

Campus Safety Legislative Update



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Higher Education Opportunity Act (Public Law 110-315)



Higher Education Opportunity Act

Public Law 110-315

- Reauthorization of the Higher Education Act.
- Signed into law by President George Bush on August 14, 2008.
- Most provision were effective on August 14, 2008.
- Most provisions were subject to negotiated rulemaking. See <http://www.ed.gov/heoa> for more information.

Negotiated Rulemaking

On December 31, 2008, the U.S. Department of Education announced its plans for negotiated rulemaking and established teams including:

- Team I—Loans-Lender/General Loan Issues;
- Team II—Loans-School-based Loan Issues;
- Team III—Accreditation;
- Team IV—Discretionary Grants;
- **Team V—General and Non-Loan Programmatic Issues (including campus safety issues)**

Higher Education Opportunity Act (Public Law 110-315)

- Notice of Proposed Rulemaking for the aspects discussed today were published in the *Federal Register* on Friday, August 21, 2009 (pp. 42380-42463).
- Final Rule was published in the *Federal Register* on Thursday, October 29, 2009 (pp. 55902-55969).
- The effective date for the regulations is July 1, 2010.

Key Sections with Implications for Campus Safety

- Changes to the Clery Act
 - Victim Notification
 - Fire Safety ⚡
 - Alcohol & Drug Violations
 - Missing Student Procedures ⚡
- ⚡ Only applies to institutions with on-campus housing.

On-Campus Student Housing Facility



On-Campus Student Housing Facility

- *On-campus student housing facility*: A dormitory or other residential facility for students that is located on an institution's campus, as defined in § 668.46(a) (p. 55943).

Note: This new definition applies to the fire safety, missing student, and existing campus security regulations.

Fire Safety (HEOA, Sec. 488)



Annual Fire Safety Report

- Requires the initial report by October 2, 2010.
- May be combined with the Annual Security Report, but title must be clear.
- May publish two separate reports, each report must include information about the other.

Annual Fire Safety Report: Fire Statistics

An institution must report statistics for each on-campus student housing facility, for the three most recent calendar years for which data are available, concerning—

- (i) The number of fires and the cause of each fire;
- (ii) The number of persons who received fire-related injuries that resulted in treatment at a medical facility, including at an on-campus health center;
- (iii) The number of deaths related to a fire; and
- (iv) The value of property damage caused by a fire. (p. 55946)

Annual Fire Safety Report: Fire Statistics

This reporting requirement would be phased in beginning with the collection of statistics for calendar year 2009 in the October 1, 2010 Annual Fire Safety Report. Data would be collected for three subsequent calendar years until three years are represented. The first report to contain the full three years of data would be the report due on October 1, 2012. (NPRM, p. 42399).

Annual Fire Safety Report:

Additional Components

- A description of each on-campus student housing facility fire safety system.
- The number of fire drills held during the previous calendar year.
- The institution's policies or rules on portable electrical appliances, smoking, and open flames in a student housing facility.
- The institution's procedures for student housing evacuation in the case of a fire. (p. 55946)

Annual Fire Safety Report: Additional Components

- The policies regarding fire safety education and training programs provided to the students and employees. In these policies, the institution must describe the procedures that students and employees should follow in the case of a fire.
- For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred.
- (8) Plans for future improvements in fire safety, if determined necessary by the institution. (p. 55946)

Annual Fire Safety Report: Notice and Disclosure

- *Enrolled students and current employees—annual security report and annual fire safety report.* By October 1 of each year, an institution must distribute to all enrolled students and current employees its annual security report described in § 668.46(b), and, if the institution maintains an on campus student housing facility, its annual fire safety report described in § 668.49(b).
- *Prospective students and prospective employees—annual security report and annual fire safety report.* For each of the reports, the institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. (p. 55943)

Fire Log

Campuses with an on-campus student housing facility will also be required to maintain a written fire log that is “easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. This log must include the nature, date, time, and general location of each fire” (p. 55946).

