

would permit the personal identification of such students or their parents after the data so obtained has been collected”.

Subsec. (b)(4). Pub. L. 93-568, §2(a)(9), substituted provisions that each educational agency or institution maintain a record, kept with the education records of each student, indicating individuals, agencies, or organizations who obtained access to the student's record and the legitimate interest in obtaining such information, that such record of access shall be available only to parents, school officials, and their assistants having responsibility for the custody of such records, and as a means of auditing the operation of the system, for provisions that with respect to subsecs. (c)(1), (c)(2), and (c)(3) of this section, all persons, agencies, or organizations desiring access to the records of a student shall be required to sign forms to be kept with the records of the student, but only for inspection by the parents or the student, indicating specifically the legitimate educational or other interest of the person seeking such information, and that the form shall be available to parents and school officials having responsibility for record maintenance as a means of auditing the operation of the system.

Subsec. (e). Pub. L. 93-568, §2(a)(1)(F), substituted “to any educational agency or institution unless such agency or institution” for “unless the recipient of such funds”.

Subsec. (g). Pub. L. 93-568, §2(a)(7), (10)(B), struck out reference to sections 1232c and 1232f of this title and inserted provisions that except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-325, title XV, §1555(b), July 23, 1992, 106 Stat. 840, provided that: “The amendment made by this section [amending this section] shall take effect on the date of enactment of this Act [July 23, 1992].”

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-46 effective Oct. 1, 1978, see section 8 of Pub. L. 96-46, set out as a note under section 930 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-568, §2(b), Dec. 31, 1974, 88 Stat. 1862, provided that: “The amendments made by subsection (a) [amending this section] shall be effective, and retroactive to, November 19, 1974.”

#### EFFECTIVE DATE

Pub. L. 93-380, title V, §513(b)(1), Aug. 21, 1974, 88 Stat. 574, provided that: “The provisions of this section [enacting this section and provisions set out as a note under section 1221 of this title] shall become effective ninety days after the date of enactment [Aug. 21, 1974] of section 438 [now 444] of the General Education Provisions Act [this section].”

## § 1232h. Protection of pupil rights

### (a) Inspection of instructional materials by parents or guardians

All instructional materials, including teacher's manuals, films, tapes, or other supplementary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program shall be available for inspection by the parents or guardians of the children.

### (b) Limits on survey, analysis, or evaluations

No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning—

- (1) political affiliations or beliefs of the student or the student's parent;
- (2) mental or psychological problems of the student or the student's family;
- (3) sex behavior or attitudes;
- (4) illegal, anti-social, self-incriminating, or demeaning behavior;
- (5) critical appraisals of other individuals with whom respondents have close family relationships;
- (6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- (7) religious practices, affiliations, or beliefs of the student or student's parent; or
- (8) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program),

without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

### (c) Development of local policies concerning student privacy, parental access to information, and administration of certain physical examinations to minors

#### (1) Development and adoption of local policies

Except as provided in subsections (a) and (b) of this section, a local educational agency that receives funds under any applicable program shall develop and adopt policies, in consultation with parents, regarding the following:

(A)(i) The right of a parent of a student to inspect, upon the request of the parent, a survey created by a third party before the survey is administered or distributed by a school to a student; and

(ii) any applicable procedures for granting a request by a parent for reasonable access to such survey within a reasonable period of time after the request is received.

(B) Arrangements to protect student privacy that are provided by the agency in the event of the administration or distribution of a survey to a student containing one or more of the following items (including the right of a parent of a student to inspect, upon the request of the parent, any survey containing one or more of such items):

- (i) Political affiliations or beliefs of the student or the student's parent.

(ii) Mental or psychological problems of the student or the student's family.

(iii) Sex behavior or attitudes.

(iv) Illegal, anti-social, self-incriminating, or demeaning behavior.

(v) Critical appraisals of other individuals with whom respondents have close family relationships.

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

(vii) Religious practices, affiliations, or beliefs of the student or the student's parent.

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

(C)(i) The right of a parent of a student to inspect, upon the request of the parent, any instructional material used as part of the educational curriculum for the student; and

(ii) any applicable procedures for granting a request by a parent for reasonable access to instructional material within a reasonable period of time after the request is received.

(D) The administration of physical examinations or screenings that the school or agency may administer to a student.

(E) The collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose), including arrangements to protect student privacy that are provided by the agency in the event of such collection, disclosure, or use.

(F)(i) The right of a parent of a student to inspect, upon the request of the parent, any instrument used in the collection of personal information under subparagraph (E) before the instrument is administered or distributed to a student; and

(ii) any applicable procedures for granting a request by a parent for reasonable access to such instrument within a reasonable period of time after the request is received.

