

Family Educational Rights & Privacy Act and Other Privacy Requirements – A Guide to Handling Student Educational Records and Student Medical Records

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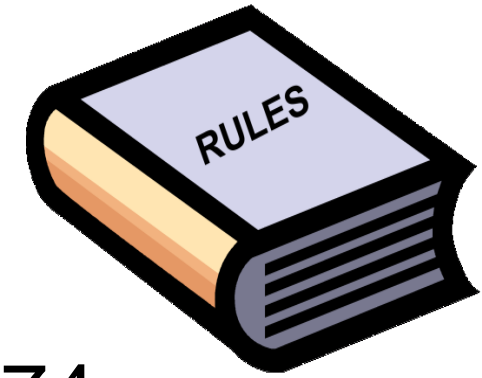
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Overview of Topics

- FERPA Overview
- FERPA Key Definitions & Elements
- FERPA Consent
- Exceptions to Consent
- Scenarios
- Other Medical Records and Privacy Considerations
- Discussion & Questions



FERPA Background



- Family Educational Rights & Privacy Act of 1974 (Buckley Amendment)
- College students control:
 - Disclosure of “education records” to others
 - Inspect and review their own “education records”
 - Ask to amend “education records”



FERPA Overview

- **Key Idea:**

University and its employees cannot disclose an “education record” to a third person* without the student’s written consent

- Unless falls within a specific exception

*Third person = person outside JCU (such as a parent) or within JCU without a need to know

FERPA Key Elements



- “Education Records” =
 - Records that are:
 - (1) Directly related to the student (meaning they are personally identifiable), and
 - (2) Maintained by an educational institution or a party acting for the institution.

Identifiable = includes name or address of student or parent/family member, SSN, student number, date of birth



FERPA Key Definitions



- “Education Records” includes:
 - Any information recorded in any way including handwritten, print, computer media, video, audio tape, film, microfilm etc.
 - Does not include information not recorded i.e. Personal Knowledge



FERPA Key Definitions

■ Examples of “Education Records”:

- Class schedule
- Class Assignments, Tests, Papers, Projects, Research
- Grades
- Attendance records
- Emails including student name, ID numbers, to/from email address
- Transcript
- Photographs
- Financial aid records and accounts
- Student accessibility/disability records
- Student Conduct Records
- Sports and Extracurricular Activities detailed information beyond directory information
- Information provided by the student in an educational process





FERPA Key Definitions

- Who is a “Student”?
 - Anyone in attendance at the University
 - Does not include applicants unless accepted and attend
 - Former students and alumni are included
 - Continues until student’s death or destruction of record

FERPA Exceptions

- “Sole possession” records
 - Records not shared or accessible to others
- “Law enforcement” records
 - i.e. JCUPD records in possession of JCUPD
- Employment records, but generally not student worker records
- Alumni records
- Treatment records, if not shared
- Educational records to another educational institution where the student is enrolled or intends to enroll



FERPA Exceptions

- Health or safety emergency - Significant threat to health or safety of student/others
 - i.e. missing student
 - Threat to self or others
 - May provide notice to parents, intended victim, health care providers
- Legal requirement (subpoena, court order, lawsuit etc.)
- To parents of a dependent student for federal tax purposes
 - Otherwise, no right to see records even if a minor
 - Need to obtain copy of parents' most recent federal tax return or other confirmation to verify dependent status in writing - See Financial Aid

FERPA Exceptions



- Sharing within the University –

Is there a **legitimate educational interest** as determined by University in disclosing the information?

To:

- Other faculty
- Administrative offices
- Coaches
- Students on University committees
- Contractors under University control/policy

Does not include disclosure to other students (unless University committee member etc.)



Exception - Directory Information

- Directory Information, if student does not opt out (except can't opt out of name, email, or identifier in classes they are enrolled)

Directory Information at JCU

- Name
- Campus, local, home and email addresses
- Campus, local, home and cell telephone numbers
- Major(s)
- Class year
- Year of graduation
- Degrees and awards received
- Date and place of birth
- Photograph
- Dates of attendance
- Full or part-time status
- Participation in officially recognized activities and sports
- Previous educational institution attended
- Weight and height of members of athletic team



See <http://sites.jcu.edu/registrar/pages/faculty-and-staff/what-administrators-faculty-staff-need-to-know>



Exception - Directory Information

For questions about disclosure of directory information, discuss with Registrar or Legal Affairs.

