IN THE DISTRICT OF COLUMBIA COURT OF APPEALS 16566

THE PRESIDENT AND DIRECTORS OF GEORGETOWN COLLEGE, Petitioner,	)	
v.	)	**App. No. 01-AA-1182**
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent.	)	

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OPPOSITION TO PETITIONER'S MOTION FOR STAY

INTRODUCTION

The District of Columbia Board of Zoning Appeals ("BZA") opposes the motion of Georgetown College for a stay of two conditions in Georgetown's recently approved campus plan. Georgetown has failed to demonstrate: (1) it is likely to succeed on its claim that these two conditions require it to violate the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g; (2) it will suffer irreparable harm if a stay is denied; (3) proponents of the conditions will not be harmed if a stay is granted; and (4) the public interest favors a stay. *See Barry v. Washington Post Co.*, 529 A.2d 319, 320-21 (D.C. 1987).[1]

To the contrary, Georgetown has failed to establish any incompatibility between FERPA and the two conditions it challenges and thus has also failed to establish that it will be harmed, much less irreparably harmed, by complying with the two conditions. Furthermore, both the interests of Georgetown's neighbors and the public interest favor enforcement of the two conditions. It is important that Georgetown students, like other District residents, comply with the District's motor vehicle registration laws. It is also important to ensure that Georgetown students living off-campus reside in housing that complies with the District's sanitation and housing laws.

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[1]For the convenience of the Court, a copy of 20 U.S.C. § 1232g is attached here

BZA
Board of Zoning Adjustment
District of Columbia
CASE NO.16566
EXHIBIT NO.269
Case No. 16566
Exhibit No. 269

There is one further consideration. If, indeed, as the record reflects, Georgetown concluded months ago that the BZA's Conditions 7 and 14 were incompatible with FERPA, it should have sought relief from the Secretary of Education. The Secretary has promulgated a regulation addressing the "responsibility" of an educational agency or institution which discerns a "conflict with State or local laws," on the one hand, and FERPA, on the other. 34 C.F.R. § 99.61.[2] The regulation provides: "If an educational agency or institution determines that it cannot comply with the Act . . . due to a conflict with State or local law, it shall notify the Office [of the Secretary] within 45 days, giving the text and citation of the conflicting law." 34 C.F.R. § 99.61. This Court certainly should not enter a stay until and unless Georgetown has discharged its obligation under federal law. Until it does so, the Secretary cannot determine whether there is a conflict. If there is not, Georgetown's merits and irreparable harm arguments evaporate. Furthermore, even if the Secretary determines that there is a conflict, the Secretary may exercise its enforcement discretion in a manner favorable to Georgetown.

ARGUMENT

I. GEORGETOWN HAS FAILED TO ESTABLISH ANY INCOMPATIBILITY BETWEEN FERPA AND CONDITION 14 OF ITS CAMPUS PLAN.

FERPA is a federal statute imposing on educational agencies and institutions which elect to receive specified types of federal funding certain conditions governing the creation, maintenance, and disclosure of student education records. As explained more fully below, the Act generally prohibits disclosure of education records subject to several exceptions and exemptions, including an exemption for "directory information." For the reasons that follow, this exemption encompasses the license plate numbers of student motor vehicles sought by Condition 14 of Georgetown's Campus Plan.

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[2]For the convenience of the Court, a copy of the Secretary's pertinent regulations is attached hereto.

FERPA defines "education records" as "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). Subsection (b) provides, in pertinent part, that specific federal funds shall not be made available to any educational agency or institution "which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein *other than directory information* . . .) of students without the written consent of their parents . . .." 20 U.S.C. § 1232g(b)(1). The statute permits educational agencies and institutions to publish, after notice to parents and an opportunity for them to object, "directory information," a term which "*includes* the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student." 20 U.S.C. § 1232g(a)(5)(A) (emphasis added); see 20 U.S.C. § 1232g(a)(5)(B).

The Secretary of Education has promulgated a regulation further defining "directory information" as "information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed." 34 C.F.R. § 99.3. It adds to the examples of directory information contained in the Act itself the following information: electronic mail address, photograph, grade level, enrollment status, and honors. It also makes clear that the term directory information "includes, but is not limited to" the categories of information listed. 34 C.F.R. § 99.3.

The information sought by Condition 14 easily qualifies as directory information. Condition 14 provides:

> The Applicant, through its Office of the Registrar, shall maintain an accurate record of the license plate numbers of motor vehicles kept by all University students. The Applicant shall direct its students to register their vehicles in the District of Columbia, or obtain a reciprocity sticker if eligible to do so, and shall consult with the D.C. Department of Motor Vehicles to determine whether such registration is completed or such stickers are obtained. The Applicant shall withhold parking privileges to students who do not comply with D.C. registration requirements. Failure to abide by District law concerning registration of student vehicles shall constitute a violation of the Code of Student Conduct.

Order Certifying Revised Plan, Application No. 16566-C of the President and Directors of Georgetown College 5 (March 5, 2002).[3]

The license plate numbers of motor vehicles kept by Georgetown students is information "that would not generally be considered harmful or an invasion of privacy if disclosed." 34 C.F.R. § 99.3. To the contrary, this information is publicly displayed on all motor vehicles. The only other requirement of Condition 14 implicating FERPA is the requirement that Georgetown "shall consult with the D.C. Department of Motor Vehicles to determine" whether a student has either registered his or her motor vehicle in the District or has obtained a reciprocity sticker as required by District law. D.C. Code § 50-1401.02(a)(b) & (e) (2001 ed.). Once again, any information that may be disclosed during this process is properly considered harmless directory information: a list of student names and license plate numbers and/or reciprocity stickers.

