information that the unit had obtained from a student's education records to local police or prosecutors. He believes that the regulations, as proposed, would impede the institution's ability to investigate students suspected of falsified time sheets, transcript forgery, computer fraud, and similar crimes that may be demonstrated by documents considered "education records" under FERPA.

Discussion: An institution may disclose education records to an outside law enforcement agency without consent to comply with a judicial order or lawfully issued subpoena. The Secretary does not have the statutory or regulatory authority to permit the nonconsensual disclosure of education records to outside law enforcement authorities in other circumstances. Any changes to this provision would have to be made by Congress.

Changes: None.

Comment: The same commenter proposed that § 99.8(c)(1) be changed by replacing "contacting its law enforcement unit, orally or in writing" with "disclosing education records or information from education records to its law enforcement unit."

Discussion: This provision was included in order to clarify that the Secretary would not consider an institution "contacting" its own law enforcement officials regarding suspected criminal activity to involve necessarily the disclosure of information from an education record, which the institution would not be permitted to do under FERPA unless those individuals had been designated in the school's FERPA policy as "school officials" with legitimate educational interest in accordance with 34 CFR 99.6.

Additionally, as referenced in the previous comment, FERPA does not permit any party, including the institution's own law enforcement unit, that has received information from education records to redisclose that information without the prior consent of the parent or eligible student or in accordance with one of the exceptions listed under 34 CFR 99.31, which includes disclosure in compliance with a judicial order or lawfully issued subpoena.

Changes: None.

Comments: A commenter from a large metropolitan school district agreed that exempting law enforcement unit records from the definition of "education records" promotes cooperation between local police agencies and local educational agencies in their efforts to reduce violence on school campuses. He further stated, however, that to regard disciplinary records as "education

records," which cannot be disclosed to the school district's own law enforcement unit, obstructs a law enforcement unit official's ability to maintain a safe school environment. In contrast, a commenter from a State educational agency, who agreed with the Secretary's proposed regulatory definition of "law enforcement unit." stated that the proposed change would allow schools to disclose to the public records created and maintained by school law enforcement units. He further noted, without explanation, that the change would assist public schools in working with local law enforcement authorities and other agencies to provide the best education for students in a safe environment conducive to learning.

Discussion: With regard to the first commenter's concern that FERPA prevents the disclosure of information from disciplinary records to the school district's designated law enforcement unit, as discussed in the previous comment section, FERPA does not prevent such a disclosure if the officials of the law enforcement unit have been designated as "school officials" with a legitimate educational interest under the district's student records policy, as required by 34 CFR 99.6. However, FERPA does prohibit an educational agency or institution from disclosing information from education records, including information from disciplinary records, to an outside, governmental law enforcement authority, except in certain circumstances such as in response to a judicial order or lawfully issued subpoena, provided notice requirements of § 99.31(a)(9) have been met. As previously noted, the Secretary does not have the statutory or regulatory authority to permit the non-consensual disclosure of information from education records, such as disciplinary records, to third parties, including governmental law enforcement authorities.

Changes: None.

Comments: A few commenters noted that students who are victims of crime should have a right to know about the progress of the investigation of their cases. In contrast, several commenters suggested that information regarding active criminal investigations be protected from disclosure until the investigations have been closed or adjudicated.

Discussion: The Secretary has considered these comments but believes that because agencies and institutions are *permitted*, not *required*, by FERPA to publicly disclose information from law enforcement unit records, schools should develop their own policies with regard to if and when they will disclose the information. *Changes:* None.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

In the NPRMs, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the NPRMs and on its own review, the Department has determined that the regulations in this document do not 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 99

Administrative practice and procedure, Education, Family educational rights, Privacy, Parents, Reporting and recordkeeping requirements, Students.

Dated: January 10, 1995

Richard W. Riley,

Secretary of Education.

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

The Secretary amends Part 99 of Title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 continues to read as follows: Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.3 is amended by republishing the introductory text of paragraph (b) and revising paragraph (b)(2) in the definition of "Education records" and by adding a new definition of "Disciplinary action or proceeding" in alphabetical order to read as follows:

§ 99.3 What definitions apply to these regulations?

Disciplinary action or proceeding means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

Education records * * *