

DEPARTMENT OF EDUCATION

34 CFR Part 98

RIN 1880-AA66

Protection of Pupil Rights

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Pupil Protection Rights Amendments of 1994 (PPRA) to the Protection of Pupil Rights provision contained in the General Education Provisions Act (GEPA). PPRA was amended in the Goals 2000: Educate America Act (Pub. L. 103-227). The proposed regulations rename and revise the current regulations (34 CFR part 98 "Student Rights in Research, Experimental Activities, and Testing") for the Protection of Pupil Rights to implement these statutory changes and to make other changes that are necessary for proper program operation.

DATES: Comments must be received on or before October 27, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to LeRoy Rooker, U.S. Department of Education, 600 Independence Avenue SW., room 1366, Washington, DC 20202-4605. Comments may also be sent through Internet to "PPRA—Comments@ed.gov."

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the *Paperwork Reduction Act of 1980* section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, U.S. Department of Education, 600 Independence Avenue, SW., room 1366, Washington, DC 20202-4605. Telephone: (202) 260-3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations have been reviewed and revised in accordance with the Department's "Principles for Regulating," which were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. These principles advance the regulatory reinvention and customer service objectives of the Administration's National Performance Review II and are essential to an effective partnership with states and localities. The Secretary

proposes these regulations because he believes they are necessary to implement the law and give the greatest flexibility to local governments and schools. In addition, the regulations minimize burden while retaining parents' and students' rights.

The Secretary interprets the Protection of Pupil Rights provision, as amended, contained in section 445 of the General Education Provisions Act (GEPA) to provide parents with the right to have access to surveys, analyses, or evaluations (surveys) administered by a State educational agency (SEA), local educational agency (LEA), or other recipient that asks a student to reveal information concerning the areas specified in section 445(b) of GEPA. In addition, parents or the student, if a student is an adult or an emancipated minor, must consent before a student is required to submit to a survey that asks a student to reveal information concerning these areas. Finally, parents or the student, if a student is an adult or an emancipated minor, must be notified of these rights and may file a complaint for alleged violations of these rights.

Summary of Major Provisions

The following is a summary of the regulatory provisions the Secretary proposes as necessary to implement the statute, such as interpretations of statutory text or standards and procedures for the operation of the program. The summary does not address provisions that merely restate statutory language. The Secretary is not authorized to change statutory requirements. Commenters are requested to direct their comments to the regulatory provisions that would implement the statute.

Section 98.1 Applicable Program

The Protection of Pupil Rights provision contained in GEPA applies to any program that is an "applicable program" under section 400(c)(1) of GEPA. Under this section the term "applicable program" means any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law. The term includes each program for which the Secretary or the Department has administrative responsibility under the Department of Education Organization Act (DEOA) or under Federal law effective after May 4, 1980.

Section 98.2 Purpose

The Secretary interprets section 445 of GEPA to provide four general rights: (1) Parental right of access to certain

surveys and the instructional material used in connection with these surveys of a student; (2) parental or student right to consent before a student is required to submit to certain surveys; (3) parental or student right to file a complaint for alleged violations of their rights under the law; and (4) parental or student right to receive effective notice of these rights. The Secretary would implement each of these rights in the proposed regulations.

Section 98.3 Definitions

The Secretary proposes to define "recipient" to include (1) a contractor who receives financial assistance directly from the Department to carry out the project and (2) the Department. This definition clarifies that any survey that the Department directly contracts for or carries out itself would be subject to these regulations.

The Secretary proposes not to define the term "survey" because he believes the term is self-explanatory. The Secretary would welcome comment on whether the terms "survey, analysis, or evaluation" as used in section 445 of GEPA should be defined in regulations.

Sections 98.10, 98.20 Access and Consent

Section 445(a) of GEPA provides for the parental right of access to instructional materials that will be used in connection with any survey as part of any applicable program.

Section 445(b) of GEPA provides for the parent's, in the case of an unemancipated minor, and student's, if the student is an adult or emancipated minor, right of consent to submit to a survey that reveals information concerning one or more of the areas specified in the statute (also listed in § 98.4(a)(2)).