## **(2) Parental notification**

### **(A) Notification of policies**

The policies developed by a local educational agency under paragraph (1) shall provide for reasonable notice of the adoption or continued use of such policies directly to the parents of students enrolled in schools served by that agency. At a minimum, the agency shall—

(i) provide such notice at least annually, at the beginning of the school year, and within a reasonable period of time after any substantive change in such policies; and

(ii) offer an opportunity for the parent (and for purposes of an activity described in subparagraph (C)(i), in the case of a student of an appropriate age, the student) to opt the student out of participation in an activity described in subparagraph (C).

### **(B) Notification of specific events**

The local educational agency shall directly notify the parent of a student, at least annually at the beginning of the school year, of the specific or approximate dates during the school year when activities described in subparagraph (C) are scheduled, or expected to be scheduled.

### **(C) Activities requiring notification**

The following activities require notification under this paragraph:

(i) Activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose).

(ii) The administration of any survey containing one or more items described in clauses (i) through (viii) of paragraph (1)(B).

(iii) Any nonemergency, invasive physical examination or screening that is—

(I) required as a condition of attendance;

(II) administered by the school and scheduled by the school in advance; and

(III) not necessary to protect the immediate health and safety of the student, or of other students.

### **(3) Existing policies**

A local educational agency need not develop and adopt new policies if the State educational agency or local educational agency has in place, on January 8, 2002, policies covering the requirements of paragraph (1). The agency shall provide reasonable notice of such existing policies to parents and guardians of students, in accordance with paragraph (2).

### **(4) Exceptions**

#### **(A) Educational products or services**

Paragraph (1)(E) does not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions, such as the following:

(i) College or other postsecondary education recruitment, or military recruitment.

(ii) Book clubs, magazines, and programs providing access to low-cost literary products.

(iii) Curriculum and instructional materials used by elementary schools and secondary schools.

(iv) Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments.

(v) The sale by students of products or services to raise funds for school-related or education-related activities.

(vi) Student recognition programs.

**(B) State law exception**

The provisions of this subsection—

(i) shall not be construed to preempt applicable provisions of State law that require parental notification; and

(ii) do not apply to any physical examination or screening that is permitted or required by an applicable State law, including physical examinations or screenings that are permitted without parental notification.

**(5) General provisions**

**(A) Rules of construction**

(i) This section does not supersede section 1232g of this title.

(ii) Paragraph (1)(D) does not apply to a survey administered to a student in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

**(B) Student rights**

The rights provided to parents under this section transfer to the student when the student turns 18 years old, or is an emancipated minor (under an applicable State law) at any age.

**(C) Information activities**

The Secretary shall annually inform each State educational agency and each local educational agency of the educational agency's obligations under this section and section 1232g of this title.

**(D) Funding**

A State educational agency or local educational agency may use funds provided under part A of title V of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7201 et seq.] to enhance parental involvement in areas affecting the in-school privacy of students.

**(6) Definitions**

As used in this subsection:

**(A) Instructional material**

The term “instructional material” means instructional content that is provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.

**(B) Invasive physical examination**

The term “invasive physical examination” means any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

**(C) Local educational agency**

The term “local educational agency” means an elementary school, secondary school, school district, or local board of education that is the recipient of funds under an

applicable program, but does not include a postsecondary institution.

**(D) Parent**

The term “parent” includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the welfare of the child).

**(E) Personal information**

The term “personal information” means individually identifiable information including—

(i) a student or parent's first and last name;

(ii) a home or other physical address (including street name and the name of the city or town);

(iii) a telephone number; or

(iv) a Social Security identification number.

**(F) Student**

The term “student” means any elementary school or secondary school student.

**(G) Survey**

The term “survey” includes an evaluation.

**(d) Notice**

Educational agencies and institutions shall give parents and students effective notice of their rights under this section.

**(e) Enforcement**

The Secretary shall take such action as the Secretary determines appropriate to enforce this section, except that action to terminate assistance provided under an applicable program shall be taken only if the Secretary determines that—

(1) there has been a failure to comply with such section; and

(2) compliance with such section cannot be secured by voluntary means.

**(f) Office and review board**

The Secretary shall establish or designate an office and review board within the Department of Education to investigate, process, review, and adjudicate violations of the rights established under this section.

