



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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Overview of Topics

FERPA Overview

FERPA Key Definitions & Elements

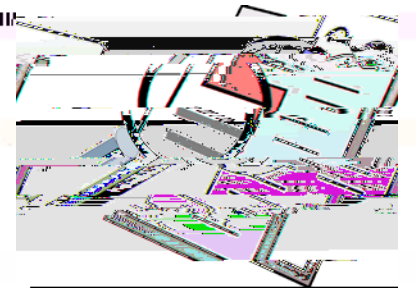
FERPA Consent

Exceptions to Consent

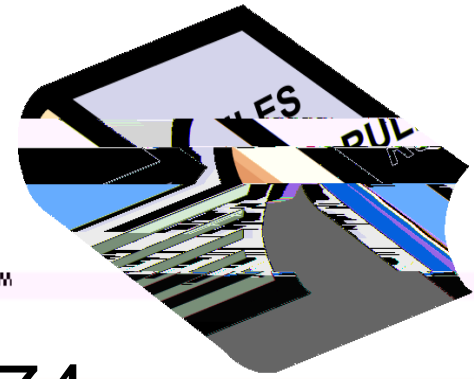
Scenarios

Other Privacy Issues Including Health Records

Discussion & Questions



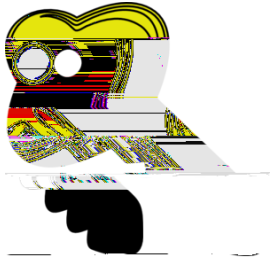
FERPA Background



Family Educational Rights & Privacy Act of 1974
(Buckley Amendment)

College students control:

