

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 4111 (14 **Del.C.** §4111)  
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

Pursuant to 14 **Del.C.** §4111, the Secretary of Education intends to amend 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA). This regulation is being amended to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and to update references to federal programs.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on December 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities requesting: (1) the Department leave in the sentence explaining that Student Privacy Policy Office (SPPO) will investigate and review alleged FERPA violation complaints that are filed with its office. The Department believes that the proposed replacement language in subsection 4.1 addresses the investigation and review of alleged FERPA violation complaints; and (2) that the zip code listed on the SPPO's website be corrected in the proposed regulation. The Department appreciates the Council identifying this error and has corrected it in the regulation. Also, for further clarification and identification the Department edited language in subsection 4.1 to be more prominent and include the website and phone number for the SPPO.

#### 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) in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and to update references to federal programs.

#### 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 January 15, 2020. 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 15<sup>th</sup> day of January 2020.

**Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 15<sup>th</sup> day of January 2020

**251 Family Educational Rights and Privacy Act (FERPA)**

- 4.4 The Department of Education ("Department") 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, the 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~~ 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~~ 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~~ district's] 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~~ subsection 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~~ subsection 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.

**14 DE Reg. 27 (07/01/10)**

## **4.0 Federal Complaints and Investigations**

- [4.4]** ~~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. The U.S. Department of Education's Office of the Chief Privacy Officer ("OCPO") provides leadership, oversight, and coordination to ensure Departmental compliance with government initiatives regarding the acquisition, release and maintenance of information. OCPO oversees the administration of FERPA. The Student Privacy Policy Office ("SPPO") leads U.S. Department of Education efforts to protect student privacy by providing leadership, oversight, and coordination to ensure Department and field compliance with several Federal privacy laws and regulations, most notably FERPA. [The following is the address of the office: Student Privacy Policy Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4605. Parents and students who need assistance may contact the SPPO through the website below or via mail or phone:~~
- Student Privacy Policy Office**  
**U.S. Department of Education**

**400 Maryland Avenue, S.W.,  
Washington, D.C. 20202-5920**

**<https://studentprivacy.ed.gov>**

**Phone: 1-800-USA-LEARN]**

Families of students attending schools to which federal education funding has not been made available may also find ~~FPCO's~~ SPPO'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 (02/01/05)**

**14 DE Reg. 27 (07/01/10)**

**23 DE Reg. 645 (02/01/20) (Final**