



Policy Name:	COVID-19 Privacy Statement		
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I. Introduction

The Coronavirus/COVID-19 pandemic has required Mercy College to adapt and change in numerous ways so as to continue to meet the needs of our students by continuing to provide a high quality, personalized and challenging education. Some of the ways in which the College has changed operations on a daily basis in light of COVID-19 include the following:

- Greatly expanded and now every-day use by students, faculty and staff of virtual platforms such as Zoom, Microsoft Teams, and Blackboard Collaborate;
- Mandating daily COVID-19 screenings before coming to campus, random surveillance testing of those who regularly come to campus, and contact tracing when a positive case is identified on-campus;
- Allowing increased use of teleworking for employees where practicable; and
- Providing more disability-related and other accommodations to employees and students than any time in the past, in light of the danger posed by the virus

With these and the many other changes implemented, Mercy believes it is important to reiterate that it takes personal privacy of all its Community Members very seriously. While we have a [Privacy Policy](#) which deals with the fair use of the College's webpage, this Statement is meant to inform the College community about *all other areas* where we ensure confidential and private information about employees and students in light of the adaptations made by the College in the face of COVID-19.

II. Privacy Questions Relating to Zoom and Other Virtual Platforms

Questions have arisen from faculty, students and staff regarding use of video and recording over Zoom and other virtual platforms. For guidance about best practice for using Zoom and other virtual platforms, Mercy College Faculty should refer to the *Guidelines and Best Practices for the Use of Virtual Platforms in the Classroom* and students should refer to the *Virtual Etiquette* in the Student Handbook.

A. Use of Video.

Faculty may require students to sign in with video while attending virtual classes, and staff supervisors may require employees to do the same. While Mercy does not have a specific "opt-out" option for using video-conferencing technology (e.g., Zoom, Blackboard Collaborate), students and employees who have privacy concerns for various reasons, including but not limited to child privacy concerns, domestic or interpersonal violence or other family concerns, or homelessness, should contact their professor or the Office of ACCESSibility (for students); or their supervisor or Office of Human Resources (for employees).

B. Recordings.

1. Notice. While there is no legal obligation under New York law to obtain your students' consent to record, it is required by other states. As such, faculty must inform students (and other faculty and staff where applicable) in advance of recording and obtain their written consent.
2. Opting out. Faculty should give students the ability to opt out of the recordings by turning off their cameras by muting their audio, not enabling video, and not typing into the Chat window. In these cases, students should still be considered in attendance and not penalized in any way.
3. Who is allowed to record? The faculty member, course staff and IT staff (upon request) are the only ones authorized to initiate a recording of a class. Further, faculty should make it clear to all students that they are not authorized to record a class, as per the Mercy Student Handbook.
4. Distribution of recordings. Faculty may only make recordings available to students in the class, and only through a password protected link on Blackboard. Faculty must make clear that students are not permitted to share the recording with anyone outside of the class pursuant to privacy laws, including the Family Education Rights and Privacy Act (FERPA).

Any privacy-related questions or concerns should be directed to the Department Chair (for students and faculty) and supervisor or manager (for staff). Any concerning incidents, such as unauthorized access and where threats or discriminatory remarks are made (such as Zoom-bombing) should be reported to the IT Help Desk as soon as practicable. And conduct that might be sexual harassment or other forms of discrimination should be reported to the Title IX Coordinator/Equity Compliance Specialist immediately.

III. Privacy Relating to Screening and Testing for COVID-19, and Contract Tracing

A. Screening

All daily screening results from Mavericks Safe app via *App Armour* that the College receives will be tracked separately from any student or personnel records, and will be kept confidential except as otherwise required to be provided by law or public authority, or due to an emergency that threatens an individual's life, health or personal security during the COVID-19 pandemic.

B. Diagnostic and Surveillance Testing

Diagnostic and surveillance testing records are shared with the testing agency as well as Mercy College's Health and Wellness staff and State and County health officials. All testing

records relating to a positive test are kept separate from any student or personnel records, and are otherwise handled in accordance with what is permissible under the Health Insurance Portability and Accountability Act (HIPAA), where applicable.

C. Contact Tracing

Employees and students who test positive, or who have been exposed to someone in the College Community who tests positive, are expected to cooperate with the state or local department of health contact tracing efforts and to assist the College with its own internal contact tracing. Any information shared (including cases in which an employee or student self-reports with the College) will be tracked separately from personnel records for employees and student records. The College will keep confidential the name of the infected employee or student to the greatest extent practicable.