**Missing
Student
Notification
(HEOA, Sec 488)**

MISSING



**Morgan Dana
Harrington**

Age – 20

Eyes – Blue

Hair – Blonde

Height – 5' 6"

Weight – 120 lbs.

LAST SEEN –

*October 17, 2009 at John
Paul Jones Arena in
Charlottesville, VA*

Morgan Dana Harrington, a 20-year-old student from Virginia Tech, was last seen Saturday near the John Paul Jones Arena. The arena was the site of a Metallica concert the night she went missing.

Harrington was last seen wearing a black t-shirt with "Pantera" across the front, a black mini-skirt with black tights and knee-high black boots. She has long blonde hair and blue eyes.

If you have information, please call:

**24-Hour Tip Line
434-352-3467**

**Crime Stoppers
434-977-4000**

**Crime Stoppers & Metallica
REWARD \$150,000**

Missing Student Notification

Institutions with on-campus student housing facilities will be required to include a statement of policy regarding its Missing Student Notification Procedures for students who reside on campus in the Annual Security Report starting with the October 2010 report.

Missing Student Notification Policy

- (i) Indicate a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;
- (ii) Require that any missing student report must be referred immediately to the institution's police or campus security department, or, in the absence of an institutional police or campus security department, to the local law enforcement agency that has jurisdiction in the area. (pp. 55945-55946)

Missing Student Notification Policy

- (iii) Contain an option for each student to identify a contact person or persons whom the institution shall notify within 24 hours of the determination that the student is missing, if the student has been determined missing by the institutional police or campus security department, or the local law enforcement agency;
- (iv) Advise students that their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation. (p. 55946)

Missing Student Notification Policy

- (v) Advise students that if they are under 18 years of age and not emancipated, the institution must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student; and
- (vi) Advise students that, the institution will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination that the student is missing. (p. 55946)

Missing Student Notification

Once a student is have been determined to be missing for 24 hours, the institution must have the following procedures in place:

- (i) If the student has designated a contact person, notifying that contact person within 24 hours that the student is missing;
- (ii) If the student is under 18 years of age and is not emancipated, notifying the student's custodial parent or guardian and any other designated contact person within 24 hours that the student is missing; and
- (iii) Regardless of whether the student has identified a contact person, is above the age of 18, or is an emancipated minor, informing the local law enforcement agency that has jurisdiction in the area within 24 hours that the student is missing.

Emergency Response & Evacuation Procedures (HEOA, Sec. 488)



Annual Security Report

Beginning with the October 2010 Annual Security Report, institutions must include a statement of policy regarding the emergency response and evacuation procedures in the Annual Security Report.

Emergency Response and Evacuation Procedures

- (1) The procedures the institution will use to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus; (p. 55945)

Emergency Response and Evacuation Procedures

- (2) A description of the process the institution will use to—
 - (i) Confirm that there is a significant emergency or dangerous situation as described in paragraph (g)(1) of this section;
 - (ii) Determine the appropriate segment or segments of the campus community to receive a notification;
 - (iii) Determine the content of the notification; and
 - (iv) Initiate the notification system. (p. 55945)

Emergency Response and Evacuation Procedures

- (3) A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency;
- (4) A list of the titles of the person or persons or organization or organizations responsible for carrying out the actions described in paragraph (g)(2) of this section; (p. 55945)

Emergency Response and Evacuation Procedures

- (5) The institution's procedures for disseminating emergency information to the larger community; and
- (6) The institution's procedures to test the emergency response and evacuation procedures on at least an annual basis, including—
 - (i) Tests that may be announced or unannounced;
 - (ii) Publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year; and
 - (iii) Documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced. (p. 55945)

Hate Crimes

Expands the list of hate crimes to be reported to include beginning with statistics for the 2009 calendar year in the October 2010 Annual Security Report:

- larceny-theft
- simple assault
- intimidation
- destruction, damage, or vandalism of property (p. 55945).