(Pub. L. 90-247, title IV, §445, formerly §439, as added Pub. L. 93-380, title V, §514(a), Aug. 21, 1974, 88 Stat. 574; amended Pub. L. 95-561, title XII, §1250, Nov. 1, 1978, 92 Stat. 2355; Pub. L. 103-227, title X, §1017, Mar. 31, 1994, 108 Stat. 268; renumbered §445, Pub. L. 103-382, title II, §212(b)(1), Oct. 20, 1994, 108 Stat. 3913; amended Pub. L. 107-110, title X, §1061, Jan. 8, 2002, 115 Stat. 2083.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (c)(5)(A)(ii), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(5)(D), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended. Part A of title V

of the Act is classified generally to part A (§7201 et seq.) of subchapter V of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

#### PRIOR PROVISIONS

A prior section 445 of Pub. L. 90-247 was classified to section 1233d of this title prior to repeal by Pub. L. 103-382.

#### AMENDMENTS

2002—Subsec. (b)(1) to (8). Pub. L. 107-110, §1061(1), added pars. (1) to (8) and struck out former pars. (1) to (7) which read as follows:

- “(1) political affiliations;
- “(2) mental and psychological problems potentially embarrassing to the student or his family;
- “(3) sex behavior and attitudes;
- “(4) illegal, anti-social, self-incriminating and demeaning behavior;
- “(5) critical appraisals of other individuals with whom respondents have close family relationships;
- “(6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; or
- “(7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).”

Subsec. (c) to (f). Pub. L. 107-110, §1061(2), (3), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

1994—Pub. L. 103-227 amended section generally, substituting in subsec. (a), provisions relating to inspection of instructional materials by parents or guardians for similar provisions, in subsec. (b), provisions relating to limits on survey, analysis, or evaluations for provisions relating to psychiatric or psychological examinations, testing, or treatment, and adding subsecs. (c) to (e).

1978—Pub. L. 95-561 designated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-561 effective Oct. 1, 1978, see section 1530(a) of Pub. L. 95-561, set out as a note under section 1221e-3 of this title.

#### EFFECTIVE DATE

Pub. L. 93-380, title V, §514(b), Aug. 21, 1974, 88 Stat. 574, provided that: “The amendment made by subsection (a) [enacting this section] shall be effective upon enactment of this Act [Aug. 21, 1974].”

### § 1232i. Limitations on withholding of Federal assistance

#### (a) Refusal to supply personal data on students or families

Except as provided in section 1232g(b)(1)(D) of this title, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a preschool program, or other educational institution to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students

or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of, funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this section, reasonable notice and opportunity for a hearing shall be afforded the applicant.

#### (b) Noncompliance with nondiscrimination provisions of Federal law

The extension of Federal financial assistance to a local educational agency may not be limited, deferred, or terminated by the Secretary on the ground of noncompliance with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] or any other nondiscrimination provision of Federal law unless such agency is accorded the right of due process of law, which shall include—

(1) at least 30 days prior written notice of deferral to the agency, setting forth the particular program or programs which the Secretary finds to be operated in noncompliance with a specific provision of Federal law;

(2) the opportunity for a hearing on the record before a duly appointed administrative law judge within a 60-day period (unless such period is extended by mutual consent of the Secretary and such agency) from the commencement of any deferral;

(3) the conclusion of such hearing and the rendering of a decision on the merits by the administrative law judge within a period not to exceed 90 days from the commencement of such hearing, unless the judge finds by a decision that such hearing cannot be concluded or such decision cannot be rendered within such period, in which case such judge may extend such period for not to exceed 60 additional days;

(4) the limitation of any deferral of Federal financial assistance which may be imposed by the Secretary to a period not to exceed 15 days after the rendering of such decision unless there has been an express finding on such record that such agency has failed to comply with any such nondiscrimination provision of Federal law; and

(5) procedures, which shall be established by the Secretary, to ensure the availability of sufficient funds, without regard to any fiscal year limitations, to comply with the decision of such judge.

#### (c) Failure to comply with imposition of quotas

It shall be unlawful for the Secretary to defer or limit any Federal financial assistance on the basis of any failure to comply with the imposition of quotas (or any other numerical requirements which have the effect of imposing quotas) on the student admission practices of an institution of higher education or community college receiving Federal financial assistance.

(Pub. L. 90-247, title IV, §446, formerly §440, as added Pub. L. 93-380, title V, §515(a), Aug. 21, 1974, 88 Stat. 574; amended Pub. L. 94-482, title IV, §§407, 408, Oct. 12, 1976, 90 Stat. 2232, 2233; renumbered §446 and amended Pub. L. 103-382, title II, §212(b)(1), (3)(C), Oct. 20, 1994, 108 Stat. 3913.)