

Family Policy Compliance Office Guidelines:

Disclosure of Education Records Concerning Registered Sex Offenders

This guidance concerns an amendment to the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g, enacted by the Campus Sex Crimes Prevention Act (CSPCA), which is § 1601 of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106-386). Subsection (d) of the CSPCA amended FERPA to ensure that educational institutions may disclose information concerning sex offenders that they receive under State sex offender registration and community notification programs. See 20 U.S.C. § 1232g(b)(7). This amendment took effect on its enactment date of October 28, 2000.¹ The CSPCA amendment to FERPA directed the Secretary of Education “to take appropriate steps to notify educational institutions” that they may disclose information concerning registered sex offenders provided to them under State registration and community notification programs. See 20 U.S.C. § 1232g(b)(7)(B). In order to notify educational institutions of this amendment to FERPA, the Secretary of Education has issued this guidance.²

A Federal law, the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act (the “Wetterling Act”), provides minimum national standards for

¹ However, the CSPCA’s requirements that (1) registered sex offenders must provide notice, as required under State law, of each institution of higher education where they are employed or enrolled; (2) States must make this information available to a law enforcement agency where the institution of higher education is located; and (3) institutions of higher education must advise the campus community where the information on registered sex offenders can be obtained, do not become effective until October 28, 2002. See Campus Sex Crimes Prevention Act, Pub. L. No. 106-386, § 1601(b) and (c), 114 Stat. 1537, 1538 (to be codified at 20 U.S.C. § 1092(f)(1) and 42 USC § 14071 (j)).

² The Secretary of Education also will soon issue a proposed amendment to the FERPA regulations at 34 C.F.R § 99.31 to reflect that prior written consent is not required for these disclosures.

State sex offender registration and community notification programs. To comply with the Wetterling Act's standards, States must establish programs that require current address registration by residents of the State who have been convicted of sexually violent offenses or offenses involving sexual abuse or exploitation of minors, as described in the Act. The Wetterling Act's standards also require States to accept registration information from non-resident offenders who have entered the State to work or attend school. The Wetterling Act provides generally that States must release relevant information concerning persons required to register as necessary to protect the public. See 42 U.S.C. § 14071 (Wetterling Act provisions); 64 Fed. Reg. 572 (Jan. 5, 1999) (Attorney General's guidelines for the Wetterling Act).

The CSCPA supplemented the Wetterling Act's general standards for sex offender registration and community notification programs by enacting provisions which are more specifically designed to ensure that the members of campus communities have information available concerning the presence of registered sex offenders. In part, this included an amendment to the Wetterling Act which requires States to obtain information concerning registered sex offenders' enrollment or employment at institutions of higher education, and to make this information available promptly to a campus police department or other appropriate law enforcement agency having jurisdiction where the institution is located. See 42 U.S.C. § 14071(j) (Wetterling Act provisions added by the CSCPA amendment); 67 Fed. Reg. 65598 (October 25, 2002) (Attorney General's guidelines for the amendment).

The CSCPA also enacted two amendments to Federal education laws. One of these is an amendment to the Higher Education Act of 1965 which requires institutions of higher education to advise the campus community where it can obtain the information about registered sex offenders provided by the State (pursuant to 42 U.S.C. § 14071(j)), such as the campus law

enforcement office, a local law enforcement agency, or a computer network address. See 20 U.S.C. § 1092(f)(1)(I). The other is the FERPA amendment, which makes it clear that FERPA does not prevent educational institutions from disclosing such information:

- (A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071) concerning registered sex offenders who are required to register under such section.
- (B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.

20 U.S.C. § 1232g(b)(7). The legislative history to the FERPA amendment also confirms that FERPA does not prevent educational institutions from disclosing information about registered sex offenders:

In order to ensure that the information [about registered sex offenders] is readily accessible to the campus community, the Campus Sex Crimes Prevention Act requires colleges and universities to provide the campus community with clear guidance as to where this information can be found, and clarifies that Federal laws governing the privacy of educational records do not prevent campus security agencies or other administrators from disclosing such information.

146 Cong. Rec. S10216 (Oct. 11, 2000) (remarks of Senator Kyl, sponsor of the CSCPA); see H. Conf. Rep. No. 939, 106th Cong., 2d Sess. 110 (2000) (conference committee report for the CSCPA) (the CSCPA “[a]mends the Family Educational Rights and Privacy Act of 1974 to clarify that nothing in that Act may be construed to prohibit an educational institution from disclosing information provided to the institution concerning registered sex offenders”).

Thus, nothing in FERPA prevents an educational institution from disclosing information provided to the institution under the Wetterling Act concerning registered sex offenders, including personally identifiable, non-directory information from education records that is disclosed without prior written consent or other consent from the person. The authority of educational institutions to make such disclosures extends both to information about registered

sex offenders made available by a State in carrying out the specific requirements of the CSCPA (42 U.S.C. 14071(j)), and information about registered sex offenders that may otherwise become available to educational institutions through the operation of State sex offender registration and community notification programs.³

While the CSCPA amendments to the Wetterling Act and the Higher Education Act affect only institutions of higher education, both institutions of higher education and other educational institutions are covered by the CSCPA amendment to FERPA. The Family Policy Compliance Office, the Office in the Department that administers FERPA, broadly interprets the term “educational institution” in the amendment to FERPA to be consistent with the use of the term in the Wetterling Act. The Wetterling Act defines the term “student” as “a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.” 42 U.S.C. § 14071(a)(3)(G). Thus, because the Wetterling Act broadly applies to students enrolled in any educational institution, the CSCPA amendment to FERPA similarly should be interpreted so as not to prohibit disclosures by an educational institution to which FERPA applies. Further, the Department of Education will not take federal funds away from any local educational agency (LEA) on account of the LEA’s policy or practice of releasing

³ Readers are advised that the United States Supreme Court has granted certiorari to review the constitutionality of sex offender registration and community notification laws in two States. Specifically, the Supreme Court granted certiorari on the question whether Alaska’s sex offender registration and community notification law imposes punishment in violation of the Constitution’s prohibition of ex post facto legislation. See Glenn G. Godfrey, et. al. v. John Doe I, et al., No. 01-729 (Feb. 19, 2002). The Supreme Court also granted certiorari on whether the Due Process Clause of the Fourteenth Amendment prevents the State of Connecticut from listing convicted sex offenders in a publicly disseminated registry without first affording such offenders individualized hearings on their current dangerousness. See Connecticut Department of Public Safety, et al. v. John Doe, et al., No. 01-1231 (May 20, 2002).

information that a State (or any agency authorized by a State) provides to the LEA under the Wetterling Act on a registered sex offender enrolled in an educational institution within the LEA.

In sum, this guidance clarifies that nothing in FERPA prevents educational institutions from disclosing information concerning registered sex offenders provided under the Wetterling Act, including information made available under the CSCPA amendment to that Act and information otherwise made available under State sex offender registration and community notification programs.

This guidance is available on the Family Policy Compliance Office's Web site at: www.ed.gov/offices/OM/fpc. School officials with questions about FERPA in general, or this issue in particular, may send inquiries to: FERPA@ED.Gov.