New Campus Law Enforcement Policy Information

The Annual Security Report requirements have been expanded to require information about:

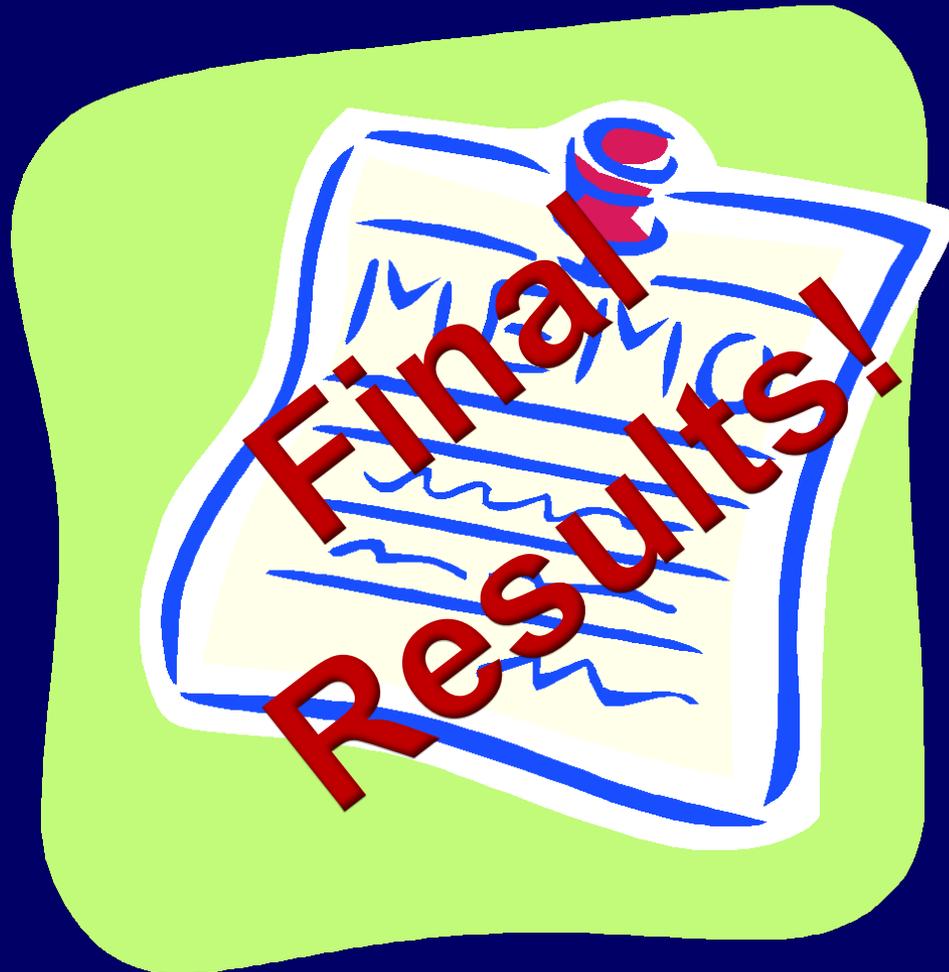
“whether the institution has agreements with such agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses.”

New Protections for “Whistleblowers”

New amendments prohibit an institution from

- retaliating against,
- intimidating,
- Threatening, or
- coercing anyone who is implementing the law.

Victim Notification (HEOA, Sec. 493)



Victim Notification

The institution will, upon written request, disclose to the alleged victim of any crime of violence, or a nonforcible sex offense, the report on the results of any disciplinary proceeding conducted by such institution against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim.

