possession of the attorney general's office are not

subject to inspection or copying in the office of the attorney general, provided such records, books and materials are available for copying and inspection in such other departments.

(B) Books, records and other materials made confidential by this subsection which are in the possession of the office of the attorney general and reporter shall be open to inspection by the elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house and is required for the conduct of legislative business.

(C) Except for the provisions of subdivision (B) hereof, the books, records and materials made confidential or privileged by this subdivision shall be disclosed to the public only in the discharge of the duties of the office of the attorney general.

(6) State agency records containing opinions of value of real and personal property intended to be acquired for a public purpose shall not be open for public inspection until the acquisition thereof has been finalized. This shall not prohibit any party to a condemnation action from making discovery relative to values pursuant to the rules of civil procedure as prescribed by law.

(7) Proposals received pursuant to personal service, professional service, and consultant service contract regulations, and related records, including evaluations and memoranda shall be available for public inspection only after the completion of evaluation of same by the state. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including evaluations and memoranda relating to same, shall be available for public inspection only after the completion of evaluation of same by the state.

(8) Records of the department of economic and community development pertaining to proprietary information of industrial and commercial enterprises shall not be subject to public review if such records are deemed by the commissioner, after consultation with the attorney general, to be of a confidential and sensitive nature.

(9) All investigative records and reports of the internal affairs division of the department of correction shall be treated as confidential and shall not be open to inspection by members of the public. However, an employee of the department of correction shall be allowed to inspect such investigative records and reports if the records or reports form the basis of an adverse action against the employee. The release of reports and records shall be in accordance with the Tennessee rules of civil procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. The information contained in such records and reports shall be disclosed to the public only in compliance with a subpoena or an order of a court of record.

(b) Any record designated "confidential" shall be so treated by agencies in the maintenance, storage and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted, or reconstructed. The destruction shall be in accordance with an approved records disposition authorization from the public records commission.

(c) Notwithstanding any provision of the law to the contrary, any confidential public record in existence more than seventy (70) years shall be open for public inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law or unless the record is a record of services for a person for mental illness or mental retardation. Provided, however, the provisions of this section shall not apply to a record concerning an adoption or a record maintained by the department of health and environment's office of vital records or by the Tennessee bureau of investigation. For the purpose of providing an orderly schedule of availability for access to such confidential public records for public inspection, all records created and designated as confidential prior to January 1, 1901, shall be open for public inspection on January 1, 1985. All other public records created and designated as confidential after January 1, 1901 and which are seventy (70) years old on January 1, 1985, shall be open for public inspection on January 1, 1986; thereafter all such records shall be open for public inspection pursuant to this part after seventy (70) years of the creation date of such records. [Acts 1957, ch. 285, § 2; 1970, ch. 531, §§ 1, 2; 1973, ch. 99, § 1; 1975, ch. 127, § 1; 1976, ch. 552, § 1; 1976, ch. 777, § 1; 1977, ch. 152, § 3; 1978, ch. 544, § 1; 1978, ch. 890, § 2; T.C.A., § 15-305; Acts 1983, ch. 211, § 1; 1984, ch. 947, § 2; 1985, ch. 421, §§ 1-4; 1985 (1st E.S.), ch. 5, § 29; 1987, ch. 113, § 2; 1987, ch. 337, § 20.]

Cross-References. Access, retention or disposal of confidential or archival records, § 10-7-508.

Bidding, contracts and purchases generally, part 2 of this chapter.

Confidentiality of abortion records and reports, § 39-4-203.

Confidentiality of adoption or federal records, § 10-7-503.

Confidentiality of bank and financial institution information, §§ 45-2-1602, 45-2-1713, 45-7-117.

Confidentiality of cancer reporting system information, §§ 68-1-1006, 68-1-1007.

Confidentiality of collection services information, § 62-20-119.

Confidentiality of contractors' financial statements, § 62-6-124.

Confidentiality of court of the judiciary proceedings, Jud. Ct. Rule 7.

Confidentiality of disclosure information by mortgagee, §§ 47-23-101, 47-23-102.

Confidentiality of hazardous chemical trade secrets, § 50-3-2013.

Confidentiality of joint legislative services committee information, § 3-10-106.

Confidentiality of juvenile court predisposition report, Juv. Proc. Rule 33.

Confidentiality of mentally ill patient records, § 33-3-104.

Confidentiality of legislative computer system information, § 3-10-108.

Confidentiality of medical misconduct information, § 63-1-117.

Confidentiality of medical review committee records and proceedings, § 63-6-219.

Confidentiality of polygraph examiner information, § 62-27-124.

Confidentiality of registration of public obligations, owner's identity, § 9-19-109.

Confidentiality of sources of body parts for transplantation, § 68-30-111.

Confidentiality of Tennessee Competitive Export Corporation information, § 13-27-113.

Confidentiality of savings and loan association information, §§ 45-3-807, 45-3-814, 45-3-1308.

Confidentiality of supreme court disciplinary enforcement proceedings, Sup. Ct. Rule 9, § 25.

Confidentiality of tax returns and tax information, §§ 67-1-1701 — 67-1-1709.

Confidentiality of Tennessee Competitive Export Corporation information, § 13-27-113.

Confidentiality of Tennessee Economic Development Corporation materials or data, § 4-17-109.

Confidentiality of writings, records or tangible objects obtained by attorney general, § 8-6-407.

Department of financial institutions, confidentiality of information, § 45-2-1603.

Hospital records not public records, § 68-11-304.

Legal services office, confidentiality of records, § 3-12-105.

Penalty for divulging property tax information furnished local authorities, § 67-5-401.