Disclosure of “education records” to others



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



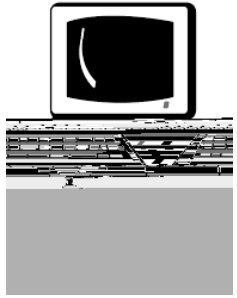
FERPA Key Elements

“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

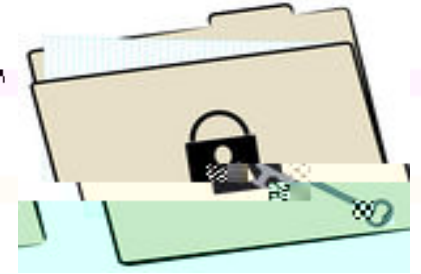
Financial aid records and accounts

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

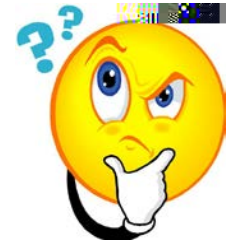
Employment records

Alumni records

Treatment records, if not shared



FERPA Exceptions



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

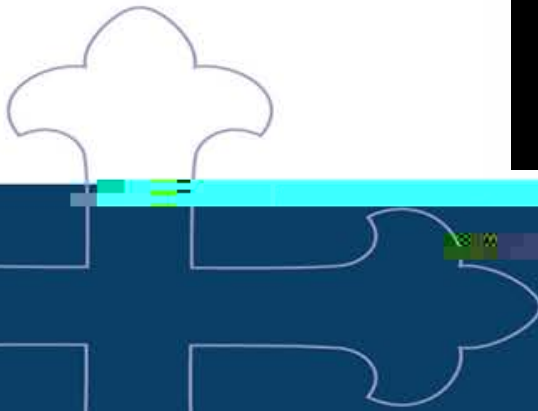
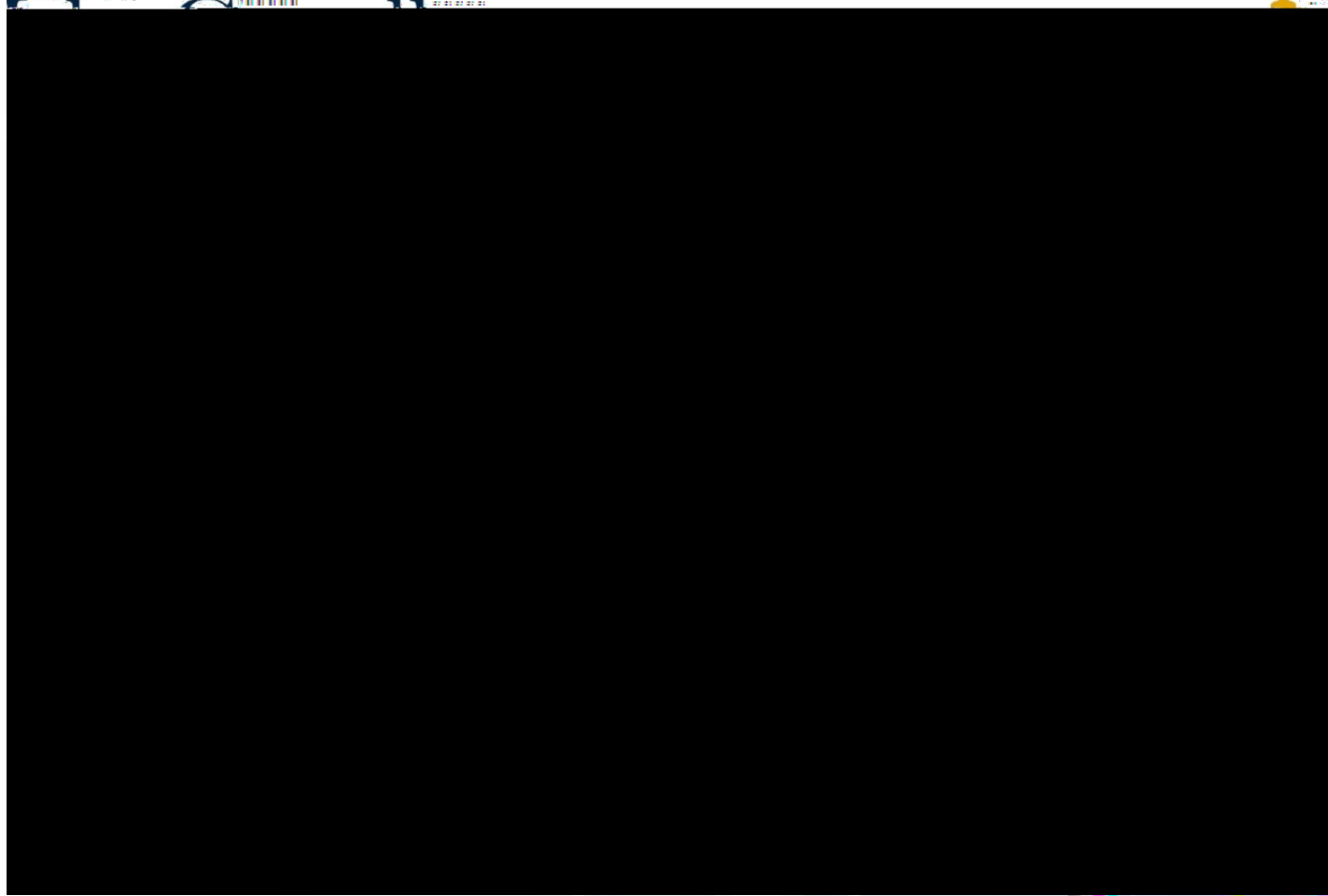
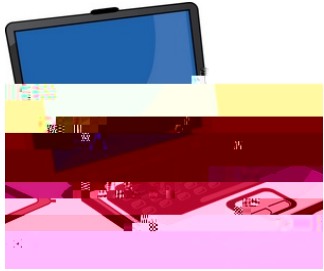
FERPA Consent Form – For any 3rd party consent

Finance, Financial Aid, Grades, Schedule, Other Academic Records, Conduct Records for a specified time period.