The Secretary interprets the statutory provisions on access and consent to be read together; this interpretation would require an SEA, LEA, or other recipient of program funds from the Department of Education to make available for inspection by a parent or guardian only those surveys (and instructional material in connection with a survey) concerning one or more of the areas listed in section 445(b) of GEPA. Because, unlike the Family Educational Rights and Privacy Act (FERPA), this statute makes no specific reference applying the access and consent provisions to post-secondary institutions and the legislative history supports only applying these provisions to elementary and secondary school students, these proposed regulations will only apply to surveys administered in elementary and secondary schools.

—*Access provision:* The Secretary would implement the access provision by requiring that an SEA, LEA, or other recipient that uses any type of program funds received from the Department, to develop or implement a survey must make available for inspection by a parent or guardian of a student a survey, and the instructional materials used in connection with the survey, if the survey (1) asks the student to reveal information concerning one or more of the areas listed in section 445(b) of GEPA; and (2) is administered in an elementary or secondary school.

—*Compliance with a request for access:* An SEA, LEA, or other recipient would be required to comply with a request to inspect a survey (and the instructional materials used in connection with the survey) without unnecessary delay and in no case more than 45 days after it has received the request. This requirement is consistent with FERPA. Also, the Secretary believes this requirement is a reasonable way to ensure a prompt response to a parent's request for access to these materials while not requiring an SEA, LEA, or other recipient to provide immediate access.

An SEA, LEA, or other recipient would not be required to provide parents with their own copy of a survey (and the instructional material used in connection with the survey). The Secretary believes that such a requirement would be unduly burdensome. The Secretary notes, however, that an SEA, LEA, or other recipient may wish to provide a copy of a survey in order to accommodate parents with disabilities.

—*Destruction of material:* An SEA, LEA, or other recipient would not be permitted to destroy any survey or the instructional material used in connection with the survey, if there is an outstanding request to inspect the material under § 94.10 of the regulations. The Secretary believes this provision is necessary to ensure that a parent's request for access is not frustrated.

—*Consent provision:* The Secretary would implement the consent provision by requiring an SEA, LEA, or other recipient to obtain the prior consent of the parent or guardian, or student, as appropriate, before a student is required to submit to the survey if the SEA, LEA, or other recipient (1) uses any type of program funds, received from the Department, to develop or implement a survey; (2) the survey is administered in an

elementary or secondary school; and (3) requires a student to submit to a survey that asks the student to reveal information concerning one or more of the areas listed in section 445(b) of GEPA. The Secretary has not interpreted "required" as used in section 445(b) of GEPA. By not interpreting the word "required", the Secretary will not be imposing a single rule to address a myriad of situations. Recipients will make initial judgments in individual cases as to whether a survey is or has been "required" in the administration of their activities. In the event a complaint is filed with the Department, the Department will determine on a case-by-case basis in light of all the circumstances whether a student has been required to submit to a survey.

Section 445(b) of GEPA provides that if a student is an unemancipated minor, a parent or guardian of a student provides the consent. If a student is an adult or emancipated minor, the student provides the consent. An adult would be defined as an individual who has attained 18 years of age. An emancipated minor would be defined according to the definition under State law.

—*Obtaining consent:* To meet the requirements of prior consent an SEA, LEA, or other recipient must provide an opportunity for the student or parent or guardian of a student to review a general description or summary of the type of information found in section 445(b) that is included in the survey and to provide information to the parent or guardian on the right to inspect the materials before the student submits to the survey. Rather than prescribing in regulations a standard form of written consent for parents or guardians, the Secretary proposes to allow an SEA, LEA, or other recipient the flexibility to develop its own type of written consent. To provide guidance to SEAs, LEAs, and other recipients, the Department intends to develop a model consent form.

Section 98.30 LEA Notification

Section 445(c) of GEPA provides that educational agencies and institutions shall give parents and students effective notice of their rights. The Secretary would implement this provision by requiring each LEA to give effective notice to parents of students in attendance, and students currently in attendance, at the LEA of their rights under the regulations. The notice would state, at a minimum, that parents and

students have the four rights listed in § 98.2. An LEA would have the option to include more information in the notice. With respect to frequency, an annual notification, for example, would constitute an effective notice.

