

records are education records, thus leaving open to interpretation whether they are "education records" subject to FERPA. Another commenter suggested that the definition be changed to include all appeals of the initial adjudication or imposition of sanctions.

Discussion: Under FERPA, the statutory definition of "education records" is all inclusive, covering "those records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution." 20 U.S.C. 1232g(a)(4)(A). The only types of records specifically identified in FERPA are those that are specifically excluded from the definition of "education records," such as law enforcement unit records. 20 U.S.C. 1232g(a)(4)(B). FERPA does not list, identify, or single out any particular type of materials or documents as "education records." Consequently, the regulations explain that records of a law enforcement unit do not include or mean disciplinary records. That is, they are not excluded from the definition of "education records" under FERPA.

Change: None.

Section 99.8 What provisions apply to records of a law enforcement unit?

Definition of "law enforcement unit".

Comments: One commenter, a State assistant attorney general, interpreted the proposed rules to mean that if a school principal or dean maintained a record on a student in a discipline file it would be an "education record" protected by FERPA, but that the same record maintained by the institution's law enforcement unit would not be protected by FERPA and could be disclosed to an outside party directly from the campus law enforcement unit. A school official also commented that, under the proposed definition, it is not clear whether using law enforcement unit records during a disciplinary proceeding would render the records "disciplinary records" and thus "education records" subject to FERPA. A commenter from a State educational agency asked for clarification on whether a record of a law enforcement unit can lose its status and become an "education record."

Discussion: FERPA was amended by Congress to exempt from the definition of "education records" those records that are created by a law enforcement unit for a law enforcement purpose and maintained by that law enforcement unit, thus allowing educational agencies and institutions to disclose these records publicly without obtaining prior

written consent. If a law enforcement unit of an institution creates a record for law enforcement purposes and provides a copy of that record to a dean, principal, or other school official for use in a disciplinary proceeding, that copy is an "education record" subject to FERPA if it is maintained by the dean, principal, or other school official and not the law enforcement unit. The original document created and maintained by the law enforcement unit is not an "education record" and does not become an "education record" merely because it was shared with another component of the institution.

Change: None.

Comments: A few commenters said that the proposed definition of "law enforcement unit" was too broad and could encompass offices or components within an institution that may maintain information directly related to students but that are responsible for the institution's compliance with Federal civil rights laws, financial aid regulations, hiring requirements, etc., which should not be considered law enforcement activities under FERPA. It was also suggested that the definition be limited to enforcement of "criminal" laws.

Discussion: The proposed definition is intended to cover that part of the institution which is responsible for providing and maintaining a safe and orderly school environment by monitoring and dealing with the conduct of *individuals*, not the institution itself. After considering these comments, the Secretary agrees that the definition is potentially too broad and may encompass functions of the institution, such as an office of legal counsel, that should not be included. However, the Secretary believes that adding "criminal" to the definition might unnecessarily restrict or confuse school officials as to their responsibilities for ensuring school safety.

Changes: The Secretary has revised the definition of "law enforcement unit" by adding a new provision to clarify that it pertains to those individuals or parts of the institution responsible for maintaining the safety and security of school surroundings and for enforcing laws against individuals and organizations within the school community and not those responsible for the institution's own compliance with various laws.

Comments: Several commenters associated with postsecondary institutions stated that they did not believe, for various reasons, that their campus security departments were "law enforcement units" under FERPA and

requested clarification on the status of the records of what they considered a "non-law enforcement" campus security department. Some commenters also noted that a majority of colleges and universities do not employ "campus police officers" who possess police authority or perform official police functions. Instead, many institutions employ non-commissioned "campus security officers" whose main function is to keep the peace and enforce institutional policies. Another commenter noted that the definition of "law enforcement unit" was potentially confusing because student conduct code offenses are considered violations of the "law" and that an office that is responsible for student conduct might be considered a "law enforcement unit" under the definition.

Discussion: The Secretary has taken into consideration these comments and has revised the regulations to clarify that the term "law enforcement unit" under FERPA includes "a unit of commissioned police officers or non-commissioned security guards." That is, security departments such as those described by the commenters would be considered "law enforcement units" if they are officially authorized or designated by the institutions to carry out the functions listed in the regulatory definition, regardless of whether the individuals of that unit are commissioned police officers. The second part of the definition of law enforcement unit makes it clear that a security department retains its status as a "law enforcement unit" even if it also has responsibility for enforcing the institution's code of student conduct.

Change: The definition has been revised to state that it applies to units consisting of commissioned police officers as well as non-commissioned security guards.

Comments: One commenter, an official at a major university, stated that the law enforcement unit at that institution generates both "crime reports," which it considers public documents, and "incident reports," which are treated as education records and referred to the student affairs office for disciplinary purposes. The official further stated that he believes that the functions of the law enforcement unit and the functions of the student affairs office charged with administering the student discipline system are intertwined at his institution as they are at other institutions.

Discussion: If an institution has a security unit or individual with a dual role or function of enforcing institutional rules of conduct related to safety and security and referring