

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

PROPOSED

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

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 re-adoption 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.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 2, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to educational records and not student achievement specifically.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to educational records and has been amended to ensure all students receive an equitable education as it relates to the FERPA.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to educational records. The regulation contemplates the students' health and safety is adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to educational records and has been amended to reflect all students legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation is related to educational records. The regulation continues to preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is related to educational records. The regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decisions making authority and accountability remains with the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation is related to educational records and is not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing educational records as the state, local school districts and charter school must be in compliance with the federal law.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no

additional costs contemplated by the amendments.

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)
13 DE Reg. 1380 (05/01/10) (Proposed)