

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders, alphabetized by name, and in some cases the records are separated by individual law school affiliation and by the date the application is received. In some instances records are located in lockable conserva-file cabinets and in a locked secured room with access limited to those officials whose duties require access. In other instances records are maintained in file rooms or with other Office of General Counsel files.

**RETRIEVABILITY:**

These records are retrievable by name.

**SAFEGUARDS:**

Access is limited to those Department officials whose duties require access.

**RETENTION AND DISPOSAL:**

These records are retained in accordance with the Department of Education Records Disposition Schedules (ED/RDS).

**SYSTEM MANAGER(S) AND ADDRESS:**

The General Counsel, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue, SW., Room 6E301, Washington, DC 20202.

**NOTIFICATION PROCEDURE:**

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

**RECORD ACCESS PROCEDURES:**

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

**CONTESTING RECORD PROCEDURES:**

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

**RECORD SOURCE CATEGORIES:**

Information in this system of records comes from the individual to whom it applies, law school officials and past employers.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**18-09-03**

**SYSTEM NAME:**

Employee Conduct—Government Ethics.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Ethics Counsel Division, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E231, Washington, DC 20202.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system contains information about current and past Department employees who have requested or received advice or guidance in subject matter areas relating to employee conduct.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains information relating to acceptance or offer of gifts, entertainment and favors, outside employment; financial interests; use of government funds, property or official information; partisan political activity; or other matters relating to employee conduct.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

18 U.S.C. 202, 203, 205, 207, 208, 209; Executive Order 11222; and 5 CFR parts 735, 104; 34 CFR Part 73.

**PURPOSE(S):**

The information in this system is used in providing advice or guidance in subject matter areas relating to employee conduct.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* May disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory,

investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

- (i) The Department of Education, or any component of the Department; or
- (ii) Any Department employee in his or her official capacity; or
- (iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed

to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(6) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are kept in legal size files in filing cabinets.

**RETRIEVABILITY:**

These records are retrievable by name in most cases. In some instances, these records are retrievable by cross-reference to index cards containing the

name of the party involved and the subject matter.

**SAFEGUARDS:**

These records are only accessible to General Counsel staff. Office buildings in which these records are maintained are locked after the close of the business day.

**RETENTION AND DISPOSAL:**

The records are maintained for an indefinite duration.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant General Counsel, Ethics Counsel Division, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW, Room 6E231, Washington, DC 20202.

**NOTIFICATION PROCEDURE:**

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department of Education's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

**RECORD ACCESS PROCEDURES:**

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

**CONTESTING RECORD PROCEDURES:**

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**18-09-04**

**SYSTEM NAME:**

Litigation Files, Administrative Complaints, and Adverse Personnel Actions.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E301, Washington, DC 20202.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The individuals on whom records are maintained in this system are individuals who are involved in

litigation with the Department or the United States (regarding matters within the jurisdiction of the Department) either as plaintiffs or as defendants in both civil and criminal matters, and individuals who either file administrative complaints initiated by the Department, except claims which are the subjects of records maintained in the Administrative Claims System.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records contain information pertaining to the subject matter of the litigation, administrative complaint, or adverse personnel action. Such records would include complaints, litigation reports, administrative transcripts, various litigation documents, investigative materials, correspondence, briefs, court orders and judgments, and in cases where personal injury is involved, evaluations by physician specialists.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The authority for maintaining this system are the various statutes, regulations, rules or orders pertaining to the subject matter of the litigation, administrative complaint or adverse personnel action, (e.g., Civil Rights Act, Federal Torts Claim Act).

**PURPOSE(S):**

The information in this system is used for litigating civil cases, criminal cases and administrative complaints to which the Department or the United States is a party.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technical Assistance to Improve Services and Results for Children with Disabilities program (*e.g.*, the extent to which projects use high quality methods and materials, provide useful products and services, and contribute to improving results for children with disabilities (States report improved ability to provide technical assistance as a result of projects and demonstrate improved results for children with disabilities)). Data on these measures will be collected from the projects funded under this notice.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

#### VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202-2550. Telephone: 1-202-205-8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section.

#### VIII. Other Information

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at 1-202-512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO

Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: March 10, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 04-5823 Filed 3-12-04; 8:45 am]

**BILLING CODE 4000-01-P**

### DEPARTMENT OF EDUCATION

#### Privacy Act of 1974; System of Records; Employee Conduct—Government Ethics (18-09-03)

**AGENCY:** Office of the General Counsel, U.S. Department of Education.

**ACTION:** Notice of an altered system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of an altered system of records entitled "Employee Conduct—Government Ethics (18-09-03)," last published in the **Federal Register** on June 4, 1999 (64 FR 30149-50). The Department amends this notice by: (1) Updating the categories of individuals covered by the system to include employees who are required to attend ethics training; (2) revising the categories of records in the system to exclude records covered by two government-wide executive branch Privacy Act systems of records of the Office of Government Ethics (OGE): OGE/GOVT-1 and OGE/GOVT-2 and to include records relating to compliance with ethics training requirements; (3) revising the authority for the system; (4) adding that a purpose of the system is to ensure compliance with ethics training requirements; (5) adding a new routine use to allow disclosures to the Office of Government Ethics pursuant to its oversight responsibilities; (6) revising the paragraph on storage to include electronic records; (7) revising the paragraph on safeguards to include the measures taken to protect electronic records; (8) revising the paragraph on retention and disposal to state that the records in the system will be destroyed in accordance with the National Archives and Records Administration's General Records Schedule (GRS) 25 for Ethics Program Records; and (9) adding a new paragraph on record source categories, which was inadvertently omitted from the last publication of the system of records notice.

