



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

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Human Resources Training Series

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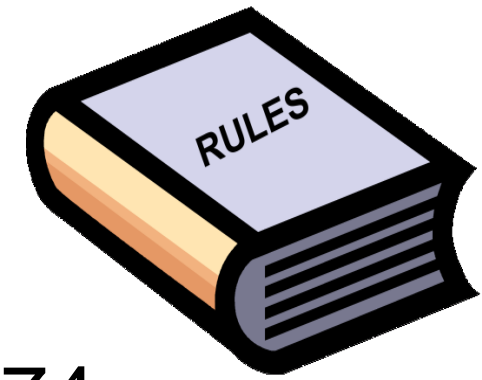
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Overview of Topics

- FERPA Overview
- FERPA Key Definitions & Elements
- FERPA Consent
- Exceptions to Consent
- Scenarios
- Other Privacy Issues Including Health Records
- 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

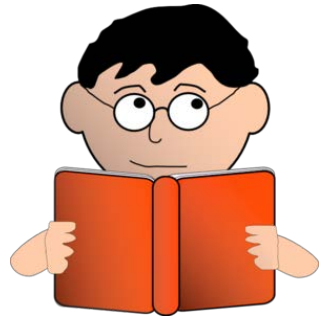


FERPA Key Definitions

■ 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





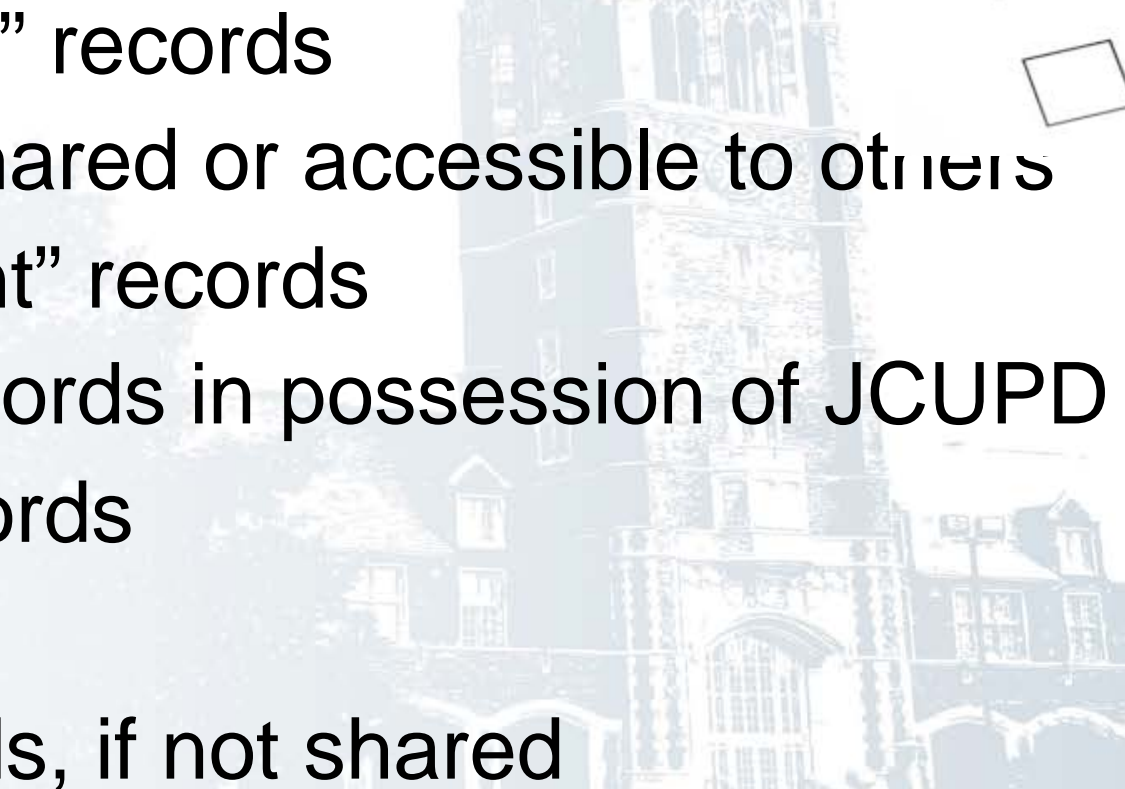
FERPA Key Definitions

- 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
 - Alumni records
 - Treatment records, if not shared
- 



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



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



- **Web4Parent** – Parent Banner Access
 - ❖ 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:	