If, despite the foregoing, Georgetown believes that there is an irreconcilable conflict between its obligations under FERPA and its obligations under Condition 14, it must comply with 34 C.F.R. § 99.61 by reporting that matter to the Office of the Secretary of Education. That Office can determine whether there is such a conflict and, if there is, Georgetown can request the Secretary to exercise its discretion not to enforce FERPA in this instance.

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[3]For the convenience of the Court, a copy of this Order is attached hereto.

In short, Georgetown has not raised a serious issue that Condition 14 is unlawful and therefore has also failed to establish that compliance with the condition would cause it irreparable harm.[4]

II. GEORGETOWN HAS FAILED TO ESTABLISH ANY INCOMPATIBILITY BETWEEN FERPA AND CONDITION 7 OF ITS CAMPUS PLAN.

FERPA also exempts from the term "education records" "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement . . .." 20 U.S.C. § 1232g(a)(4)(B)(ii). The Secretary's regulations explain that a "[l]aw enforcement unit means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to -- (i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or (ii) Maintain the physical security and safety of the agency or institution." 34 C.F.R. § 99.8(a)(1)(i) & (ii). These regulations define "records of a law enforcement unit" as "those records, files, documents, and other materials that are -- (i) Created by a law enforcement unit; (ii) Created for a law enforcement purpose; and (iii) Maintained by the law enforcement unit." 34 C.F.R. § 99.8(b)(1)(i)-(iii). *Compare* 34 C.F.R. § 99.8(b)(2) (law-enforcement records do *not* include records maintained by another component of the educational agency or institution and records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose). Finally, the regulations encourage educational agencies and institutions to enforce local and State (as well as Federal) laws. 34 C.F.R. § 99.8(c)(1) provides: "Nothing in the

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[4]The *GWU* case on which Georgetown relies is not to the contrary (Motion for Stay (Tabs D-F)). Furthermore, Judge Oberdorfer did not enjoin the vehicle license provisions of GWU's Campus Plan or consider 34 C.F.R. § 99.61.

Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law." And 34 C.F.R. § 99.8(d) provides: "The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records."

Condition 7 is not incompatible with any of these provisions. It provides:

> When the Applicant, upon investigation of a complaint or by any other means, receives evidence of a violation of sanitation or housing regulations involving or affecting students living in an off-campus residence, the Applicant shall report the violation to the housing provider, the Department of Consumer and Regulatory Affairs, Department of Public Works, or other agency as appropriate. The Applicant shall monitor enforcement of reported violations to determine whether necessary inspections have occurred and whether fines have been issued and paid, and shall keep detailed records of reported complaints and responses.

Order Certifying Revised Plan 4.

Georgetown can comply with both FERPA and Condition 7. It admittedly has established a law enforcement unit, its Department of Public Safety ("DPS"). Motion Mem. 12; see also Motion Mem. Tab B at 28 (BZA Commissioner Herbert M. Franklin observing that Georgetown submitted "an extensive response [to the BZA] setting out a whole range of programs that it engages in to assure that local law is . . . complied with," including "a new partnership . . . with the community, city agencies, landlords, Metropolitan Police Department ["MPD"], and students living off-campus, to make sure there was no violation of local law" and a "hotline" which "refers certain calls" to the MPD). Georgetown's DPS can, therefore, address violations of District sanitation or housing regulations, as well as violations of the District's motor vehicle registration law (and any other District law) without violating FERPA. Once again, moreover, if, despite the foregoing, Georgetown somehow believes that compliance with Condition 7 would require it to violate FERPA, it should repair to the Office of the Secretary of Education. Furthermore, should a complaint of a legal violation be filed with

Georgetown at an office other than its DPS (see Motion Mem. 12), that unit can be instructed to direct the complainant to the DPS and/or to request the DPS to conduct an investigation.

In short, Georgetown has not raised a serious issue that Condition 7 is unlawful and therefore has also failed to establish that compliance with the condition would cause it irreparable harm.[5]

III. THE OTHER FACTORS RELEVANT TO WHETHER THIS COURT SHOULD GRANT A STAY FAVOR ITS DENIAL, AND GEORGETOWN'S MISCELLANEOUS ARGUMENTS IN FAVOR OF A STAY SHOULD BE REJECTED.

The foregoing largely disposes of the other relevant stay factors. Because Conditions 7 and 14 of its Campus Plan are compatible with FERPA, Georgetown does not face what it has asserted is its irreparable harm -- the loss of federal funding. Its "risk" is rendered even more hypothetical by the Secretary's regulation directing it to report to the Department of Education any conflicts it believes exist between FERPA and State and local laws. By contrast, its neighbors and the public have an unquestionable interest in ensuring that the District's health and safety laws are enforced. As BZA Commissioner Franklin observed, "a stay would harm opposing parties by relieving" Georgetown of "its obligation to take effective and wholly lawful action to avoid adverse effects on such parties and the community . . .." Motion Mem. Tab B at 25.[6] And, as noted, FERPA encourages educational agencies and institutions to support compliance with State and local laws. Finally, Georgetown has an independent interest in ensuring that its students comply with District law because "a [student's] violation of local law is also a violation of the Student Code of Conduct." Motion Mem. 9 n.5.