Crime of Violence

Rather than relying on the definition of a “crime of violence” at 18 U.S.C. 16, the Department of Education has provided an all inclusive list of “crimes of violence”:

- Arson
- Assault offenses
- Burglary
- Robbery
- Kidnapping/abduction
- Forcible and nonforcible sex offenses
- Criminal homicide—manslaughter by negligence
- Criminal homicide—murder and nonnegligent manslaughter
- Destruction, damage, and vandalism of property (§99.39)

Victims and Sanctions

“We note also that the sanction imposed on a student for misconduct is not generally considered directly related to another student, even the student who was injured or victimized by the disciplined student's conduct, except if a perpetrator has been ordered to stay away from a victim” (FERPA Final Rule, *Federal Register*, December 9, 2008, p. 74833).

Alcohol and Drug Violations (HEOA, Sec. 107)



Drug Free Schools and Communities Act of 1989

A biennial review by the IHE of its alcohol and drug programs to—

- Determine their effectiveness and implement changes if necessary; and
- Ensure that the disciplinary sanctions are consistently enforced.
- **Biennial reviews are typically completed in the fall of even years and address the two previous academic years.**

20 USC § 1101i with regulations at 34 CFR 86

Alcohol and Drug Violations (HEOA)

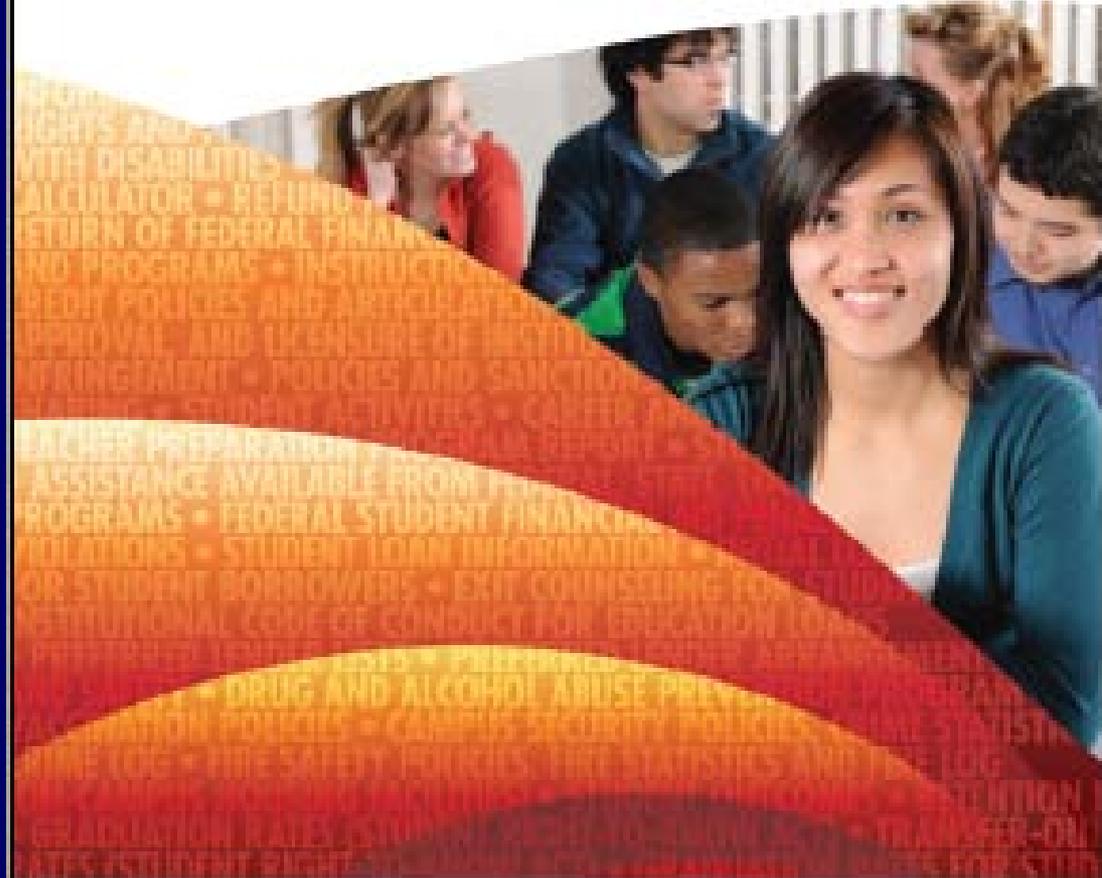
The institutions must determine the number and type of sanctions described that are imposed by the institution as a result of drug and alcohol-related violations and fatalities on the institution's campus or as part of any of the institution's activities.