University Policies



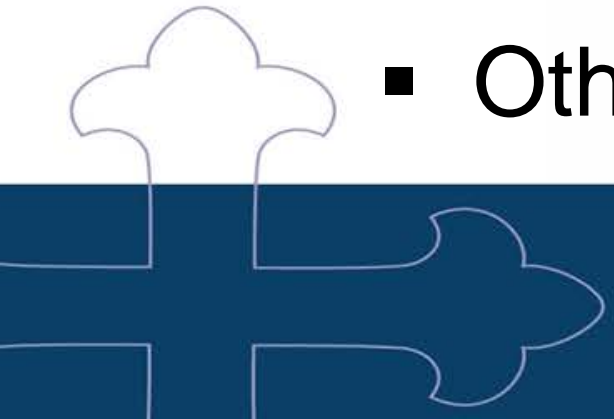
JCU's FERPA Notice/Policy

- 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/>
- 2016-18 Graduate Bulletin:
http://webmedia.jcu.edu/graduatestudies/files/2017/02/WORKING-COPY_GB16.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:

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 University-related activity/academics.
 - Getting written consent is needed to comply with FERPA.
 - On-campus job: Can be shared internally for legitimate educational purposes





Scenario #2:

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.
- Is there any issue with this?





Scenario #2:



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 #3:

Sally and a Visit From a Parent:



- Sally, a faculty member, hears a knock on the door. She opens it, and the person identifies herself as the mother of one of her students.
- The parent says that the student has been in an accident, and she needs to obtain information on the student's class progress to determine if she can complete the semester.
- The parent also wants to talk about an academic dishonesty claim 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.
- Can be done via written consent or Web 4 Parents.
- An accident by a student could be a health and safety emergency, but only if the disclosure is necessary related to emergency.
- Here, health and safety emergency likely does not apply.
- Faculty cannot discuss academic dishonesty without consent.
- 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 as to what occurred, and also to the two students.
- George writes up his notes from the fight as usual.
- 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:
 - Genetic Information Nondiscrimination Act
 - Health Insurance Portability and Accountability Act
 - The Family and Medical Leave Act
 - Americans with Disabilities Act
 - Section 504 of the Rehabilitation Act
 - The Family Educational Rights and Privacy Act



Protecting Private Info

- These laws and the regulations have moved the discussion of health specifics out of the decision maker's office and into student accessibility/HR offices.
- Clear expectation that records will be maintained separately
- In some cases, decision makers will be insulated from the specifics of health or disability related information.





Privacy Considerations in our Collegial Environment

- Other than in discussions with SAS, HR, OLA, or in safety responses, it is not advised to share information concerning a student's or employee's health or disability.
- Universities and employers are often held liable for what employees and supervisors learned in casual conversation, especially if the individual elicited the information.

Health
Medical

Scenario: Sam's Student Challenge



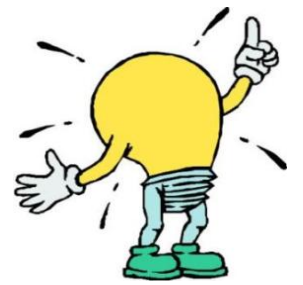
- Sam is a professor who is very interested in helping students who would otherwise fall through the cracks. He had a very challenging but rewarding semester working with Carl, who displays some classic signs affiliated with Asperger's Syndrome. To lessen the adjustment period, Sam wants to tell his peers in the department about his diagnosis of Carl in order to shorten this adjustment period for future courses.
- Is this a good idea?

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 faculty and staff.
- 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.
- If a student does disclose a disability, Sam can work with SAS to help accommodate the student.

ADA Confidentiality at Work

- The ADA contains strict confidentiality requirements. Medical information revealed by an applicant or employee must be kept confidential.
 - Disability and FMLA records must be kept in a separate file from other personnel documents.
 - These documents should not be in supervisors' files.
- The ADA's confidentiality requirements protect:
 - information voluntarily revealed
 - information revealed in response to an employer's written or oral questions or during a medical examination.



Exceptions to Confidentiality



- A University may share student medical information with others in certain instances:
 - There is a “legitimate educational purpose” that necessitates the information. This disclosure should be limited in scope.
 - Health or safety emergency
 - There is an imminent threat to others
- An employer may share medical information with others in certain instances:
 - hiring decision makers where medical information is related to essential functions of job
 - health and safety personnel for safety planning
 - government officials investigating compliance with the ADA etc.

Thank you

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