There are several other matters the Court should consider. First, Georgetown has failed to submit any affidavits by responsible University officials explaining why or how compliance with

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[5]The foregoing also disposes of the argument (Motion Mem. 7) that Georgetown's Office of Student Conduct is its only mechanism for dealing with student legal infractions.

[6]For the convenience of the Court, we attach hereto and incorporate by reference Parts IIA & B & III of the Opposition of Georgetown's neighbors to its Motion to Stay in the BZA.

Conditions 7 and 14 would require it to violate FERPA. This includes its failure to address why and how its Department of Public Safety cannot deal with student violations of District law (or landlord violations of the District's sanitation and housing regulations that may jeopardize the health and safety of its students). The absence of any evidence on such points underscores that it has failed to establish any irreconcilable conflict between FERPA and Conditions 7 and 14 of its Campus Plan. See also Motion Mem. Tab B at 29 & 30 (BZA Commissioner Franklin observing that Georgetown did not provide "any evidence of specific efforts to demonstrate why its compliance with [Condition 7 of] the Board's order cannot be undertaken without violating FERPA" or any "evidence of the logistical or practical issues it asserts prevents its compliance with" Condition 14). *Compare Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982).

Second, Georgetown has not addressed, by affidavit or otherwise, why it did not long ago comply with the federal regulation requiring it to report suspected conflicts between FERPA and State and local laws to the Secretary of Education. Had it done so, the matters that are the subject of this Motion very likely would have been resolved without taking the valuable time of this Court.

Third, while admitting that the argument would not warrant a stay, Georgetown, citing *Nat'l Black Child Dev. Inst., Inc. v. Board of Zoning Appeals*, 483 A.2d 687 (D.C. 1984), urges that the BZA has imposed impermissible administrative burdens on it. Motion Mem. 7-10. This argument should be rejected. The BZA's Conditions 7 and 14 merely recognize the special responsibility Georgetown has voluntarily assumed for safeguarding and overseeing its students. As Georgetown admits, it will not approve housing for its students that does not meet its standards, it informs its students of their obligation to register their automobiles or secure reciprocity stickers, and it specifies that a student's violation of local law is also a violation of the Student Code of Conduct. Motion Mem. 9 n.5. Furthermore, the *Black Child Development* case is easily distinguishable. In that case,

this Court invalidated two personal conditions the BZA had placed on the grant of a zoning variance -- that only the applicant for the variance could use the property in question and that any purchaser of its premises could use them only for the purposes permitted in the zone district at the time of purchase. Neither Condition 7 nor 14 is remotely similar to those conditions. Neither precludes Georgetown from allowing other persons to occupy its premises for authorized purposes and neither provides that any purchaser of Georgetown's property can use it only for the (residential) purposes permitted in the zoning district where Georgetown is located. And finally neither condition remotely impinges on Georgetown's educational mission or threatens Georgetown's self-governance or academic freedom.

CONCLUSION

The Court should deny the Motion for Stay.[7]

Respectfully submitted,

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[7]As a final note, we formally record our vigorous objection to the disclosure by Georgetown's lawyers of the details of settlement negotiations with the BZA's counsel.

APPENDIX

LIBRARY REFERENCES

American Digest System
Records ⇐30 to 35.

Encyclopedias
Records, see C.J.S. §§ 33, 60 et seq.

WESTLAW ELECTRONIC RESEARCH

Records cases: 326k[add key number].
See WESTLAW guide following the Explanation pages of this volume.

§ 1232g. Family educational and privacy rights

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), 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.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) (i) authorized representatives of (I) the Comptroller General of the United States, (II) the Secretary, or (III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if—

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be

disclosed to any other party except as provided under State law without the prior written consent of the parent of the student. [1]

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26;

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons; and

(J)(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory informa-

tion, or as is permitted under paragraph (1) of this subsection, unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to

information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6)(A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of Title 18), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of Title 18), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

(i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

(c) Surveys or data-gathering activities; regulations

Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations

established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students' rather than parents' permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance

The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. 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.

(h) Disciplinary records; disclosure

Nothing in this section shall prohibit an educational agency or institution from—

(1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or

(2) disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student.

(i) Drug and alcohol violation disclosures

(1) In general

Nothing in this chapter [20 U.S.C.A. § 1221 et seq.] or chapter 28 of this title [20 U.S.C.A. § 1001 et seq.] shall be construed to prohibit an institution of higher education from disclosing, to a parent or legal guardian of a student, information regarding any violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student's education records, if—

(A) the student is under the age of 21; and

(B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

(2) State law regarding disclosure

Nothing in paragraph (1) shall be construed to supersede any provision of State law that prohibits an institution of higher education from making the disclosure described in subsection (a).

