

	<b>FGCU POLICY 3.006</b>	<b>Responsible Unit:</b> Office of Records and Registration
	<b>Education Records</b>	

## A. POLICY STATEMENT

The Family Educational Rights and Privacy Act of 1974 (FERPA) is a federal law and state statute and provides Students with several important rights and privileges relating to their Education Records. This Education Records Policy and related procedures offer a general overview of applicable privacy laws and provide guidance to University employees with respect to handling Education Records.

## B. REASON FOR POLICY

Florida Gulf Coast University maintains Education Records and is responsible for their custody, maintenance, disposal, release, and alteration. The reason for this Policy is to ensure FGCU's compliance with federal and state laws. This Policy is also to prevent the improper management of Education Records, thus limiting the risk of having all federal funds withdrawn from the institution.

## C. APPLICABILITY AND/OR ACCOUNTABILITY

All faculty, staff, and Students of the University

## D. DEFINITION OF TERMS

1. *Attendance*: Includes, but is not limited to:
  - a. Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for Students who are not physically present in the classroom; and
  - b. The period of time during which a Student is working under a work-study program or in a position held exclusively by Students.
  
2. *Directory Information*: Information contained in a Student's Education Record that would not be considered harmful or an invasion of privacy if disclosed. FGCU has designated the following types of Student information as directory: Student full name, mailing address, major/field of study, participation in officially recognized activities and sports, participation in intramural events, dates of Attendance, degrees received, most recent educational institution attended prior to FGCU, weight and height for athletic team members, honors and awards received, class status, enrollment status, and University email addresses.

3. *Disclosure*: 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, but not limited to, oral, written, or electronic means.
4. *Education Record*: Any personally identifiable records maintained by the University or an agent or representative of the University that is directly related to a Student and recorded in any medium, including, but not limited to, handwriting, electronic, print, computer media, video or audio tapes and disks, film, microfilm, and microfiche. Examples of Education Records include, but are not limited to, grades, test scores, courses taken, disciplinary records, social security number, and names of parents.
5. *Eligible Parent or Guardian*: One who holds the appropriate documentation (e.g. power of attorney, court order, etc.) to establish a legal right to act on behalf of the Student.
6. *Exceptions to the definition of Education Records*: FERPA (confirmed by State law) expressly excludes certain types of University records relating to a Student from the definition of Education Records. The University's ability to disclose these excluded records may fall within the parameters of Florida's Public Records Law, Chapter 119, Florida Statutes, and other federal or state laws. The following records are not considered Education Records:
  - a. *Personal Records or Notes*: Records that are kept in the sole possession of the maker, and are not accessible or revealed to any other individual, except a substitute who performs on a temporary basis the duties of the individual who made the records.
  - b. *Law Enforcement Records*: Records maintained by the University Police Department (UPD) that were created by that department for a law enforcement purpose.
  - c. *Employment Records*: Records relating to individuals who are employed by FGCU and that are made and maintained in the normal course of business, relate exclusively to individuals in their capacity as employees, and are not available for any other purpose. In contrast, records related to individuals whose employment is contingent upon being a Student, such as work-study employment records, are Education Records.
  - d. *Medical Records*: Records relating to a Student that are:
    - 1) Created 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;
    - 2) Used solely in connection with the provision of treatment to the Student; and
    - 3) Not disclosed to anyone other than individuals providing such treatment.

- e. Records created after the Student is no longer in Attendance at FGCU: Records that contain information about an individual after he or she no longer is a Student such as alumni records.
  - f. Grades on peer-graded papers before they are collected and recorded by an instructor.
7. *FERPA*: The Family Education Rights and Privacy Act of 1974, 20 U.S.C. §1232g and its implementing regulations in 34 CFR Part 99, and corresponding state Education Record statute at section 1002.22, Florida Statutes.
8. *Legitimate Educational Interest*: A University Official has an educational interest if the official is:
- a. Performing a task outlined in the official's position description or contract;
  - b. Performing a task related to the Student's education;
  - c. Performing a task related to the discipline of a Student;
  - d. Providing a service or benefit for the Student such as health care, counseling, Student job placement, or financial aid; or
  - e. Maintaining the safety and security of the campus.
9. *Personally Identifiable Information*: Includes, but is not limited to,:
- a. Student's name;
  - b. Name of Student's parent or other family members;
  - c. Address of Student or Student's family;
  - d. Personal identifier, such as social security number or Student I.D.;
  - e. Other indirect identifiers, such as Student's date of birth, place of birth, and mother's maiden name;
  - f. Other information, alone or in combination, is linked or linkable to a specific Student which would allow a reasonable person in the University community, who does not have personal knowledge of the relevant circumstances, to identify the Student with reasonable certainty; or
  - g. Information requested by a person whom the University reasonably believes knows the identity of the Student to whom the Education Records relates.

