



<b>Policy Name:</b>	Policy on Access to Student Records Under the Family Educational Rights and Privacy Act (FERPA)		
<b>Associated Form(s):</b>	FERPA release form, available at: <a href="https://www.mercy.edu/about/student-dashboard-ferpa-information-release-form">https://www.mercy.edu/about/student-dashboard-ferpa-information-release-form</a>	<b>Policy Number:</b>	2017-12
<b>Approval Authority:</b>	President <i>Timothy L. Hall</i>	<b>Adopted:</b>	November 22, 2017
<b>Reviewed:</b>	Non-Academic Policy Committee	<b>Approved:</b>	November 16, 2017
<b>Responsible Executive:</b>	General Counsel	<b>Revised:</b>	September 2016
<b>Responsible Office:</b>	Office of the General Counsel	<b>Contact:</b>	General Counsel or Associate General Counsel

## **I. Rights Afforded Under FERPA**

The Family Educational Rights and Privacy Act of 1974 (“FERPA” or the “Act”) affords eligible students certain rights with respect to their education records. An eligible student under FERPA is a student who is 18 years of age or older or who attends a postsecondary institution at any age. Persons who unsuccessfully applied for admission to the University or who are offered admission but never attended the University are not covered by the Act.

Eligible students are afforded the following rights:

1. Inspection. The right to inspect and review the student’s education records within 45 days after the day the University receives a request for access. A student should submit a written request to the Registrar that identifies the record the student wishes to inspect. The school official will make arrangements for access and notify the student of the time and place where the records may be inspected. If the records are not maintained by the school official to whom the request was submitted, that official shall advise the student of the correct official to whom the request should be addressed.
2. Amendment. The right to request the amendment of the student’s education records that the student believes is inaccurate, misleading, or otherwise in violation of the student’s privacy rights under FERPA. A student who wishes to ask the University to amend a record should write to the Vice President for Enrollment Services, clearly identify the part of the record the student wants changed, and specify why it should be changed.
3. Appeal of University’s amendment decision. If the University decides not to amend the record as requested, the University will notify the student in writing of the decision and the student’s right to a hearing regarding the request for amendment. Hearing requests must be made in writing, to the VP of Enrollment Services within thirty (30) days of being informed of the decision to decline the request for amendment. Within a reasonable period of time after receiving such request, the VP of Enrollment Services will inform the student of the date, place and time of the hearing. The hearing will take place before the designee of the Vice President of Enrollment Services, a designee of the Vice President for Student Affairs and a designee of the Provost. The student may present evidence relevant to the issues raised and may be assisted or represented at the hearing by one or more persons of the student’s choice, including an attorney, at the student’s sole expense. While the FERPA amendment procedure may be used to challenge facts that are inaccurately recorded, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about an eligible student.

The Committee must issue a written decision that contains a summary of the evidence and a statement of the basis for the decision. The decision of the Committee is final and must be based solely on the evidence presented at the hearing. If the decision is in the student’s favor,

the education records will be amended in accordance with the Committee's decision. If the decision is unfavorable to the student, the student may prepare a statement commenting on the contested information in the education record or stating why the student disagrees with the decision not to amend the record, or both. The University must maintain any such statement in the student's file along with the contested part of the record for as long as the University maintains that record and the University must disclose the statement whenever it discloses the portion of the record to which the statement relates.

4. Consent for disclosure. The right to provide written consent before the University discloses personally identifiable information (PII), as defined below, from the student's education records, except to the extent that FERPA authorizes disclosure without consent as set forth in section III below.
5. Complaint. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the University to comply with the requirements of FERPA. The name and address of the office that administers FERPA is:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

## **II. Definition of Terms**

- A. "Educational records" of a student are those records, files, documents, and other materials that are maintained by the University and contain information directly related to the student Education records which include traditional paper records as well as material that is maintained in digital, electronic, photographic, video, audio or any other form.

Examples of student records include, but are not limited to, the following:

- Admissions records
- Grades
- Course schedules
- Billing, tuition and fees assessments
- Financial aid, scholarships, grants, work-study, loans
- Disciplinary records
- Accommodation Requests and documentation
- Residential Life paperwork
- Internship records
- Clinical placement records

“Education records” do not include:

- Personal notes maintained by faculty members or other staff that are not available to others.
- Records that are created or maintained by a physician, psychologist, or other recognized health or mental health professional or paraprofessional that are created, maintained, or used only in connection with the provision of treatment to the student and are not available to others except in connection with providing such treatment.
- Records, such as those that might be maintained by the University’s legal counsel, the confidentiality of which is protected by law.
- Records created and maintained by a campus law enforcement unit solely for law enforcement purposes
- Records containing financial information about his or her parents, such as information submitted in connection with an application for financial aid.
- Grades or peer-graded papers before they are collected and recorded by an instructor.
- Records that contain information about a person only after they are no longer students at the University.
- Records of a student who is deceased.

