"education records" under FERPA. The commenters believe that the Department's position in this matter represents an effort to circumvent the recent State court ruling, Red & Black Publishing Co. v. Board of Regents, 427 S.E.2d 257, 261 (Ga. 1993), which considered records of a disciplinary action against a student fraternity outside the definition of "education records" and, thus, outside the privacy protections of FERPA. Several commenters also requested that the proposed definition of "disciplinary action or proceeding" be changed to include only violations of academicallyrelated rules and that disciplinary action taken against a student for criminal acts be excluded.

Discussion: The Secretary has carefully analyzed the statutory and regulatory authority to address these concerns. Based on the broad definition of "education records," which includes those records, files, documents, and other materials that contain information directly related to a student, except those that are specifically excluded by statute, all disciplinary records, including those related to non-academic or criminal misconduct by students, are 'education records' subject to FERPA. It is noted that Red & Black Publishing Co. v. Board of Regents concerned records of a student "organization court," which disciplined a student organization (fraternity) for a rules violation, and did not concern disciplinary action against an individual student. More recently, another State court ruled that FERPA prevented a university from releasing to the media personally identifiable information from student disciplinary records without consent. Shreveport Professional Chapter of the Society of Professional Journalists v. Louisiana State University in Shreveport, Case No. 393,332, First Judicial District Court, Caddo Parish, LA, (March 4, 1994). Although the Secretary is equally concerned with the problem of crime on campus, it is clear that only Congress has the authority to change the statutory provisions of FERPA to permit disclosure of disciplinary records without prior

Nevertheless, because crime on our Nation's college campuses has escalated since 1974 when FERPA was enacted, the Secretary has notified Congress of the need to address this important issue. The Congress may find that public access to disciplinary records concerning criminal and other non-academic misconduct is an appropriate response to the problem of maintaining safe college campuses, and the Secretary has offered to work with Congress in

writing an appropriate amendment to FERPA.

The Secretary received very few comments from State and local educational officials on how the proposed definition of "disciplinary action or proceeding" might affect elementary and secondary schools. Issues regarding the privacy of minor students and their families on the elementary and secondary level may require different treatment than those of postsecondary students. At this time, FERPA is consistent with those State laws that protect information regarding juvenile offenders.

Change: None.

Comments: Even among those commenters who approved of the proposed definition of "disciplinary action or proceeding," several postsecondary officials noted that it is important that institutions be able to tell victims the outcome of a disciplinary proceeding regarding their assailant.

Discussion: Section 99.31(a)(13) of the FERPA regulations, which implements 20 U.S.C. 1232g(b)(6) of the statute, permits postsecondary institutions to disclose to an alleged victim of a crime of violence, as defined in the United States Code, the results of any disciplinary proceeding conducted by the institution against the alleged perpetrator. As noted earlier, this specific statutory exception to the prior written consent rule, enacted in 1990 as part of the Student Right-to-Know and Campus Security Act, demonstrates Congress' view that disciplinary records are education records under FERPA. Additionally, 34 CFR 668.47(a)(12)(vi) (Student Assistance General Provisions) provides that in cases of an alleged sex offense both the accuser and the accused shall be informed of the outcome of any institutional disciplinary proceeding at the postsecondary level. On the elementary and secondary level, Congress has made no changes to FERPA that would allow a school official to disclose information relating to a disciplinary action without the prior consent of that student's parents, to an alleged victim or the alleged victim's parents. The Secretary has no authority to change these statutory provisions to provide for disclosure of information from disciplinary records other than in the circumstances identified.

Change: None.

Comments: Some commenters noted that conduct that would constitute a criminal violation should not be kept confidential as part of a campus disciplinary proceeding and that disciplinary hearings should be open to the public. In contrast, a number of

school officials stated that to allow disciplinary hearings to be open to the public would substitute those processes for criminal proceedings, which would negate a long-standing separation of an on-campus disciplinary system from the criminal justice system.

Discussion: FEŘPA does not prevent an institution from opening disciplinary proceedings to the public. Rather, FERPA prevents the non-consensual disclosure of education records or personally identifiable information from 'education records," unless the disclosure meets one or more of the statutory conditions for non-consensual disclosure. Schools routinely restrict access to disciplinary proceedings to those school officials with a "legitimate educational interest," which is the first condition for non-consensual disclosure under section (b)(1) of the statute, because information from "education records" is frequently disclosed in a disciplinary hearing.

As discussed above, the Secretary has advised and offered to work with Congress toward an appropriate solution to the concern about campus safety issues in relation to FERPA.

Change: None.

Comments: Several commenters expressed concern that, as parents, they would want to know how many sexual assaults had been reported at the schools to which their children had applied or at which their children were attending. These commenters believed that disciplinary records related to criminal conduct should not be considered "education records."

Discussion: Parents and students at the postsecondary level may currently obtain information about the type and the amount of crime on college campuses under 34 CFR 668.47(a)(6) (Student Assistance General Provisions), which implements the Student Right-to-Know and Campus Security Act. These provisions require postsecondary institutions to report annually statistics concerning the occurrence on campus of certain crimes, including sexual assaults, that have been reported to local police agencies and to any official of the institution who has significant responsibility for student and campus activities. The Secretary is enforcing these requirements fully and believes that they will make students—and their parents—aware of the nature and the amount of crime on any college campus they may attend or which they are considering attending.

Change: None.

Comments: One commenter noted that the definition of "disciplinary action or proceeding" does not specifically state that disciplinary