Section 98.40 Family Policy Compliance Office and the Office of Administrative Law Judges Functions

Section 445(e) of GEPA requires the Secretary to establish or designate an office and review board within the Department to investigate, process, review, and adjudicate violations of the rights established under this section. The Secretary would designate the Family Policy Compliance Office (Office) to investigate, process, and review complaints of violations under the regulations and to provide technical assistance to ensure compliance with the regulations. The Secretary would designate the Office of Administrative Law Judges as having jurisdiction over proceedings to recover, withhold, and terminate funds and to conduct hearings to compel compliance through cease and desist orders.

Section 98.41 Conflict With State or Local Laws

If an SEA or LEA determines that it cannot comply with the requirements of these regulations due to a conflict with State or local laws, it would be required to notify the Office within 45 days, giving the text and citation of the conflicting law. This provision is consistent with the Family Educational Rights and Privacy regulations (34 CFR 99.61). The Secretary believes that, to the extent possible, these proposed regulations should parallel the regulations implementing the Federal Educational Rights and Privacy Act (FERPA) because both the protection of pupil rights legislation and FERPA were originally introduced together with a common purpose and, therefore, should be administered in a similar fashion.

Section 98.42 SEA or LEA Required Reports

Under the proposed regulations the Office may require an SEA or LEA to submit reports containing information necessary to resolve complaints under this part, including information regarding the source of funding for the survey, and to ensure that SEAs, LEAs, or other recipients are complying with the statute. This requirement is in the current regulations (34 CFR 98.6).

Sections 98.43, 98.44, 98.45 Complaint Procedures

The statute does not specify any procedures for filing or processing a

complaint. The regulations would allow a parent or student, as appropriate, to file a written complaint with the Office regarding an alleged violation under this part. This requirement is in the current regulations (34 CFR 98.7(a)).

The proposed regulations would clarify when a parent and student have a right to file a complaint. Also, the proposed regulations would require that a complaint contain specific allegations of fact giving reasonable cause to believe that a violation of this part has occurred. The Office would investigate each timely complaint to determine whether an SEA, LEA, or other recipient has failed to comply with the proposed regulations. These requirements are in 34 CFR 98.7(a) and (b), respectively, of the current regulations.

The proposed regulations clarify when a complaint would be timely and when the Office may extend the time limit. These provisions are consistent with the requirements in 34 CFR 99.64(c) and (d) of the FERPA regulations. Again, the Secretary believes that for the reasons already discussed, and to the extent possible, the proposed regulations should be consistent with the FERPA regulations.

—*Notice of complaint issued by the Office:* The Office notifies the complainant and the SEA, LEA, or other recipient in writing if it initiates an investigation of a complaint and notifies the complainant if it does not initiate an investigation of a complaint. The required content of the notice to the SEA, LEA, or other recipient is consistent with 34 CFR 98.8(a) and (b) of the current regulations. The Secretary believes this notification is necessary to keep the complainant properly informed of the status of his or her complaint.

Sections 98.46, 98.47 Enforcement Process

The statute does not prescribe any enforcement procedures except for the establishment or designation of an office and review board within the Department of Education to investigate, process, review and adjudicate violations of the rights established by section 445 of GEPA. Under the proposed regulations, the Office would review a complaint and response and may permit the parties to submit further written or oral arguments or information. Following its investigation, the Office would provide to the complainant and the SEA, LEA, or other recipient written notice of its findings and the basis for its findings. If the Office found that the SEA, LEA, or other recipient had not complied with these regulations, the notice would (1) include a statement of the specific steps

that the SEA, LEA, or other recipient must take to comply; and (2) provide a reasonable period of time, given all the circumstances of the case, during which the SEA, LEA, or other recipient may comply voluntarily. This procedure is consistent with that in 34 CFR 98.9 of the current regulations.

If an SEA, LEA, or other recipient other than a contractor does not voluntarily comply with the proposed regulations, the Office may, in accordance with part D of GEPA, (1) withhold, recover, or terminate funds under 34 CFR 81.3; or (2) issue a complaint to compel compliance through a cease-and-desist order under 34 CFR 81.3. This is consistent with 34 CFR 98.10(a)(1) of the current regulations.