(Pub.L. 90-247, Title IV, § 444, formerly § 438, as added Pub.L. 93-380, Title V, § 513(a), Aug. 21, 1974, 88 Stat. 571, and amended Pub.L. 93-568, § 2(a), Dec. 31, 1974, 88 Stat. 1858; Pub.L. 96-46, § 4(c), Aug. 6, 1979, 93 Stat. 342; Pub.L. 96-88, Title III, § 301, Title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 101-542, Title II, § 203, Nov. 8, 1990, 104 Stat. 2385; Pub.L. 102-325, Title XV, § 1555(a), July 23, 1992, 106 Stat. 840; renumbered § 444 and amended Pub.L. 103-382, Title II, §§ 212(b)(1), 249, 261(h), Oct. 20, 1994, 108 Stat. 3913, 3924, 3928; Pub.L. 105-244, Title I, § 102(a)(6)(C), Title IX, §§ 951, 952, Oct. 7, 1998, 112 Stat. 1618, 1835, 1836.)

[1] So in original. The period probably should be a comma.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1974 Acts. House Report No. 93-805 and Senate Conference Report No. 93-1026, see 1974 U.S. Code Cong. and Adm. News, p. 4093.

House Report No. 93-1056 and Senate Conference Report No. 93-1409, see 1974 U.S. Code Cong. and Adm. News, p. 6779.

1979 Acts. House Report No. 96-338, see 1979 U.S. Code Cong. and Adm. News, p. 819.

Senate Report No. 96-49 and House Conference Report No. 96-459, see 1979 U.S. Code Cong. and Adm. News, p. 1514.

1990 Acts. House Report No. 101-518, see 1990 U.S. Code Cong. and Adm. News, p. 3363.

SUBCHAPTER II—APPROPRIATIONS AND EVALUATIONS

PART 2—PLANNING AND EVALUATION OF FEDERAL EDUCATION ACTIVITIES

Sec.
1228. Prohibition against use of appropriated funds for busing.

Sec.
SUBCHAPTER III—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS: GENERAL AUTHORITY OF SECRETARY

PART 4—RECORDS; PRIVACY; LIMITATION ON WITHHOLDING FEDERAL FUNDS

1232g. Family educational and privacy rights.

SUBCHAPTER II—APPROPRIATIONS AND EVALUATIONS

PART 2—PLANNING AND EVALUATION OF FEDERAL EDUCATION ACTIVITIES

§ 1228. Prohibition against use of appropriated funds for busing

No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except for funds appropriated pursuant to title VIII of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7701 et seq.], but not including any portion of such funds as are attributable to children counted under section 8003(d) of such Act [20 U.S.C.A. § 7703(d)] or residing on property described in section 8013(10) of such Act [20 U.S.C.A. § 7713(10)].

(As amended Pub.L. 106–398, § 1 [Div. A, Title XVIII, § 1808(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654–___)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2000 Acts. House Conference Report No. 106–945 and Statement by President, see 2000 U.S. Code Cong. and Adm. News, p. 1516.

Amendments

2000 Amendments. Pub.L. 106–398 [Div. A, Title XVIII, § 1808(b)(2)], struck "subsections (d) and (g) of section 8003 of such Act [20 U.S.C.A. § 7703(d), (g)]" and inserted "section 8003(d) of such Act [20 U.S.C.A. § 7703(d)]".

Effective and Applicability Provisions

2000 Acts. Amendment by Pub.L. 106–398, § 1 [Div. A, Title XVIII], effective on October 1, 2000, or the date of the enactment of that Act [Oct. 30, 2000], whichever occurs later, see section 1818 of Pub.L. 106–398, § 1 [Div. A, Title XVIII], set out as a note under section 7701 of this title.

SUBCHAPTER III—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS: GENERAL AUTHORITY OF SECRETARY

PART 4—RECORDS; PRIVACY; LIMITATION ON WITHHOLDING FEDERAL FUNDS

§ 1232g. Family educational and privacy rights

[See main volume for text of (a)]

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

[See main volume for text of (1) to (6)]

(7)(A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 14071 of Title 42 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.

[See main volume for text of (c) to (i)]

(Pub.L. 90–247, Title IV, § 444, formerly § 438, as added Pub.L. 93–380, Title V, § 513(a), Aug. 21, 1974, 88 Stat. 571, and amended Pub.L. 93–568, § 2(a), Dec. 31, 1974, 88 Stat. 1858; Pub.L. 96–46, § 4(c), Aug. 6, 1979, 93 Stat. 342; Pub.L. 96–88, Title III, § 301, Title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub.L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 101–542, Title II, § 203, Nov. 8, 1990, 104 Stat. 2385; Pub.L. 102–325, Title XV, § 1555(a), July 23, 1992, 106 Stat. 840; renumbered § 444 and amended Pub.L. 103–382, Title II, §§ 212(b)(1), 249, 261(h), Oct. 20, 1994, 108 Stat. 3913, 3924, 3928; Pub.L. 105–244, Title IX, §§ 951, 952, Oct. 7, 1998, 112 Stat. 1835, 1836; Pub.L. 106–386, Div. B, Title VI, § 1601(d), Oct. 28, 2000, 114 Stat. 1538.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2000 Acts. House Report No. 106–939, see 2000 U.S. Code Cong. and Adm. News, p. 1380.

Amendments

2000 Amendments. Subsec. (b)(7). Pub.L. 106–386, § 1601(d), added par. (7).

Notes of Decisions

Persons protected 4a

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1. Constitutionality

Family Educational Rights and Privacy Act (FERPA) did not violate First Amendment by denying right of public access to university student disciplinary records. U.S. v. Miami University, S.D.Ohio 2000, 91 F.Supp.2d 1132.