**New
Resource
from
National
Postsecondary
Education
Cooperative**



**Information Required to Be Disclosed
Under the Higher Education Act of 1965:
Suggestions for Dissemination**

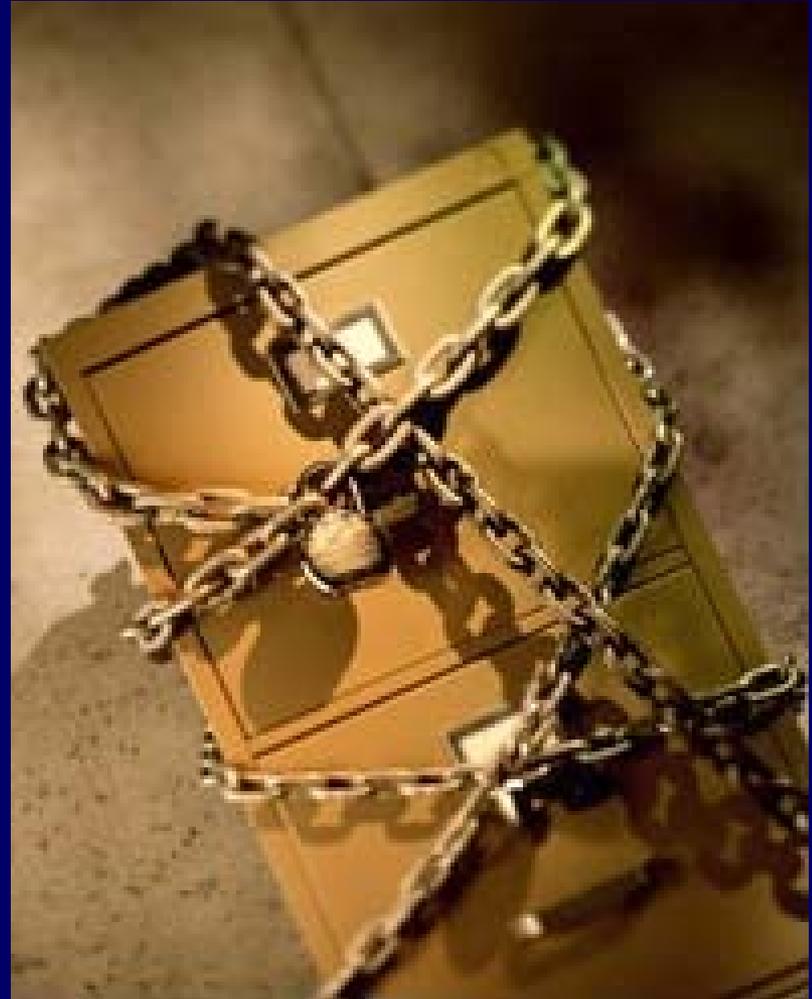


New Resource

- The National Postsecondary Education Cooperative (NPEC) has issued a new report which provides an overview of all of the disclosure requirements under the Higher Education Act, including those under HEOA, *Information Required to Be Disclosed Under the Higher Education Act of 1965: Suggestions for Dissemination*. The full report is available on-line at <http://nces.ed.gov/pubs2010/2010831.pdf>

FERPA

Family
Educational Rights
& Privacy Act of
1974



FERPA

- Originally passed in 1974
- Amended numerous times over the past 3 decades
- Significant changes were included in the Higher Education Amendments of 1998.
- Codified at 20 USC 1232(g)
- Regulations appear at 34 CFR 99
- The most recent Final Rules were published in the *Federal Register* on December 9, 2008 (pp. 74805-74855)

Students' Rights Under FERPA

- Right to inspect and review education records.
- Right to seek to amend records.
- Right to have some control over the disclosure of information from education records.