10. *Student*: An individual who is or has been in Attendance at FGCU and about whom the University maintains Education Records.
11. *Student Record*: Any Personally Identifiable Information or data relating to a Student and collected, recorded, or maintained in any medium including but not limited to handwriting, electronic, print, computer media, video or audio tapes and disks, film, microfilm, and microfiche. Student Records include Education Records and other types of records relating to Students, as well as Student employment records where the job is only available to Students.
12. *Third Parties*: An entity or individual other than University personnel that has submitted a request for the Disclosure of Education Records. A Student who has submitted a request to review or inspect his or her own Education Records is not a Third Party.
13. *University Officials*: Employees, members of the FGCU Board of Trustees, or an entity under contract to the University to perform a task such as a contractor, consultant, outside attorney, or external auditor. Student or community members of University committees also are included in the definition of University Officials as are Student employees assisting a University Official in performing his or her tasks. Inter-institutional Disclosures may be made between FGCU and entities that administer or participate in joint programs or activities and that further a Legitimate Educational Interest because such Disclosures are considered made to University Officials.

## **E. PROCEDURES**

Florida Gulf Coast University's records relating to Students fall into two (2) categories: Education Records and other information. FERPA provides Students with several important rights and privileges relating to their Education Records at FGCU and imposes certain obligations upon the University and its employees, representatives, and agents. Below, the University sets forth its records management procedures:

1. Roles of the Registrar, Director of Institutional Research and Analysis, and Director of International Services
  - a. The Registrar is designated as the Education Records custodian and FERPA compliance officer for the University.
  - b. The Director of Institutional Research and Analysis is designated as the University's data administrator and officer responsible for electronic reporting of general Student information, data, and records to federal and state agencies and officials.
  - c. The Director of International Services is designated as the officer responsible for reporting to federal and state agencies and officials for matters relating to international Students.

## 2. Student Rights under FERPA

In accordance with FERPA, FGCU shall afford each Student the following rights with respect to his or her Education Records:

- a. The right to inspect and review his or her Education Records within forty-five (45) days of a request to do so;
- b. The right to request an amendment of the Student's Education Records to ensure that the records are not inaccurate, misleading, or otherwise in violation of the Student's privacy or other rights;
- c. The right to consent to, or deny Disclosures of, Personally Identifiable Information contained in the Student's Education Records, except to the extent that FERPA authorizes Disclosure without consent;
- d. The right to file a complaint alleging a violation of FERPA with the Family Policy Compliance Office of the United States Department of Education; and
- e. The right to obtain a copy of FGCU's Education Records Policy.

## 3. Non-Consensual Disclosure of Directory Information

Notwithstanding the above, the University may, at its discretion, disclose certain classes of Education Records without a Student's consent. This public information is referred to as Directory Information and is of a nature that Disclosure would not result in harm or an invasion of privacy. The University designates Directory Information and annually publishes such designation in the FGCU Catalog.

## 4. Student's Request for Non-Disclosure of Directory Information

- a. A Student may elect to block the Disclosure of his or her Directory Information. To do so, the Student, or Eligible Parent or Guardian, must make a formal written request of the Registrar. The Student's request remains valid throughout the Student's academic career with the University, unless subsequently modified or revoked in writing by the Student.
- b. Upon receiving a request for non-disclosure of Directory Information, the University will not release any Directory Information about the Student without the Student's prior written consent, except to the extent otherwise authorized or required by FERPA or other laws.

## 5. Procedure of Disclosure of Directory Information

Prior to releasing Directory Information to Third Parties to the University, University

Officials are required to verify with the Registrar that the Student has not submitted a request for non-disclosure of his or her Directory Information.