If a contractor does not voluntarily comply with the proposed regulations, the Office may direct the contracting officer to take an appropriate action authorized under the Federal Acquisition Regulation, including either (1) issuing a notice to suspend operations under 48 CFR 12.5; or (2) issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

If, after an investigation, the Secretary finds that an SEA, LEA, or other recipient has complied voluntarily with these regulations, the Secretary provides the complainant and the SEA or LEA written notice of the decision and the basis for the decision. These enforcement provisions are consistent with 34 CFR 98.10(b) of the current regulations.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary to administer this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 98.1 *To which programs do these regulations apply?*) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FOB-10B), Washington, DC 20202-2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds from the Department. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would

impose minimal requirements to ensure that LEAs comply with the pupil protection requirements in GEPA.

Paperwork Reduction Act of 1980

Section 98.30 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

SEAs, LEAs, and other recipients may be affected by these regulations. The Department needs and uses the information to ensure compliance with requirements in the Pupil Protection Rights in GEPA. Annual public reporting burden for this collection of information is estimated to be .25 hours per response for 15,713 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. This section highlights those issues already discussed in the preamble on which the Secretary would particularly like comment.

The Secretary has attempted to balance a number of interests by interpreting "applicable program" narrowly and applying these regulations only to surveys that are developed or implemented under Department programs. The Secretary believes that this interpretation balances the rights of parents and students under the statute with the interests of local governments and schools in minimal administrative burdens. The Secretary requests comments on this interpretation. The Secretary is trying to minimize the role of the Federal government in implementing the statute.

The Secretary specifically requests comments from school officials regarding the practicality of a narrow interpretation. As proposed, if asked, an SEA or LEA would have to be able to identify which funds it used to develop, or otherwise implement, a survey. On the other hand, if the Secretary interpreted "applicable program" broadly, the regulations would apply to

any survey given by a school that receives money from the Department, and an identification of whether Department money was used in developing or implementing the survey would be unnecessary. The Secretary welcomes comments on whether school officials believe the broader interpretation of "applicable program" would be less burdensome.

The Secretary also requests comments on whether it is clear that these proposed regulations only apply to surveys that are developed, purchased, implemented, or otherwise funded under Department programs covered by section 445 of GEPA. The Secretary also requests comments on whether the provisions regarding access and consent rights, §§ 98.10 and 98.20 respectively, provide adequate guidance.

As previously stated in the preamble the Secretary would like comments on whether the regulations should include a definition of "survey" (see discussion of § 98.3 Definitions) and "required" (see discussion of §§ 98.10, 98.20 Access and consent: Obtaining consent).

Finally, as already discussed, the regulations interpret the statute to apply to surveys administered in elementary or secondary schools because the statute specifically provides protections under this law to "students." The Secretary requests specific comments on whether the statutory provisions should be interpreted to include surveys administered in settings outside of schools, such as Department-sponsored household-based surveys, conducted either by telephone or in person.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 1366, FOB-10, 600 Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 98

Administrative practice and procedure, Education, Educational research, Privacy, Reporting and recordkeeping requirements, Schools, and Students.

Dated: August 21, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 98 to read as follows:

PART 98—PROTECTION OF PUPIL RIGHTS

Subpart A—General

Sec.

- 98.1 To which programs do these regulations apply?
98.2 What is the purpose of these regulations?
98.3 What definitions apply to these regulations?

Subpart B—Access

- 98.10 What are a parent's rights of access to a survey?

Subpart C—Consent

- 98.20 In what circumstances must an SEA, LEA, or other recipient obtain consent before requiring a student to submit to a survey?

Subpart D—Notification

- 98.30 What must an LEA include in its annual notification?

Subpart E—Enforcement

- 98.40 What are the functions of the Family Policy Compliance Office (Office) and the Office of Administrative Law Judges?
98.41 What are an SEA's and LEA's responsibilities in the case of a conflict with State or local laws?
98.42 What information must an SEA, LEA, or other recipient submit to the Office?
98.43 Where are complaints filed?
98.44 What is the complaint procedure?
98.45 What is the content of the notice of complaint issued by the Office?
98.46 What are the responsibilities of the Office in the enforcement process?
98.47 How does the Office enforce decisions?

Authority: 20 U.S.C. 1232h, unless otherwise noted.

Subpart A—General

§ 98.1 To which programs do these regulations apply?

This part applies to any applicable program, that is, any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law.

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

§ 98.2 What is the purpose of these regulations?