FERPA

Under FERPA, *education record* means those records that are:

1. Directly related to the student; and
2. Maintained by educational institution or by a party acting for the institution.

(§99.3)

Final Rule:
Family Educational Rights and Privacy

Federal Register

December 9, 2008

pp. 74805-74855

Effective Date: January 8, 2009

Health and Safety Emergencies

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. (p. 74864)

Health and Safety Emergencies

(c) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination. (p. 74864)

§ 99.32 Record Keeping

- (5) An educational agency or institution must record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception in § 99.31(a)(10) and § 99.36:
- (i) The articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and
 - (ii) The parties to whom the agency or institution disclosed the information. (p. 74853)

Sharing Information with Parents

§ 99.5 What are the rights of students?

(2) Nothing in this section prevents an educational agency or institution from disclosing education records, or personally identifiable information from education records, to a parent without the prior written consent of an eligible student if the disclosure meets the conditions in § 99.31(a)(8), § 99.31(a)(10), § 99.31(a)(15), or any other provision in § 99.31(a). (p. 74852)

**Balancing Student Privacy and
School Safety: A Guide to the
*Family Educational Rights and
Privacy Act* for Colleges and
Universities**

www.ed.gov/policy/gen/guid/fpc/brochures/postsec.html

Disclosure to Parents

When a student turns 18 years old or enters a postsecondary institution at any age, all rights afforded to parents under *FERPA* transfer to the student. However, *FERPA* also provides ways in which schools may share information with parents without the student's consent. For example:

- Schools may disclose education records to parents if the student is a dependent for income tax purposes.
- Schools may disclose education records to parents if a health or safety emergency involves their son or daughter.
- Schools may inform parents if the student who is under age 21 has violated any law or its policy concerning the use or possession of alcohol or a controlled substance.
- A school official may generally share with a parent information that is based on that official's personal knowledge or observation of the student.

Sharing Information with Parents

“Institutions can determine that a parent claims a student as a dependent by asking the parent to submit a copy of the parent's most recent Federal income tax return....

Institutions may rely instead on a student's assertion that he or she is not a dependent unless the parent provides contrary evidence” (p. 74813).

The Family Policy Compliance Office has developed two sample forms which colleges and universities can use to collect information regarding dependency status:

- <http://www.ed.gov/policy/gen/guid/fpc/ferpa/safeschools/modelform2.html>
- <http://www.ed.gov/policy/gen/guid/fpc/ferpa/safeschools/modelform.html>

Victim Notification & Redisclosure

(c) Paragraph (a) of this section [§ 99.33 What limitations apply to the redisclosure of information?] does not apply to disclosures... are required to disclose under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f) (Clery Act), to the accuser and accused regarding the outcome of any campus disciplinary proceeding brought alleging a sexual offense. (pp. 74853-74854)

Expanding Seeks or Intends to Enroll

§ 99.31 Under what conditions is prior consent not required to disclose information?

(2) The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or **where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.** (p. 74852)

Registered Sex Offenders

§ 99.31 Under what conditions is prior consent not required to disclose information?

(16) The disclosure concerns sex offenders and other individuals required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14071, and the information was provided to the educational agency or institution under 42 U.S.C. 14071 and applicable Federal guidelines. (p. 74852)

FERPA

Questions concerning FERPA may be directed to:

Family Policy Compliance Office

U.S. Department of Education

600 Independence Avenue. S.W.

Washington, D.C. 20202-4605

(202) 260-3887

<http://www.ed.gov/policy/gen/guid/fpco/index.html>

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