2. Construction with other laws

Elementary school principal's disclosure, to parents complaining of sexual harassment, of information regarding accused student did not violate Family Educational Rights and Privacy Act (FERPA); FERPA addressed systematic, not individual, violations of students' privacy by unauthorized releases of sensitive information in their educational records. Jensen v. Reeves, D.Utah 1999, 45 F.Supp.2d 1265.

3. Purpose

Family Educational Rights and Privacy Act (FERPA) imposes a direct obligation on universities not to disclose education records. U.S. v. Miami University, S.D.Ohio 2000, 91 F.Supp.2d 1132.

4a. Persons protected

School defendants owed mother a duty not to violate her rights to procedural due process and under Family and Educational Rights and Privacy Act (FERPA) by providing her notice prior to releasing to the media her letter to her son's teacher about his education. Warner v. St. Bernard Parish School Bd., E.D.La.2000, 99 F.Supp.2d 748.

6. Criminal reports

University student disciplinary records were not "records of a law enforcement unit," and thus, did not fall within Family Educational Rights and Privacy Act's (FERPA) exception for law enforcement records. U.S. v. Miami University, S.D.Ohio 2000, 91 F.Supp.2d 1132.

7. Educational records

University student disciplinary records were "education records" as defined by Family Educational Rights and Privacy Act (FERPA), and thus, protected from public disclosure. U.S. v. Miami University, S.D.Ohio 2000, 91 F.Supp.2d 1132.

22. Injunction

Government, which showed that universities had violated Family Educational Rights and Privacy Act (FERPA) by releasing student disciplinary records containing personally identifiable information without the prior consent of the students or their parents, was entitled to permanent injunction since that was the only adequate remedy available, and the harm to third parties, specifically, students, prospective students, and parents, that could arise from an injunction enforcing FERPA was slight. U.S. v. Miami University, S.D.Ohio 2000, 91 F.Supp.2d 1132.

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CONSULT GENERAL INDEX

†

6TH SECTION of Level 1 printed in FULL format.

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TITLE 34 -- EDUCATION
SUBTITLE A -- OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION
PART 99 -- FAMILY EDUCATIONAL RIGHTS AND PRIVACY
SUBPART A -- GENERAL

34 CFR 99.3

@ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

Act means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

Attendance includes, but is not limited to:

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

Dates of attendance. (a) The term means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter.

(b) The term does not include specific daily records of a student's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

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 ins[redacted]tution.

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g (b)(1))

Educational agency or institution means any public or private agency or institution to which this part applies under @ 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

Education records (a) The term means those records that are:

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of @ 99.8.

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

Eligible student means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

Institution of postsecondary education means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

Party means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

Personally identifiable information includes, but is not limited to:

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

Record means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. [redacted]1g)

Secretary means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

Student, except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

HISTORY:
[53 FR 11943, Apr. 11, 1988; 60 FR 3468, Jan. 17, 1995, as corrected at 60 FR 8563, Feb. 15, 1995; 61 FR 59292, 59295, Nov. 21, 1996; 65 FR 41852, July 6, 2000]

AUTHORITY:
20 U.S.C. 1232g.

NOTES:
[EFFECTIVE DATE NOTE: 65 FR 41852, July 6, 2000, amended this section, effective Aug. 7, 2000.]

1185 words

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34 CFR 99.8

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

(a)(1) Law enforcement unit means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to --

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(b)(1) Records of a law enforcement unit means those records, files, documents, and other materials that are --

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean --

(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of @ 99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

HISTORY:
[60 FR 3469, Jan. 17, 1995, as corrected at 60 FR 8563, Feb. 15, 1995]

AUTHORITY:
(20 U.S.C. 1232g(a)(4)(B)(ii))

393 words

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34 CFR 99.31

@ 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by @ 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of @ 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of @ 99.35, to authorized representatives of --

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The Secretary; or

(iv) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, financial aid means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically --

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of @ 99.38.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if:

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(iv) For the purposes of paragraph (a)(6) of this section, the term organization includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents, as defined in @ 99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with --

(A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(iii)(A) If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

(B) If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in @ 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in @ 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(13) The disclosure, subject to the requirements in @ 99.39, is to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense. The disclosure may only include the final results of the disciplinary proceeding conducted by the institution of postsecondary education with respect to that alleged crime or offense. The institution may disclose the final results of the disciplinary proceeding, regardless of whether the institution concluded a violation was committed.

(14)(i) The disclosure, subject to the requirements in @ 99.39, is in connection with a disciplinary proceeding at an institution of postsecondary education. The institution must not disclose the final results of the disciplinary proceeding unless it determines that --

(A) The student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and

(B) With respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies.

(ii) The institution may not disclose the name of any other student, including a victim or witness, without the prior written consent of the other student.

(iii) This section applies only to disciplinary proceedings in which the final results were reached on or after October 7, 1998.

(15)(i) The disclosure is to a parent of a student at an institution of postsecondary education regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance if --

(A) The institution determines that the student has committed a disciplinary violation with respect to that use or possession; and

(B) The student is under the age of 21 at the time of the disclosure to the parent.

(ii) Paragraph (a)(15) of this section does not supersede any provision of State law that prohibits an institution of postsecondary education from disclosing information.

(b) Paragraph (a) of this section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11), (13), (14), and (15) of this section.