#### 6. Annual FERPA Notice to Students

The Registrar shall annually inform Students of their rights under FERPA by publishing a notice in the FGCU Catalog and through other appropriate means. The annual notice shall also prescribe the procedures whereby a Student may make a formal request for non-disclosure of Directory Information, exercise the right to inspect and review Education Records, request an amendment of Education Records, and obtain a copy of the University's Education Records Policy.

#### 7. Additional Disclosures Not Requiring a Student's Consent

In addition to permitting Disclosures of Directory Information as described above, FERPA allows the University to disclose Education Records without the Student's prior written consent in the following circumstances:

- a. Where the University Officials have a Legitimate Educational Interest in accessing the information;
- b. Another educational institution where the Student seeks or intends to enroll;
- c. Where authorized representatives of the Attorney General of the United States, the Controller General of the United States, the U.S. Department of Education, the Secretary of Education of the United States, or state and local education officials require information to audit or enforce legal conditions related to programs at the University that are supported by federal or state funds; the Federal Bureau of Investigation; or the U.S. Immigration Customs Enforcement;
- d. Where persons or organizations are providing financial aid to a Student or to which a Student has applied for financial aid, if the purpose is to determine eligibility, amount or conditions of aid, or to enforce the terms of the aid;
- e. To state or local officials in compliance with state laws adopted prior to November 19, 1974;
- f. Where an individual or organization conducts a study (collectively "consultants") to develop, validate, or administer tests, Student aid programs, or improve instruction for, or on behalf of, the University or other lawfully authorized education officials of the State of Florida;<sup>1</sup>

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<sup>1</sup> Care must be taken to ensure that consultants will not re-disclose the Personally Identifiable Information of Students and that the consultants promptly and appropriately destroy such information upon conclusion of the study. Contracts between the University and such consultants shall contain a provision requiring appropriate records confidentiality and destruction procedures.

- g. Where accrediting organizations carrying out accrediting functions;
  - h. To parents of a dependent Student as defined by the Internal Revenue Code. The University will exercise this option only upon submission and verification of evidence proving such dependency;
  - i. In order to comply with a lawfully issued subpoena or order of a court of competent jurisdiction;<sup>2</sup>
  - j. In order to inform the victim of a crime of violence or non-forcible sex-offense committed by a Student of the disciplinary proceeding outcome under the FGCU Student Code of Conduct;
  - k. For appropriate parties, including parents, in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the Student or others. The determination will be made on the “totality of the circumstances” pertaining to a threat to the health or safety of a Student or others;
  - l. To inform parents of a Student who is under twenty-one (21) of a disciplinary violation of FGCU drug or alcohol policies;
  - m. To proceed with legal action as a plaintiff against a parent or Student; or
  - n. To defend itself if the parent or eligible Student initiates a legal action.
8. Procedures for Disclosure of Non-Directory Education Records
- a. FGCU has a duty to record and maintain a record of each release of Personally Identifiable Information from a Student’s Education Records, except when the request for information is received from the respective Student, when the request is from a University Official with a Legitimate Educational Interest, or when the request is for Directory Information. The Registrar shall maintain a record of the names of Third Parties to whom Education Records have been released. This record shall be kept with the Education Record.
  - b. When providing requested records, the Registrar shall advise Third Parties that the information may be used only for the purpose for which it was requested and that the information cannot be re-disclosed to any other individual or organization. A Student may obtain a copy of any records that the University disclosed to Third Parties upon the Student’s written request.
  - c. University employees are required to coordinate all requests for Disclosure of

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<sup>2</sup> In advance of compliance with a subpoena or court order, the University will make a reasonable effort to notify the Student unless the document states that providing prior notice would compromise the confidentiality of an investigation or other legal proceeding such as a grand jury.



Education Records through the Registrar, except when such requests are made for Directory Information by a University Official with a Legitimate Educational Interest or by a Student for his or her own Education Records. As mentioned above, University employees must confirm with the Registrar that a Student has not requested the non-disclosure of Directory Information prior to releasing such information to Third Parties.