Parents and students have the following rights under this part:

- (a) Parental right to have access to certain surveys, analyses, or evaluations

(surveys), and the instructional materials used in connection with these surveys of a student.

(b) Parental or student right to consent before the student is required to submit to certain surveys.

(c) Parental or student right to file a complaint for alleged violations of the rights in paragraphs (a), (b), and (d) of this section.

(d) Parental or student right to receive effective notice of the rights under paragraphs (a), (b), and (c) of this section.

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

§ 98.3 What definitions apply to these regulations?

(a) The following terms used in this part are defined in 34 CFR 77.1:

Department
Elementary school
Grantee
Local educational agency (LEA)
Secondary school
Secretary
State educational agency (SEA).

(b) *Other definitions.* The following definitions also apply to this part:

Adult means an individual who has attained 18 years of age.

Emancipated minor means a person under 18 years of age who would be considered emancipated according to state law.

Recipient, for the purposes of this part, means a grantee, subgrantee, or contractor that receives financial assistance directly from the Department to carry out a project and includes the Department.

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

Subpart B—Access

§ 98.10 What are a parent's rights of access to a survey?

(a) An SEA, LEA, or other recipient that receives funds from the Department to develop or implement a survey shall make available for inspection by a parent or guardian of a student the survey, and the instructional materials used in connection with the survey, if the survey—

(1) Is administered in an elementary or a secondary school; and

(2) Asks the student to reveal information concerning one or more of the following areas:

- (i) Political affiliations.
- (ii) Mental and psychological problems potentially embarrassing to the student or his or her family.
- (iii) Sex behavior and attitudes.
- (iv) Illegal, anti-social, self-incriminating, and demeaning behavior.
- (v) Critical appraisals of other individuals with whom the student has close family relationships.

(vi) Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.

(vii) Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(b)(1) An SEA, LEA, or other recipient shall comply with a parent's request to inspect a survey (and the instructional material used in connection with the survey) under paragraph (a) of this section without unnecessary delay and in no case more than 45 days after the recipient receives the request.

(2) An SEA, LEA, or other recipient is not required to give a personal copy of the survey, and the instructional materials, to a parent who requests to inspect a survey under paragraph (a) of this section.

(c) An SEA, LEA, or other recipient may not destroy any survey, or any instructional material used in connection with the survey, if there is an outstanding request by a parent to inspect the material under this section.

(d) An SEA, LEA, or other recipient shall make the survey available for inspection under paragraph (a) of this section even if a student is not required to submit to the survey under § 98.20.

(Authority: 20 U.S.C. 1232h(a))

Subpart C—Consent

§ 98.20 In what circumstances must an SEA, LEA, or other recipient obtain consent before requiring a student to submit to a survey?

(a) An SEA, LEA, or other recipient shall obtain the prior consent of the parent or guardian of a student, or the student, if appropriate under paragraph (b) of this section, before the student is required to submit to the survey if the SEA, LEA, or other recipient—

(1) Uses funds, received from the Department, to develop or implement the survey;

(2) Administers the survey in an elementary or secondary school;

(3) Requires the student to submit to the survey; and

(4) Asks the student in the survey to reveal information concerning one or more of the areas listed in § 98.10(a)(2).

(b)(1) If a student is an unemancipated minor, the SEA, LEA, or other recipient must obtain the consent required in paragraph (a) of this section, in writing, from the parent or guardian of the student.

(2) If a student is an adult or emancipated minor, the SEA, LEA, or other recipient must obtain the consent required in paragraph (a) of this section from the student.

(c) To meet the requirements of prior consent the SEA, LEA, or other recipient must provide—

(1) An opportunity for the student or parent or guardian of a student to review a general description or summary of the type of information found in § 98.10(a)(2) that is included in the survey; and

(2) Information to the parent or guardian on the right to inspect these materials before the student submits to the survey.

(Authority: 20 U.S.C. 1232h(b))

Subpart D—Notification

§ 98.30 What must an LEA include in its notification?

(a) Each LEA shall give effective notice to parents of students in attendance, and to students currently in attendance at the LEA of their rights under this part.

(b) The notice must state that parents and students have the rights listed in § 98.2.

(c) As used in paragraph (a) of this section, effective notice means a notice that is reasonably likely to inform parents and students, including those with disabilities and those whose primary or home language is not English, of their rights.