B. Personally Identifiable Information (PII): Under FERPA, PII includes but is not limited to:

- Student’s name
- Name of student’s parent or family member
- Student’s address or address of student’s parent or family member
- A personal identifier, such as the student’s Social Security number or student number
- A list of personal characteristics that would make the student’s identity easily traceable; or
- Other information that would make the student’s identity easily traceable.

C. Directory Information: The University may, at its discretion, release “directory information” with respect to a student for any purpose without the student’s consent. The University has designated the following categories of information as directory information with respect to each student: name, local and permanent address, electronic mail address, telephone listing; age; photograph; major field of study; participation in officially recognized activities and sports; weight and height of members in athletic teams;

enrollment status; dates of attendance at Mercy University; degrees, honors and awards received, and their dates; and most recent educational institution attended.

A student in attendance at the University who does not want to have directory information relating to himself released should complete an Authorization to Withhold Directory Information form and return it to the Registrar.

A student may not use the withholding of directory information to prevent the University from disclosing or requiring the student to disclose his or her name, identifier, or institutional e-mail address in a class in which the student is enrolled.

Students should consider very carefully the effect of a decision to withhold directory information. If that decision is made, any requests during that academic year for such information from non-University persons or organizations will be refused (subject to the exceptions stated in Section III (a) above or unless the student has subsequently removed the hold by notifying the Registrar in writing). If a student does not specifically request the withholding of directory information by filing the Authorization to Withhold Directory Information form, as indicated above, the University assumes that he or she approves of the disclosure of such information.

### **III. Disclosure of PII Without Consent**

FERPA permits the disclosure of PII from students' education records, without consent of the student, if the disclosure meets certain conditions found in § 99.31 of the FERPA regulations. Except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the student, § 99.32 of FERPA regulations requires the institution to record the disclosure. Eligible students have a right to inspect and review the record of disclosures.

The University may disclose PII from the education records without obtaining prior written consent of the student under the following circumstances:

1. To other school officials, including teachers, within the University whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that the conditions listed in § 99.31(a)(1)(i)(B)(1) - (a)(1)(i)(B)(3) are met. (§ 99.31(a)(1))
2. To officials of another school where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements of § 99.34. (§ 99.31(a)(2))

3. To authorized representatives of the U. S. Comptroller General, the U.S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as a State postsecondary authority that is responsible for supervising the University's State-supported education programs. Disclosures under this provision may be made, subject to the requirements of §99.35, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf. (§§ 99.31(a)(3) and 99.35)
4. In connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid. (§ 99.31(a)(4))
5. To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. (§ 99.31(a)(6))
6. To accrediting organizations to carry out their accrediting functions. (§ 99.31(a)(7))
7. To parents of an eligible student if the student is a dependent for IRS tax purposes. (§ 99.31(a)(8))
8. To comply with a judicial order or lawfully issued subpoena. (§ 99.31(a)(9)) (Notification would still be required to be made prior to releasing the information, except where there is a non-disclosure notice from law enforcement indicating that disclosure could jeopardize an investigation.)
9. To appropriate officials in connection with a health or safety emergency, subject to § 99.36. (§ 99.31(a)(10))
10. Information the school has designated as "directory information" under § 99.37. (§ 99.31(a)(11))
11. To a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense, subject to the requirements of § 99.39. The disclosure may only include the final results of the disciplinary proceeding with respect to that alleged crime or offense, regardless of the finding. (§ 99.31(a)(13))
12. To the general public, the final results of a disciplinary proceeding, subject to the requirements of § 99.39, if the school determines the student is an alleged perpetrator of a crime of violence or non-forcible sex offense and the student has committed a violation of

the school's rules or policies with respect to the allegation made against him or her. (§ 99.31(a)(14))

13. To parents of a student regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the school, governing the use or possession of alcohol or a controlled substance if the school determines the student committed a disciplinary violation and the student is under the age of 21. (§99.31(a)(15))

#### IV. **Maintenance of University Records**

FERPA does not impose an obligation on University officials to create or maintain particular education records, except that the University cannot discard an education record as to which a request for inspection is pending. However, the University is required to maintain a record, kept with the education records of each student, indicating all individuals, agencies or organizations that have requested or obtained access to a student's education records and indicating specifically the legitimate interest that each has in obtaining the information. This requirement does not extend to requests made with consent of the student, by University officials with legitimate educational interests, and to certain requests made in the context of ongoing terrorist investigations and prosecutions.