- There may be other policy reasons not to disclose information.

i.e. Disclose all alumni names and contact information as of May graduation date to a prospective employer

FERPA Consent



- FERPA Consent must be in writing and must include:
 - Records that may be disclosed
 - Purpose of disclosure
 - Persons to whom may be disclosed
 - Signature of student
 - Date

JCU FERPA Consent



- Parent Banner Access – Proxy Access on Banner
 - ❖ Finance, Financial Aid, Midterm/Final Grades and Schedule
- **FERPA Consent Form** – For any 3rd party consent
 - ❖ Finance, Financial Aid, Grades, Schedule, Other Academic Records, Conduct Records for a specified time period.
- **Transcript Request Form** – Releases academic transcript
- **Academic Records Verification Form** – Letters/forms to 3rd parties

JCU FERPA Consent



CONSENT TO RELEASE EDUCATION RECORDS

The Family Educational Rights and Privacy Act of 1974 (FERPA) prohibits the disclosure of information contained in your educational records to a third party, unless you provide written consent. You must complete a separate form for each third party to whom you grant access.

Section A – Student Information	
Name (last, first, middle initial) – PRINT	Student ID Number
	Date of Birth
	Daytime Phone Number
Section B – Third Party Information (Who Will Receive Records)	
Name (last, first, middle initial) – PRINT	Relationship to Student
Home / Business Address (street, apartment number, city, state, zip code)	Daytime Phone Number
Section C – Student Certification	
I, _____, give consent to _____ (employee name or administrative office of John Carroll University) to provide education records and information about me to the third party listed in Section B above.	
The purpose of the consent is to provide those authorized above with access to my education records. For this purpose, I consent to the oral or written disclosure of the following:	
<input type="checkbox"/> all records contained in my transcripts and other education records (GPA, grades, accomplishments, academic and student conduct records etc.)	
<input type="checkbox"/> academic records only <input type="checkbox"/> financial aid/student account information	
<input type="checkbox"/> student conduct records	
<input type="checkbox"/> other: _____	
If letters of recommendation are requested from the above employee/administrative office, I	
<input type="checkbox"/> waive my access to such letters of recommendation; or	
<input type="checkbox"/> reserve the right to review such letters of recommendation.	
I understand that if I so request, I may receive copies of any records disclosed except for records, such as confidential letters of recommendation, to which I have waived my access.	
This consent is granted for the period identified below:	
<input type="checkbox"/> one-time disclosure, <input type="checkbox"/> for a period of _____, <input type="checkbox"/> for an indefinite period of time	
<input type="checkbox"/> other _____	
I understand that I may revoke this consent at any time, by submitting a written revocation.	
Signature: _____ Date: _____	



University Policies



JCU's FERPA Notice/Policy

- Registrar: <http://sites.jcu.edu/registrar/pages/faculty-and-staff/what-administrators-faculty-staff-need-to-know/>
- Dean of Students: <http://sites.jcu.edu/deanofstudents/pages/community-standards/the-family-educational-rights-and-privacy-act-2/>
- 2017-19 Bulletin:
<http://sites.jcu.edu/undergraduatebulletin/home/2017-2019-undergraduate-bulletin/>
- 2018-2020 Graduate Bulletin:
<http://webmedia.jcu.edu/graduatestudies/files/2018/09/2018-2020-GRADUATE-BULLETIN-002-1.pdf>



FERPA Take-Away

- FERPA does NOT mandate disclosure to a third person
 - Except to students for their OWN records
 - It is permissible, but not required to disclose
 - Even with consent of the student - can say NO to a request for records
 - Other policies/protocols can control decision

Scenario #1:

Stanley's Class Assignment

- Stanley, a faculty member, likes to use group projects to increase overall learning.
- Each group presents a written project and a class presentation. Stanley provides group feedback and announces group and individual grades in class.
- He puts the written projects with group and individual grades on a desk in the classroom for students to collect.
- He then posts individual and group grades using student ID numbers on a board in class before posting individual grades in Canvas so the class can learn from others' presentations.
- A student comes to complain to you about Stanley's practices. Is there any issue with this?



Scenario #1:



Stanley's Class Assignment

- Providing feedback in class is acceptable and likely not an educational record.
- Announcing individual or group grades in class is not compliant with FERPA without consent of all students.
- Placing completed projects with individual grades on desk is a FERPA violation.
- Sharing grades on board in class is not permissible.

Scenario #2:

Barb's Phone Call



- Barb, a staff member, receives a phone call from the HR department in a local firm. The caller says they are very interested in hiring a JCU graduate, John, and just has a couple questions about John's character, grades and JCU activities. Barb knows John well from the department and also from his work in alumni activities after graduation.
- What can she share?
- Would it be different if the job were an on-campus job?

