

## Handbook of Operating Procedures

### FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) POLICY

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#### A. Purpose

The University of Texas Rio Grande Valley (UTRGV) is committed to compliance with federal and state laws and regulations regarding student records. This purpose of this policy is to set forth policy and procedures related to student records that will promote such compliance.

#### B. Persons Affected

This policy applies to all UTRGV administrators, faculty, staff, students and University officials.

#### C. Definitions

1. Annual Notice - The notices that the University shall provide to each Student in attendance at the University at least annually of their rights pursuant to FERPA, the procedures for exercising their rights, information about the Directory Information Exception, and the process by which a Student may elect to opt out of the release of the Student's Directory Information under that exception. A link to the Annual Notice is attached as an Appendix A to this policy.
2. Consent - written or electronic consent, signed by the Student or otherwise verified by the Student if electronic, that is dated and specifies the specific records to be disclosed, the party to whom the records are to be disclosed, and the purpose of the disclosure.
3. De-identified Record - an Education Record that has been stripped of all identifiers and/or aggregated such that it is not possible to re-identify an individual who is the subject of the record. An Education Record that has been de-identified is no longer an Education Record and is not subject to this policy or FERPA.
4. Directory Information - information in a Student's Education Record that would not generally be considered harmful or an invasion of privacy if disclosed. The following information about a Student has been designated by University as Directory Information:
  - name;
  - local and permanent postal addresses;
  - email address;
  - telephone number;
  - place of birth;
  - field of study; dates of attendance;
  - enrollment status;
  - student classification (example: freshman, first year law school student)
  - degrees awarded;
  - certificates and awards (including scholarships) received;

- photographs;
  - participation in officially recognized activities and sports;
  - weight and height of members of athletic teams; and
  - most recent previous educational agency or institution attended.
5. Education Records - records directly related to a Student that are maintained by or on behalf of the University. Education records do not include:
- Records of instructional, administrative, and educational personnel that are: in the sole possession of the maker (i.e. file notes of conversations); used only as a personal memory aid; not intended to be accessible or revealed to any individual except, in the case of an instructor, a temporary substitute;
  - Law enforcement records of the University campus police;
  - Medical records and mental health records, including counseling records created, maintained, and used only in connection with provision of medical treatment or mental health treatment or counseling to the student, that are not disclosed to anyone other than the treatment facility.
  - Employment records unrelated to the Student's status as a Student; or
  - Alumni records.
6. Personally Identifiable Information - Information obtained from or contained in an Education Record that can be used to identify a Student to whom the record relates or another Student. It specifically includes information determined by the University to be:
- Linked or linkable to a specific Student such that it 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
  - Requested by a person who the University reasonably believes knows the identity of the Student to whom the Education Record relates.
- Unless the context of this policy indicates otherwise, a reference to an Education Record includes Personally Identifiable Information contained in or obtained from an Education Record.
7. Student - an individual, regardless of age, who is or who has been in attendance at University. It does not include persons who have been admitted but did not attend University. For the purposes of this policy "Attendance" includes attendance in person, or by correspondence or on-line or distance learning and the period during which a person is working in a position that requires student status, such as a student under a work-study program position.
8. University Official with a Legitimate Educational Interest - any person employed by the University in an administrative, supervisory, academic, or support staff position, including law enforcement unit and health staff; a person or company with whom the University has an affiliation or contract (such as a UT System attorney or auditor, or a clinical facility where a student is participating in an internship); the University of Texas System Board of Regents; a person employed by System Administration; or a person assisting another University Official

in performing his or her tasks (such as a volunteer or committee member), if that person or contractor requires access to an Education Record in order to fulfill his or her official responsibilities on behalf of the University.

#### **D. Policy**

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g and 34 CFR Part 99 are a federal law and regulations that provide students with the following rights with respect to their education records:

- to inspect and review the student's education records;
- to consent to disclosure of the student's education records to third parties, except to the extent that FERPA authorizes disclosure without consent;
- to request amendment of the student's education records to ensure that they are not inaccurate or misleading, or otherwise in violation of the student's privacy rights under FERPA;
- to be notified of the student's privacy rights under FERPA; and
- to file a complaint with the U.S. Department of Education concerning alleged failures by the University to comply with the requirements of FERPA.

It is the policy of The University of Texas Rio Grande Valley ("University") to protect the privacy and records access rights that apply to records maintained by or for the University about its current and former students of its institutions by complying with FERPA at all times.