HISTORY:
[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3189, Jan. 7, 1993; 61 FR 59292, 59296, Nov. 21, 1996; 65 FR 41852, 41853, July 6, 2000]

AUTHORITY:
(20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2)(B), (b)(6), (h), and (i))

NOTES:
[EFFECTIVE DATE NOTE: 65 FR 41852, 41853, July 6, 2000, amended this section, effective Aug. 7, 2000.]

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SUBPART D -- MAY AN EDUCATIONAL AGENCY OR INSTITUTION DISCLOSE PERSONALLY IDENTIFIABLE INFORMATION FROM EDUCATION RECORDS?

34 CFR 99.32

@ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under @ 99.33(b), the record of the disclosure required under this section must include:

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under @ 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in @ 99.31(a) (1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to:

(1) The parent or eligible student;

(2) A school official under @ 99.31(a)(1);

(3) A party with written consent from the parent or eligible student;

(4) A party seeking directory information; or

(5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(Approved by the Office of Management and Budget under control number 1880-0508)

HISTORY:
[53 FR 11943, Apr. 11, 1988; 61 FR 59292, 59296, Nov. 21, 1996]

AUTHORITY:
(20 U.S.C. 1232g(b)(1) and (b)(4)(A))

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34 CFR 99.33

@ 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

(1) The disclosures meet the requirements of @ 99.31; and

(2) The educational agency or institution has complied with the requirements of @ 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures made to parents of dependent students under @ 99.31(a)(8), to disclosures made pursuant to court orders, lawfully issued subpoenas, or litigation under @ 99.31(a)(9), to disclosures of directory information under @ 99.31(a)(11), to disclosures made to a parent or student under @ 99.31(a)(12), to disclosures made in connection with a disciplinary proceeding under @ 99.31(a)(14), or to disclosures made to parents under @ 99.31(a)(15).

(d) Except for disclosures under @ 99.31(a) (9), (11), and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(e) If this Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of @ 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

HISTORY:
[53 FR 11943, Apr. 11, 1988; 61 FR 59292, 59297, Nov. 21, 1996; 65 FR 41852, 41853, July 6, 2000]

AUTHORITY:
(20 U.S.C. 1232g(b)(4)(B))

NOTES:
[EFFECTIVE DATE NOTE: 65 FR 41852, 41853, July 6, 2000, revised paragraph (c), effective Aug. 7, 2000.]

339 words

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*** THE FEDERAL REGISTER ***

TITLE 34 -- EDUCATION
SUBTITLE A -- OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION
PART 99 -- FAMILY EDUCATIONAL RIGHTS AND PRIVACY
SUBPART D -- MAY AN EDUCATIONAL AGENCY OR INSTITUTION DISCLOSE PERSONALLY IDENTIFIABLE INFORMATION FROM EDUCATION RECORDS?

34 CFR 99.38

@ 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974, concerning the juvenile justice system?

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under @ 99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

HISTORY:
[61 FR 59292, 59297, Nov. 21, 1996]

AUTHORITY:
(20 U.S.C. 1232g(b)(1)(J))

101 words

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TITLE 34 -- EDUCATION
SUBTITLE A -- OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION
PART 99 -- FAMILY EDUCATIONAL RIGHTS AND PRIVACY
SUBPART E -- WHAT ARE THE ENFORCEMENT PROCEDURES?

34 CFR 99.61

@ 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

HISTORY:
[53 FR 11943, Apr. 11, 1988]

AUTHORITY:
(20 U.S.C. 1232g(f))

41 words

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

☆ ☆ ☆

Application No. 16566-C of the President and Directors of Georgetown College, pursuant to 11 DCMR § 3104.1, for a special exception for the review and approval of the University Campus Plan – years 2000-2010 under Section 210 in the R-3 and C-1 Districts at premises bounded by Glover Archbold Parkway to the west, the National Park Service property along the Chesapeake & Ohio Canal and Canal Road to the south, 35th Street, N Street to 36th Street, and 36th Street to P Street to the east and Reservoir Road to the north. (Square 1222, Lots 62, 801-810; Square 1223, Lots 85-86, 807-810, 812, 815, 826, 827, 831, 834, 846-847, 852-853, 855, and 857-858; Square 1226, Lots 91, 94-101, 104-105, 803-804, 806, and 811-815; Square 1248, Lots 122-125, 150-157, 800-802, 804-806, 829-831, and 834-835; Square 1321, Lots 815-817.)

HEARING DATES: June 13, and July 18, 2000

DECISION DATES: September 5, November 8, and December 5, 2000

ORDER DATE: March 29, 2001

RECONSIDERATION DECISION DATE: June 5, 2001

STAY DECISION DATE: September 4, 2001

CERTIFICATION DECISION DATE: March 5, 2002

ORDER CERTIFYING REVISED PLAN

By Order issued March 29, 2001, the Board approved the University Campus Plan until December 31, 2010, subject to conditions intended to mitigate any adverse impacts potentially arising from the location of a university in a residentially zoned district ("March 29 Order"). In addition to the President and Directors of Georgetown College (hereinafter "University" or "Applicant"), parties to the proceeding were Advisory Neighborhood Commission 2E, the Burleith Citizens Association ("Burleith"), Citizens Association of Georgetown ("CAG"), Cloisters in Georgetown Homeowners Association ("Cloisters"), Foxhall Community Citizens Association ("Foxhall"), Georgetown Residents Alliance ("GRA"), and Hillandale Homeowners Association ("Hillandale").