Barb's Phone Call: Student Records

- Be aware of FERPA concerns.
 - Directory information can be given without consent from the student.
 - Educational records can be disclosed with a written consent of the student.
 - Even for a personal reference, be careful that character or other information is not based on records of academics/activity.
 - Getting written consent is needed to comply with FERPA.
 - On-campus job: Can be shared internally for legitimate educational purposes



Scenario #3:



Sally and a Visit From a Parent:

- Sally, a staff member, hears a knock on the door. She opens it, and the person identifies herself as the mother of a student.
- The parent says that the student has been in an accident, and she needs a copy of her medical records from the Health Center and SAS to provide to the hospital. She also requests a copy of the residence hall agreement so the student can be released from the residence hall. Finally, she wants to know about the student's class progress to determine if she can complete the semester.
- The parent also wants to talk about a drug violation that arose prior to the accident.
- What should Sally do?

Scenario #3:

Sally and a Visit From a Parent:



- Student consent is required to reveal information to a parent, unless a dependent student.
- Consent can be done via written consent or Proxy Access on Banner web
- An accident by a student could be a health and safety emergency, but only if the disclosure is necessary related to emergency.
- Health and safety emergency may not apply to SAS records.
- Student authorization is likely necessary for health records.
- Staff generally cannot discuss conduct violations without consent, with the exception for drug/alcohol violations.
- FERPA only PERMITS disclosure, does not require it. Does Sally want to discuss with a parent?

Scenario #4:

George and the Student Fight



- George, a staff person in Residence Life, sees a fight occur in the residence hall between Sam and Mary.
- George tries to break up the fight, but has to call JCUPD to assist.
- George talks with several witnesses and his AC as to what occurred, and also to the two students.
- George writes up his personal notes from the fight for his own use.
- Sam and Mary both ask for copies of George's notes about the incident, the JCUPD report, and for George to appear as a witness in their criminal trial.
- What should George do?

Scenario #4:

George and the Student Fight



- George's observation of the fight is not FERPA-protected.
- George's notes are a FERPA record if shared with others.
- JCUPD's report is not a FERPA educational record.
- George would follow Residence Life protocol to respond to the request – refer to Dean of Students protocol.
- George would need to redact the other students' names to provide the notes to the other student.
- George is not obligated to appear at trial absent a subpoena. George can call Legal Affairs about that issue.

Health and Disability Related Information



Legal Trends: Increased Privacy of Health and Disability Information



- Health and disability related information is implicated by laws that affect activity on JCU campus, including:
 - The Family Educational Rights and Privacy Act
 - Genetic Information Nondiscrimination Act
 - Health Insurance Portability and Accountability Act
 - Americans with Disabilities Act
 - Section 504 of the Rehabilitation Act
 - The Family and Medical Leave Act



Protecting Private Info

- The ADA, FERPA, Section 504, and other laws have resulted in the separate maintenance of disability-related or health-related information by SAS, the Counseling Center, and/or the Student Health Center.
- Clear expectation that records will be maintained separately from other educational records.
- In many cases, decision makers need not have access to health or disability information.

Privacy Considerations in our Collegial Environment

- Other than in discussions with SAS, Legal Affairs, or for safety issues, it is not advised to share information concerning a student's health or disability.
- Universities can be held liable for what student affairs personnel and supervisors learn in casual conversations.

Health
Medical

Scenario: Sam's Student Challenge



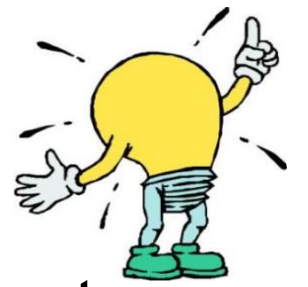
- Sam is a staff member who is very interested in helping students who would otherwise fall through the cracks.
- He helped Carl, who displays some classic signs affiliated with the autism spectrum, with concerns expressed by other students about Carl's unusual behavior.
- Sam wants to tell others in Student Affairs about his diagnosis of Carl in order to help Carl avoid future issues.
- Sam comes to talk to you about his idea. How do you Respond?

Sam's Student Challenge (Continued)



- No, this is a classic scenario where benevolent intentions can lead to discrimination or acts that are at risk of being interpreted as discriminatory.
- JCU allows students the autonomy to control whether or not to disclose their non-apparent disability information to different University offices.
- Further, Sam might be wrong about the diagnosis and/or his colleagues might react in a non-supportive manner.

What Sam Could Have Done ...



- Sam can work with Carl just as he would any other student who is struggling or difficult, without regard to his disability or perceived disability.
- Sam can encourage his department to undertake supportive engagement with students more generally or seek other ways to make himself available to support students who are having a tough time.
- Sam can direct to Carl and other students to University support services, such SAS, the Health Center or the University Counseling Center.

Exceptions to Confidentiality



- A University may share student medical information with others in certain instances:
 - For treatment, payment, or health care operations
 - There is a “legitimate educational purpose” that necessitates the information (e.g. SAS). This disclosure should be limited in scope.
 - Health or safety emergency
 - There is an imminent threat to others

Thank you

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