

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

October 16, 2019

Caragh Vasko, Assistant Registrar

Colleen Trembl, General Counsel

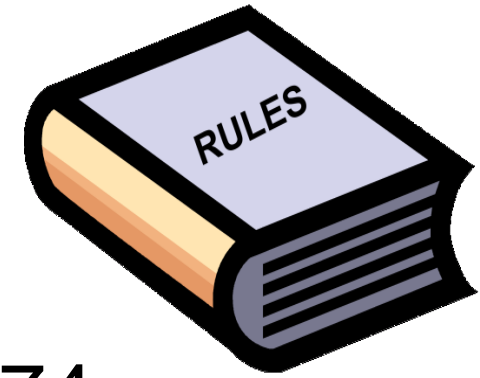
Kenneth Danton, Assistant General Counsel

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, video of students
- 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, as of date they enroll in classes
 - 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
- Medical 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 "FERPA: What Faculty and Staff Need to Know" <https://jcu.edu/registrar/faculty-and-staff>



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: <https://jcu.edu/registrar/faculty-and-staff> under FERPA
- Dean of Students: https://jcu.edu/about-us/administrative-offices/dean-of-students/student-conduct-community-standards?_ga=2.104722752.1994453044.1570451352-949212673.1546459623 under The Family Educational Rights and Privacy Act
- 2019-2020 Undergraduate Bulletin:
<http://jcu.smartcatalogiq.com/en/2019-2020/Undergraduate-Bulletin>
- 2018-2020 Graduate Bulletin:
<http://webmedia.jcu.edu/graduatestudies/files/2018/09/2018-2020-GRADUATE-BULLETIN-002-1.pdf>



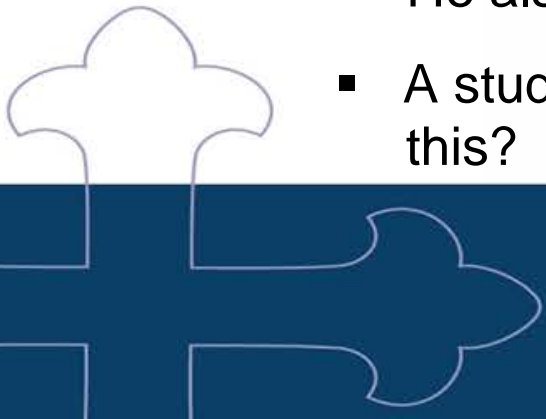
FERPA Take-Away

- 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 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 and on a google doc before posting individual grades in Canvas so the class can learn from others' presentations.
- He also wants to share the winning project with the sponsoring advertising firm.
- 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 or google doc is impermissible.

Scenario #2:

Sarah's Phone Call



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

Sarah'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 for academic information.
 - On-campus job: Can be shared internally for legitimate educational purposes



Scenario #3:

Chris and a Visit From a Parent



- Chris, a staff member, hears a knock on the door. Chris opens the door, and the person identifies herself as the mother of a student.
- The parent says that the student has been hospitalized, and she needs a copy of her medical records from the Health Center and SAS to determine what medication she is on. She also requests copies of all student account information. 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 Chris do?

Scenario #3:

Chris and a Visit From a Parent



- Student consent is required to reveal information to a parent, unless a dependent student.
- Consent methods - Proxy Access on Banner web or written consent
- Hospitalization 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.
- Health and safety emergency may apply to health records.
- Student account information – dependent student?
- Class progress – need consent because not an emergency
- Staff generally cannot discuss conduct violations without consent, with the exception for drug/alcohol violations if under 21.

Scenario #4:

Tim and the Res Hall Theft



- Tim, a staff person in Residence Life, sees Sam enter Mary's room and then run out a fire escape with an expensive purse in hand.
- Tim tries to talk to Sam, but has to call JCUPD to assist.
- Tim discusses what occurred with several witnesses and his AC.
- Tim writes down notes from the night for his own use.
- Sam and Mary both ask for copies of Tim's notes about the incident, the JCUPD report, and for Tim to appear as a witness in their criminal trial.
- What should Tim do?

Scenario #4:

Tim and the Res Hall Theft



- Tim's observation of the incident is not FERPA-protected.
- Tim's notes are a FERPA record if shared with others.
- JCUPD's report is not a FERPA educational record.
- Tim would follow departmental protocols to respond to the request.
- Tim would need to redact the other students' names to provide the notes to the other student.
- Tim is not obligated to appear at trial absent a subpoena. Tim 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 (FERPA)
 - Genetic Information Nondiscrimination Act (GINA)
 - Health Insurance Portability and Accountability Act (HIPAA)
 - Americans with Disabilities Act (ADA)
 - Section 504 of the Rehabilitation Act (Section 504)
 - The Family and Medical Leave Act (FMLA)



Protecting Private Info

- The ADA, FERPA, Section 504, and other laws – must retain separately disability-related or health-related information by SAS, the Counseling Center, Student Health Center.
- Records must 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 University staff and supervisors learn in casual conversations.

Health
Medical

Scenario: Sam's Student Challenge



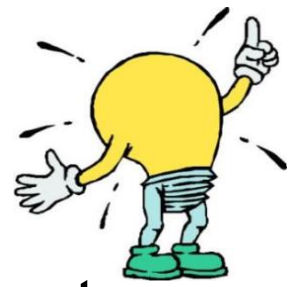
- Sam is a staff member who is very interested in helping students who would otherwise fall through the cracks.
- He helped Carl, who displays some classic signs affiliated with dyslexia and had some embarrassing issues with a presentation.
- Sam wants to tell others in the department about his diagnosis 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

- May share student medical information with others in certain instances:
 - There is a “legitimate educational purpose” that necessitates the information (e.g. SAS).
 - Health or safety emergency
 - There is an imminent threat to others
 - ALSO: Health Center – share information for treatment reasons

ADA Confidentiality at Work

- 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.
 - 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.
- Refer to Disability Accommodation Policy and consult with HR



Thank you

Caragh Vasko
Assistant Registrar
Office of the Registrar
(216) 397-4395
cvasko@jcu.edu

Colleen Trembl
General Counsel
Office of Legal Affairs
(216) 397-1595
ctrembl@jcu.edu

Kenneth Danton
Assistant General Counsel
Office of Legal Affairs
(216) 397-1994
kdanton@jcu.edu