On April 11, 2001, Cloisters submitted a timely request for reconsideration of the March 29 Order. Responses were filed May 10, 2001 by the Applicant, CAG, and Burleith. In its Order on Reconsideration (Application No. 16566A, "Reconsideration Order"), issued August 6, 2001, the Board modified certain of the conditions adopted in the March 29 Order.

Condition No. 18 of the March 29 Order, as amended by the Reconsideration Order, directed the Applicant to prepare a revised campus plan consistent with the conditions of approval adopted by the Board. Parties were granted an opportunity to comment on whether the Applicant's proposed revised plan correctly and clearly reflected the conditions of plan approval.

The Applicant submitted its proposed revised plan on November 14, 2001. Comments were filed December 14, 2001 by Hillandale, and on December 17, 2001 collectively by CAG, Burleith, Cloisters, Foxhall, and GRA. The Applicant responded to those comments December 27, 2001. The comments filed by the neighborhood associations state that the proposed revised plan submitted by the Applicant does not reflect the conditions adopted by the Board completely and accurately. In its response, the Applicant requested that the Board find that the proposed revised draft is entirely consistent with the relevant Orders and certify it as the approved Campus Plan.

FINDINGS OF FACT:

The Board is unable to find, as the Applicant requests, that the proposed revised plan is "entirely consistent" with the conditions of approval adopted in the March 29 Order, as revised by the Reconsideration Order. The Applicant's table of changes, required by Condition No. 18 to delineate the changes made to the originally filed proposed campus plan to reflect the Board's Orders, reveals only seven changes, which address only the term of the plan, undergraduate enrollment, the code of student conduct, and the transportation management plan. The March 29 Order set forth 19 conditions, which reflect these and other matters not shown in the Applicant's table of changes or in its proposed revised plan.

CONCLUSIONS OF LAW:

The Board concludes that the Applicant's proposed revised plan must be supplemented with a clear, complete, and accurate statement of all conditions of approval of the Campus Plan as set forth in the March 29 Order and Reconsideration Order. Accordingly, the Board certifies as the approved Campus Plan the proposed revised plan submitted by the Applicant together with this Order, which restates the conditions previously adopted by the Board in the March 29 Order and revised in the Reconsideration Order. The conditions listed in this

Order shall be considered part of the approved Campus Plan and shall govern in case of any conflict or inconsistency with the Applicant's proposed revised plan.

Accordingly, it is **ORDERED** that the Applicant's proposed revised plan is **CERTIFIED** as the approved Campus Plan **SUBJECT** to the following **CONDITIONS**:

1. The Applicant's proposed campus plan is approved until December 31, 2010, subject to the following conditions intended to mitigate any adverse impacts potentially arising from the location of a university use in a residentially zoned district, or until such time prior to December 31, 2010 as the Zoning Commission determines that conditions warrant submission of an updated campus plan or grants a request to amend the plan.*

2. The Applicant shall not increase undergraduate enrollment above the cap of 5,627. This cap shall apply to traditional full-time undergraduate students; that is, undergraduate students who require housing.

3. The Off-Campus Student Affairs Program implemented and enforced by the Applicant shall specify that off-campus housing is a privilege that can be revoked due to student misconduct, whether a violation occurs on- or off-campus.

a) The Applicant shall ensure that the Off-Campus Student Affairs Program is fully funded and staffed, and shall obtain the endorsement of the University's Board of Directors for the program and its implementation.

b) The Off-Campus Student Affairs Program shall specify the measures that University personnel shall undertake, immediately upon receiving a complaint regarding student misconduct, to resolve any objectionable behavior pending the University's investigation of a complaint.

c) The Off-Campus Student Affairs Program shall conduct at least annually a community education workshop that is mandatory for all students living off-campus.

4. The Off-Campus Student Affairs Program shall adopt and enforce a Code of Student Conduct.

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* The conditions marked with an asterisk denote conditions adopted in the March 29 Order as modified by the Reconsideration Order of August 6, 2001. The remainder were adopted by the Board in the March 29 Order.

a) The Code of Student Conduct shall clearly describe appropriate standards of behavior, delineate misconduct that constitutes a violation of the Code, and specify the sanctions that will be imposed for violations, particularly with respect to the consequences of repeated violations.

b) The Applicant shall distribute copies of the Code of Student Conduct to students at least annually, and shall require students to certify in writing that they agree to adhere to the Code.

5. The Code of Student Conduct shall provide that, once a complaint is received concerning a student's off-campus conduct, a University officer (e.g. the Vice President for Student Affairs or Assistant Dean for Off-Campus Student Affairs) shall determine whether probable cause exists to bring the complaint before a Hearing Board, thereby relieving the original complainant of the obligation to pursue the matter.

6. The Applicant shall maintain a telephone hotline to receive complaints regarding student misconduct. The hotline shall be staffed 24 hours per day, seven days per week, by University personnel who shall keep a detailed record of each complaint received and shall forward each complaint to the appropriate authorities for immediate response.

7. When the Applicant, upon investigation of a complaint or by any other means, receives evidence of a violation of sanitation or housing regulations involving or affecting students living in an off-campus residence, the Applicant shall report the violation to the housing provider, the Department of Consumer and Regulatory Affairs, Department of Public Works, or other agency as appropriate. The Applicant shall monitor enforcement of reported violations to determine whether necessary inspections have occurred and whether fines have been issued and paid, and shall keep detailed records of reported complaints and responses.

