

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 251

FINAL

REGULATORY IMPLEMENTING ORDER

251 Family Educational Rights and Privacy Act (FERPA)

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA). This regulation was reviewed subject to the five year review requirement. This regulation contemplates the state, local school districts and charter schools develop, adopt, and maintain policies for educational records that are consistent with the federal Family Educational Rights and Privacy Act (FERPA).

The regulation was proposed for readoption in the December 2009 *Register of Regulations*. Based on comments received from the Governors Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities the Department is republishing with amendments. The amendments address students served in the Department of Correction system.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, May 3, 2010, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the amendment while offering a language change. The Department appreciates the recommendation; however, upon review, did not believe the language change was necessary.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA). This regulation contemplates the state, local school districts and charter schools develop, adopt, and maintain policies for educational records that are consistent with the federal Family Educational Rights and Privacy Act (FERPA).

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA) hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA) in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on June 17, 2010.

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of June 2010.

DEPARTMENT OF EDUCATION

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 17th day of June 2010

251 Family Educational Rights and Privacy Act (FERPA)

1.0 Authority and Incorporation of Federal Regulations

The Department of Education is authorized by 14 **Del.C.** §4111, to adopt rules and regulations regarding the educational records of students in public and private schools in Delaware. This regulation is intended to govern access to, confidentiality of, and the amendment of educational records in a manner consistent with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations at 34 CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations.

2.0 Use and Adoption of FERPA by School Districts, Charter Schools, and Private Schools

- 2.1 Each school district, charter school and private school shall develop, adopt, and maintain a written policy regarding the educational records of its students. This policy shall address access to such records, the confidentiality of such records, and the method by which the records may be amended. The policy shall comply with FERPA and its implementing regulations.
- 2.2 Each school district, charter school and private school shall periodically review and revise its policy on educational records to ensure continued compliance with FERPA.
- 2.3 Nothing in this regulation shall preclude a school district, charter school, or private school from adopting additional policies regarding educational records so long as those regulations are consistent with FERPA. Nothing in this regulation shall alter a school district or a charter school's duties regarding educational records of children with disabilities pursuant to the Individuals with Disabilities Education Act.

3.0 State Adoption of FERPA

- 3.1 Except as otherwise provided, the Department of Education adopts the federal regulation implementing FERPA (34 CFR part 99), including any subsequent amendment or revision to that regulation, to the extent the Department maintains educational records on students in attendance in Delaware schools.
- 3.2 Notwithstanding section 3.1, and except as noted herein, the Department shall not be required to annually notify parents or eligible students of their rights under FERPA or this regulation. School districts, charter schools, and private schools shall continue to be responsible for such notification. The Department may also disclose directory information from the educational records it maintains without prior public notification.
 - 3.2.1 The Department shall annually notify parents or eligible students of their rights under FERPA or this regulation where said student is in the Delaware Department of Correction system and receiving educational services through the Department's Prison Education Program.
- 3.3 Notwithstanding section 3.1, and except as noted herein, the Department shall not be required to provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation.
 - 3.3.1 The Department shall provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation where said student is in the

Delaware Department of Correction system and receiving educational services through the Department's Prison Education Program.

4.0 Federal Complaints and Investigations

- 4.1 The Family Policy Compliance Office ("FPCO") of the U.S. Department of Education is responsible for monitoring compliance with FERPA by agencies to which federal education funds have been made available. That office will investigate, process and review violations and complaints that may be filed with it concerning the privacy rights of parents and students of covered agencies. The following is the address of the office: The Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4605. Families of students attending schools to which federal education funding has not been made available may also find FPCO's interpretations and policy letters useful in understanding their rights under the policies required by this regulation.

Nonregulatory note: 14 DE Admin. Code 927 Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information addresses this subject for students with disabilities further.

8 DE Reg. 1112 (2/1/05)

14 DE Reg. 26 (07/01/10) (Final)