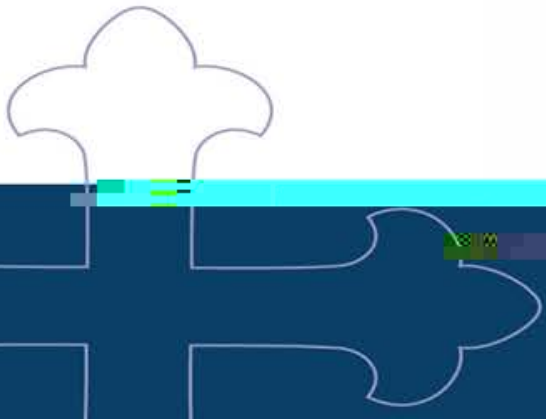
Transcript Request Form – Releases academic transcript

Academic Records Verification Form – Letters/forms to 3rd parties

JCU FERPA Consent



University Policies





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?

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.

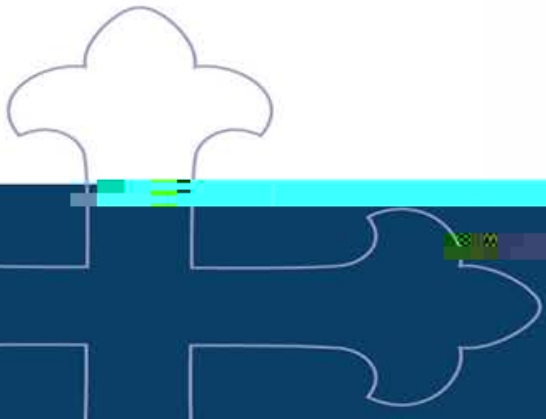
Getting written consent is needed to comply with FERPA.

On-campus job: Can be shared internally for legitimate educational purposes

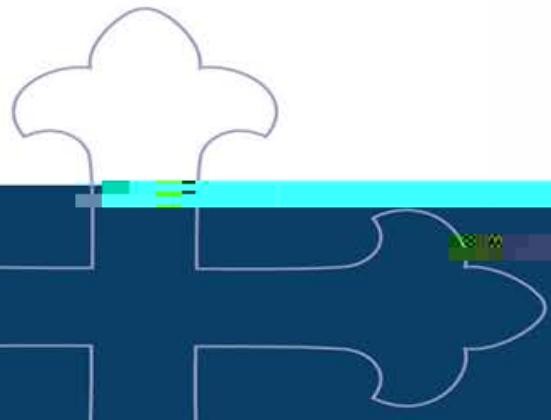


Scenario #2:

Stanley's Class Assignment



Scenario #2:



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.

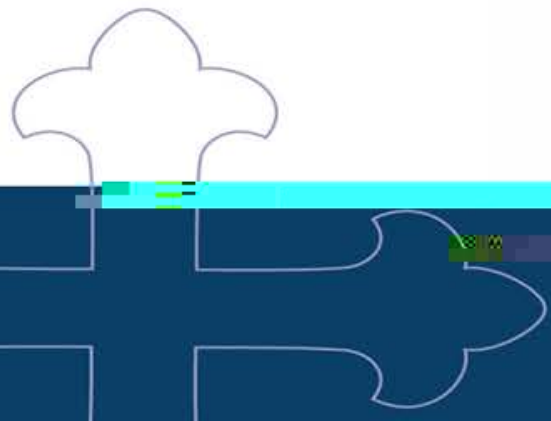
What should Sally do?



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.





Scenario #4:

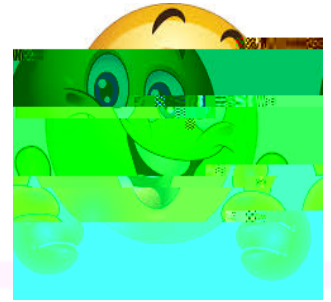
George and the Student Fight

George, a staff person in Residence Life, sees a fight occur in the residence hall between Sam and Mary.



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.

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