**DATES:** The Department seeks comments on the altered system of records

described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records included in this notice on or before April 14, 2004.

The Department filed a report describing the revisions to the system of records covered by this notice with the Chair of the Committee on Governmental Affairs of the United States Senate, the Chair of the Committee on Government Reform of the United States House of Representatives, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 9, 2004. The changes made in this notice will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on April 18, 2004 or (2) April 14, 2004, unless the system of records needs to be changed as a result of public comment or OMB review. The Department will publish any changes to the routine uses.

**ADDRESSES:** Address all comments about the proposed routine uses to Karen Santoro, Ethics Division, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E231, Washington, DC 20202-2110. If you prefer to send comments through the Internet, use the following address: [comments@ed.gov](mailto:comments@ed.gov). You must include the term "Employee Conduct" in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 6E231, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

#### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Karen Santoro. Telephone: (202) 401-8309. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:**

**Introduction**

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of an altered system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record" and the system, whether manual or computer-based, is called a "system of records."

The Privacy Act requires each agency to publish a notice of a system of records in the **Federal Register** and to prepare a report to OMB, whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Governmental Affairs and the Chair of the House Committee on Government Reform. The report is intended to permit an evaluation of the probable or potential effect of the proposal on the privacy rights of individuals.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498, or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: March 9, 2004.

**Brian W. Jones,**  
*General Counsel.*

For the reasons discussed in the preamble, the General Counsel of the U.S. Department of Education publishes a notice of an altered system of records. The following amendments are made in the Notice of New, Amended, Altered and Deleted Systems of Records published in the **Federal Register** on June 4, 1999 (64 FR 30105-30191):

1. On page 30149, 2nd column, under the headings Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System, and Purpose(s), the paragraphs are revised to read as follows:

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system contains information about current and past Department employees (1) who have requested and/or received advice or guidance in subject matter areas relating to employee conduct, or (2) who are required to attend ethics training.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains documents and records not covered by two government-wide executive branch Privacy Act systems of records of the Office of Government Ethics (OGE): OGE/GOVT-1 and OGE/GOVT-2. These documents and records may include, but are not limited to, information relating to acceptance or offer of gifts, entertainment and favors, or outside employment; financial interests; use of government funds, property, or official information; partisan political activity; compliance with ethics training requirements; or other matters relating to employee conduct.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 95-521, Ethics in Government Act of 1978; Pub. L. 101-194, Ethics Reform Act of 1989, as amended; and Executive Orders 12674, 12565, and 11222, as amended.

**PURPOSE(S):**

The records in this system are maintained in order for the Office of the General Counsel to provide advice and guidance in subject matter areas relating to employee conduct and to ensure that employees comply with ethics requirements.

2. On page 30150, 1st column, make the following changes:

A. After the paragraph labeled "(6) *Congressional Member Disclosures*," a new paragraph is added as follows:

(7) *Office of Government Ethics Disclosure*. The Department may

disclose records to the Office of Government Ethics if the disclosure is relevant to the Office of Government Ethics' review of the Department's ethics program or if the Department seeks the advice of the Office of Government Ethics on matters relating to the Department's ethics program, including, but not limited to, the program's structure and staffing, education and training, counseling or advice, public financial disclosures, confidential financial disclosures, outside employment and activities, or post employment.

B. Under the heading *Storage*, the paragraph is revised to read as follows:

**STORAGE:**

Paper records are kept in legal size files in filing cabinets; electronic records are kept in a database maintained and managed by the Ethics Division of the Office of the General Counsel.

3. On page 30150, 2nd column, make the following changes:

A. Under the heading *Safeguards*, the paragraph is revised to read as follows:

**SAFEGUARDS:**

These records are only accessible to staff of the Ethics Division of the Office of General Counsel. Paper records are kept in filing cabinets that are locked after the close of the business day, and electronic records are kept only on authorized users' computers, which are password-protected.

B. Under the heading *Retention and Disposal*, the paragraph is revised to read as follows:

**RETENTION AND DISPOSAL:**

The records in this system will be retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule (GRS) 25 for Ethics Program Records.

C. After the heading *Contesting Record Procedures*, a new paragraph is added to read as follows:

**RECORD SOURCE CATEGORIES:**

Information is obtained from individuals who request advice and from employees and other Department records in connection with the administration of the ethics training program.

[FR Doc. 04-5676 Filed 3-12-04; 8:45 am]

**BILLING CODE 4000-01-P**