8. The Applicant shall ensure that complaints are heard by a Hearing Board comprising two students and two faculty members, reflecting the University's recognition of the seriousness of complaints about student misconduct.

9. The Applicant shall make publicly available data indicating the number and types of complaints received concerning student misconduct, and the outcome of each complaint, including whether sanctions were imposed and whether any fines paid. The Applicant shall also report this information quarterly to the Office of Planning, the Zoning Administrator, ANC 2E, and

the Alliance for Local Living, and to other interested community organizations that may request the information.

10. The Applicant shall report a violation of the Code of Conduct to the parents or guardians of the violator to the extent permitted by law.

11. The Applicant shall avoid scheduling events that attract large numbers of visitors to the campus during the peak traffic times of 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. The Applicant shall employ campus personnel as necessary to direct visitors to campus parking areas and to ensure smooth flow of traffic into and out of the campus.
    a) All weekday evening performances at the Performing Arts Center expected to draw more than 100 visitors shall begin no earlier than 7:00 p.m.
    b) Athletic events at Harbin Field expected to draw over 100 visitors shall begin before 4:00 p.m. or after 7:00 p.m.

12. The Performing Arts Center, Harbin Field, and McDonough Arena shall be used for purposes related to the University or the community, and not for non-University events whose primary purpose is revenue generation.

13. The helipad shall be used only for medically necessary purposes. The Applicant shall provide monthly reports regarding use of the helipad, including credible evidence of medical necessity associated with its use, to ANC 2E, the Alliance for Local Living, and other community organizations that request the information.

14. The Applicant, through its Office of the Registrar, shall maintain an accurate record of the license plate numbers of motor vehicles kept by all University students. The Applicant shall direct its students to register their vehicles in the District of Columbia, or obtain a reciprocity sticker if eligible to do so, and shall consult with the D.C. Department of Motor Vehicles to determine whether such registration is completed or such stickers are obtained. The Applicant shall withhold parking privileges to students who do not comply with D.C. registration requirements. Failure to abide by District law concerning registration of student vehicles shall constitute a violation of the Code of Student Conduct.*

15. The Applicant shall maintain a parking inventory of 4,080 off-street parking spaces within the campus boundary, and shall ensure that not more than one percent of the parking inventory is taken out of service at any one time.*

16. The Applicant shall enhance its Transportation Management Program:
    a) to promote greater transit usage, including increased ridership of the GUTS bus service;
    b) to provide additional parking in satellite locations linked to the campus by shuttle bus;
    c) to work with the community, MedStar, and the Department of Public Works as part of a cooperative team effort to look at mitigation strategies for Reservoir Road.

17. The Applicant shall include, in all future applications for further processing of the campus plan, the following information:
    a) actual enrollment of traditional undergraduate students, as of 30 days prior to the hearing date, including documentation and an explanation of the methods and assumptions used in the calculation;
    b) whether the Southwest Quadrangle project has been completed, and, if so, the date it began use as an undergraduate dormitory;
    c) a progress report on the implementation and operation of the Off-Campus Student Affairs Program, including information on number of complaints received concerning student misconduct, reported violations, and outcomes, including what sanctions were imposed and the fines paid, if any;
    d) the number of off-street parking spaces within campus boundaries, as of 30 days prior to the hearing date, including documentation and an explanation of the methods and assumptions used in the calculation; and
    e) a status report on the Transportation Management Program.

18. The Applicant shall prepare a revised campus plan that is consistent with this Order, accompanied by table of changes that lists each page on which a change appears and describes each change. The Applicant shall submit an original and 10 copies of the revised plan to the Board no later than 90 days from the effective date of this Order, and shall, on the same day, serve a copy of the revised plan and table of changes on each party to this proceeding. Each party shall have 30 days in which to submit to the Board, and to serve on all other parties, its comments on the Applicant's proposed changes. Comments on the revisions shall be strictly limited to whether the revisions correctly and clearly reflect the Order After review of the Applicant's proposed revised plan and the parties' comments, the Board shall determine whether further proceedings are warranted or shall certify the revised plan as the approved campus plan. The revised plan shall be deemed approved 60 days after submission, absent action by the Board before that date. Copies of the approved plan shall be maintained in the Office of Zoning and the Office of the Zoning Administrator.*

19. No special exception application filed by the University for further processing under this plan may be granted unless the University proves that it has consistently remained in substantial compliance with Conditions 1 through 18 set forth in this Order. Further, any violation of a condition of this Order shall be grounds for the denial or revocation of any building permit or certificate of occupancy applied for by, or issued to, the University for any University building or use approved under this plan, and may result in the imposition of fines and penalties pursuant to the Civil Enforcement Act, D.C. Code §§ 2-1801.01 to 2-1803.03 (2001).

VOTE: **5-0-0** (Geoffrey H. Griffis, Anne M. Renshaw, Curtis L. Etherly, Jr., David W. Levy, and Herbert M. Franklin to approve.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

ATTESTED BY: Jerrily R. Kress
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAY 2 2 2002

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED,

CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. SEE D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16566-C

As Director of the Office of Zoning, I hereby certify and attest that on MAY 2 2 2002 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director