Faculty and staff who learn of positive cases from students or employees (who report confirmed cases to them) are required to immediately inform the Director of Health and Wellness about these positive cases. Such employees who learn of positive cases and who are not involved in the College's official contract tracing program are not permitted to conduct their own investigation. Further, they are required to keep the information confidential to the greatest extent possible and unless required to disclose to information pursuant to a request by the Director of Health and Wellness.

IV. Privacy Relating to Reasonable Accommodations Paperwork

All records relating to requests and granting of reasonable accommodations relating to COVID-19 are kept in the Office of Human Resources (for employees) or the Office of ACCESSibility (for students). Such records are kept separate from personnel and student records and are shared only with those at the College outside of HR or ACCESSibility when consent is granted by the employee or student, and on a need-to-know basis only.

V. Privacy Relating to Telecommuting

As set forth in the [Telecommuting Guidelines](#), Employees are required to maintain confidentiality of employee and student records. In addition, Employees are instructed that they should provide a secure location for college-owned equipment and materials, and will not use, or allow others to use, such equipment for purposes other than College business; and that the College is entitled to reasonable access to its equipment and materials.

VI. FERPA and COVID-19

The Family Educational Rights and Privacy Act (FERPA) affords eligible students rights with respect to their education records. One of the main protections under FERPA relates to the right to provide written consent before the College discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure

without consent as set forth in section III of the College's [FERPA Policy](#). A number of questions have arisen in connection with COVID-19 and the protections afforded by FERPA. Some of those questions are addressed below:

- A. Question:** May student education records, such as health records, maintained by an educational agency or institution be disclosed, without consent, to public health departments if the educational agency or institution believes that the virus that causes COVID-19 poses a serious risk to the health or safety of an individual student in attendance at the educational agency or institution?

Answer: Yes. If an educational agency or institution, taking into account the totality of the circumstances, determines that an articulable and significant threat exists to the health or safety of a student in attendance at the agency or institution (or another individual at the agency or institution) as a result of the virus that causes COVID-19, it may disclose, without prior written consent, PII from student education records to appropriate officials at a public health department who need the information to protect the health or safety of the student (or another individual). Public health department officials may be considered "appropriate parties" by an educational agency or institution under FERPA's health or safety emergency exception, even in the absence of a formally declared health emergency. Typically, public health officials and trained medical personnel are among the types of appropriate parties to whom PII from education records, may be non-consensually disclosed under FERPA's health or safety emergency exception.

- B. Question:** How does the health or safety emergency exception to FERPA's consent requirement permit an educational agency or institution to disclose PII from the education records of affected students?

Answer: Although educational agencies and institutions can often address threats to the health or safety of students or other individuals in a manner that does not identify a particular student, **FERPA permits educational agencies and institutions to disclose, without prior written consent, PII from student education records to appropriate parties in connection with an emergency, if knowledge of that information is necessary to protect the health or safety of a student or other individuals. 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. §§ 99.31(a)(10) and 99.36.** This "health or safety emergency" exception to FERPA's general consent requirement is limited in time to the period of the emergency and generally does not allow for a blanket release of PII from student education records. Typically, law enforcement officials, public health officials, trained medical personnel, and parents (including parents of an eligible student) are the types of appropriate parties to whom PII from education records may be disclosed under this FERPA exception.

- C. Question:** If an educational agency or institution learns that student(s) in attendance at the school are out sick due to COVID-19, may it disclose information about the

student's illness under FERPA to other students and their parents in the school community without prior written parental or eligible student consent?

Answer. It depends, but generally yes, but only if that information is in a non-personally identifiable form. Specifically, the educational agency or institution must make a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information. See 34 C.F.R. § 99.31(b)(1). If an educational agency or institution discloses information about students in non-personally identifiable form, then consent by the parents or eligible students is not needed under FERPA. For example, if an educational agency or institution releases the fact that individuals are absent due to COVID-19 (but does not disclose their identities), this would generally not be considered personally identifiable to the absent students under FERPA as long as there are other individuals at the educational agency or institution who are absent for other reasons.

D. Question: Does FERPA prohibit teachers from taking PII from students' education records home with them?

Answer: No. As long as the teacher has a legitimate educational interest in the education records, as determined by their educational agency or institution. School officials, including teachers, who take education records home are prohibited from further disclosing the PII from the education records, except as otherwise permitted under FERPA; and, should use reasonable methods to protect the education records, and the PII in those records, from further disclosure. These protections can include access controls that are physical, technological, and administrative controls.

E. Question: Are there any FERPA concerns relating to class video recordings?

Answer: Assuming the video recording does not disclose PII from student education records during a virtual classroom lesson or appropriate written consent is obtained if PII from the education record, FERPA would not prohibit the teacher from making a recording of the lesson available to students enrolled in the class.