- d. Notwithstanding the above, the Director of Institutional Research and Analysis and the Director of International Services shall release Student information and records to state and federal officials as necessary to fulfill the University's reporting obligations. They are not required to coordinate such reports through the Registrar.

## 9. Right of the University to Deny Access to Education Records

The University reserves the right to deny a Student access to the following Education Records:

- a. The financial statements of the Student's parents;
- b. Letters and statements of recommendation for which the Student has waived in writing his or her right of access; or
- c. Other records that are excluded from the FERPA definition of Education Records and are not public records under Florida's Public Records Law, Chapter 119, Florida Statutes, as well as other sections of Florida Statutes.

## 10. Education Records Relating to Multiple Students

When an Education Record contains information about more than one (1) Student, a Student may inspect and review only the records or portions of the records that relate to the requesting Student. Prior to Disclosure, the portions of records containing Personally Identifiable Information relating to other Students must be redacted.

## 11. Copies of Education Records

While an eligible Student is entitled to inspect and review his or her Education Record, there is no requirement that the University make copies of such records, except in certain circumstances. The University may charge a fee for copies of a Student's Education Records and provide the Education Records upon payment of the appropriate copying fee. However, the University reserves the right to deny a Student copies of Education Records, including, but not limited to, transcripts or other Education Records where the Student has an unpaid financial obligation to the University, where there is an unresolved disciplinary action against the Student, or where the Education Record requested is an exam or set of standardized test questions previously taken by the Student.



## 12. Secure Record-Handling Requirements

Employees or Students having access to Student Education Records are required to:

- a. Make every effort to ensure the privacy of Students;
- b. Access Education Records only as required to perform assigned duties;
- c. Store Education Records under secure conditions;
- d. Refuse to discuss the contents of Education Records with other University employees unless there is a Legitimate Educational Interest attached to the discussion;
- e. Destroy documents, disks, or other records containing Education Records in a confidential manner and pursuant to destruction and retention policies;
- f. Disclose Directory Information to Third Parties only upon verifying with the Registrar that the Student has not submitted a request for non-disclosure of Directory Information;
- g. Disclose non-directory Education Records to Third Parties only if authorized approval is given; and
- h. With respect to records contained in electronic or computer databases, the following must be observed:
  - 1) Employees who are given access to the Student information system will be assigned an account and password;
  - 2) In all transactions, employees shall use their own account;
  - 3) Employees will ensure that computer passwords remain confidential and must report suspected cases of leaked passwords immediately to the Registrar and the Associate Vice President for Information Technology Services and Chief Information Officer;
  - 4) Each employee given an account is held responsible for transactions which occur using that account;
  - 5) To the extent practicable, transactions on the Student information system shall be logged by account;
  - 6) Employees are responsible for changing passwords periodically and whenever they feel it is necessary to preserve security;

- 7) Employees shall not leave unattended computers that are actively logged onto Student information systems or that contain Student information;
- 8) Employees shall ensure that records displayed on computer terminal screens cannot be observed by unauthorized personnel; and
- 9) Employees shall observe the University's computer use policies, including FGCU Policy 3.042, Restricted Data.

### 13. Disposal of Education Records

Education Records should be retained only so long as valid and useful or for the period of time required by State of Florida or University record retention policies, whichever is longer. Education Records must be disposed of properly through an appropriate means of confidential disposal.

### 14. Additional FERPA Information

- a. General information and links regarding FERPA are available from the website of the Family Compliance Office of the United States Department of Education at <http://www2.ed.gov/policy/gen/guid/fpco/index.html>.
- b. Further information with respect to FGCU's implementation of FERPA may be found on the Registrar's website at <http://www.fgcu.edu/Registrar/>. This website also contains a listing of the categories, locations, and custodians of Student Records on the FGCU Campus.
- c. Questions regarding specific situations should be directed to the Office of the Registrar.

#### *Related information*

*FGCU Regulation 4.001, Student Rights and Responsibilities*

#### *Authority*

*BOG Regulation 1.001, University Board of Trustees Powers and Duties*

#### *History of Policy*

*New 06/29/04; Amended 12/01/15; Format Changed 09/10/19*

#### **APPROVED:**

          \*s/Wilson G. Bradshaw            
Wilson G. Bradshaw, President

          December 1, 2015            
Date