(Authority: 20 U.S.C. 1232h(c))

Subpart E—Enforcement

§ 98.40 What are the functions of the Family Policy Compliance Office (Office) and the Office of Administrative Law Judges?

(a) The Family Policy Compliance Office (Office)—

(1) Investigates, processes, and reviews complaints of violations under this part; and

(2) Provides technical assistance to ensure compliance with this part.

(b) The Office of Administrative Law Judges has jurisdiction to conduct the following proceedings to enforce the requirements in this part—

(1) Hearings for recovery of funds.

(2) Withholding hearings.

(3) Termination hearings.

(4) Cease and desist hearings.

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

§ 98.41 What are an SEA's and LEA's responsibilities in the case of a conflict with State or local laws?

If an SEA or LEA determines that it cannot comply with any of the requirements of this part due to a conflict with State or local laws, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

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

§ 98.42 What information must an SEA, LEA, or other recipient submit to the Office?

The Office may require an SEA, LEA, or other recipient to submit reports containing information necessary—

- (a) To resolve complaints under this part, including information regarding the source of funding for the survey; and
- (b) To ensure that SEAs, LEAs, or other recipients are complying with the statute.

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

§ 98.43 Where are complaints filed?

A parent or student, as appropriate under § 98.44(a), may file a written complaint with the Office regarding an alleged violation under this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, 600 Independence Avenue, SW., FOB-10, room 1366, Washington, D.C. 20202-4605.

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

§ 98.44 What is the complaint procedure?

(a)(1) A parent may file a complaint under this part for alleged violations of the parent's rights of access, consent, or to be notified of the parent's rights under §§ 98.10, 98.20, and 98.30.

(2) A student who is an emancipated minor or an adult may file a complaint under this part for alleged violations of the student's rights to consent or to be notified of the student's rights under §§ 98.20 and 98.30.

(b) A complaint filed under § 98.43 must contain specific allegations of fact giving reasonable cause to believe that a violation of this part has occurred.

(c) The Office investigates each timely complaint to determine whether the SEA, LEA, or other recipient has failed to comply with the provisions of this part.

(d)(1) For purposes of this section, a timely complaint is an allegation of a

violation of this part that is submitted to the Office within 180 days of—

- (i) The date of the alleged violation; or
- (ii) The date that the complainant knew or reasonably should have known of the alleged violation.

(2) The Office may extend the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

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

§ 98.45 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the SEA, LEA, or other recipient in writing if it initiates an investigation of a complaint under § 98.46(b). The notice to the SEA, LEA, or other recipient—

- (1) Includes the substance of the alleged violation; and
- (2) Requests that the SEA, LEA, or other recipient submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of § 98.44.

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

§ 98.46 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the SEA, LEA, or other recipient written notice of its findings and the basis for its findings.

(c) If the Office finds that the SEA, LEA, or other recipient has not

complied with this part, the notice under paragraph (b) of this section—

- (1) Includes a statement of the specific steps that the SEA, LEA, or other recipient must take to comply; and
- (2) Provides a reasonable period of time, given all the circumstances of the case, during which the SEA, LEA, or other recipient may comply voluntarily.

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

§ 98.47 How does the Office enforce decisions?

(a) If the SEA, LEA, or other recipient other than a contractor does not comply during the period of time set under § 98.46(c)(2), the Office may, in accordance with part D of the General Education Provisions Act—

- (1) Withhold, recover, or terminate funds under 34 CFR 81.3; or
- (2) Issue a complaint to compel compliance through a cease-and-desist order under 34 CFR 81.3.

(b) If a contractor does not comply during the period of time set under § 98.13(c)(2), the Office may direct the contracting officer to take an appropriate action authorized under the Federal Acquisition Regulation, including either—

- (1) Issuing a notice to suspend operations under 48 CFR 12.5; or
- (2) Issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

(c) If, after an investigation under § 98.44(c), the Secretary finds that an SEA, LEA, or other recipient has complied voluntarily with this part, the Secretary provides the complainant and the SEA, LEA, or other recipient written notice of the decision and the basis for the decision.

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

[FR Doc. 95-21227 Filed 8-25-95; 8:45 am]

BILLING CODE 4000-01-P