#### **E. Procedure**

1. Notice of Rights under FERPA. The University shall provide Annual Notice to each Student of his or her rights under FERPA and this policy by publishing the information that is attached as Appendix A, *Notice of Student Rights under FERPA and Notice Concerning Directory Information*, in all general information University's catalogues for undergraduate and graduate Students published by the University.
2. Consent Requirements for Access to Education Records by Third Parties.
  - a. Generally Required for Disclosures of Education Records. The University will not disclose Education Records or Personally Identifiable Information from an Education Record without prior Consent of the Student to a third party, except as authorized by FERPA and this policy.
  - b. Exceptions to the Consent Requirement. The University, pursuant to FERPA, will release Education Records without the Student's Consent as follows:
    - i. Directory Information. Directory information may appear in public documents and may otherwise be disclosed without student consent unless a student submits a written request to the registrar during the first twelve (12) days of class of a fall or spring semester, or the first four (4) class days of a summer semester to withhold such

information from disclosure, as applicable or as otherwise designated by the University in the Annual Notice. The Annual Notice required by Section E(1) of this policy and attached as Appendix A, *Notice of Student Rights under FERPA and Notice Concerning Directory Information*, shall provide specific information for Students wishing to exercise their right to have Directory Information about them withheld from release by University. Upon graduation or termination of a Student's enrollment for any reason, the release of the Student's Directory Information will be governed by the Students Directory Information status in place during the Student's last period of enrollment, unless the former Student changes that status.

- ii. University Officials with a Legitimate Educational Interests in an Education Record are allowed access to that Education Record. Inter-institutional disclosures may be made between institutions that administer or participate in joint programs or activities, in accordance with legitimate educational interest criteria. For example, an Education Record about a Student concurrently enrolled in the University and another institution, or who receives services from University (such as the provision of a distance education class) and from another institution may be disclosed by University to the other institution under this subsection. This includes services provided by University an institutions participating in distance education classes.
- iii. Other Institutions. The University may release a student's education records to officials of other educational institutions in which that Student seeks or intends to enroll or is enrolled.
- iv. Audit or Evaluation of Federal or State education programs. The University of Texas System Board of Regents, authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the United States Secretary of Education and state and local educational authorities who are authorized by law to audit and evaluate a Federal or State supported education program, or to enforce Federal law which relates to such education programs, or their authorized representatives may access an Education Record as required for the audit, evaluation or enforcement purpose.
- v. Financial Aid. The University may release an Education Record to persons or organizations in connection with that student's application for, or receipt of, financial aid to the extent necessary for such purposes as determining eligibility, amount, conditions, and enforcement of terms or conditions of such financial aid.
- vi. State and Local Officials Pursuant to Statutes Concerning Juvenile Justice. The University may release education records to state and local officials that are authorized by statute to access Student Education Records to efficiently serve the student.
- vii. Organizations Conducting Studies. Organizations conducting studies for, or on behalf of the University for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, may access Education Records for such studies provided that the study is conducted in a manner which will not permit the personal identification of Students and/or their parents by individuals other than representatives of the organization; and the information will

be destroyed when no longer needed for the purposes for which the study was conducted. The term "organizations" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

- viii. Accrediting Organizations. Accrediting organizations may access an Education Record required to carry out their accrediting functions.
- ix. Designated Parents of a Tax Dependent. A parent of a Student who is a dependent for federal tax purposes, as defined by Section 152 of the Internal Revenue Code of 1954, may access the Student's Education Records if the Student provides a written designation that permits such access. If a tax dependent Student's parents are divorced, both parents may have access to the Student's Education Records, so long as at least one parent is designated by the student.
- x. Judicial Order or Subpoena. Information concerning a Student shall be released in response to a judicial order or lawfully issued subpoena. However, the University must make reasonable efforts to notify the Student of an order or subpoena before complying with it, except that the University shall not notify a student of a subpoena if it is from a federal grand jury or is for law enforcement purposes, and the subpoena or order provides that the University shall not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena. In addition, education records may be disclosed to the U. S. Attorney General or his or her designee in response to an ex parte order concerning an authorized investigation or prosecution of domestic or international terrorism, without prior notice to the student.
- xi. Health and Safety. The University may disclose student information deemed by the University as appropriate to persons in connection with an emergency in order to protect the health and safety of the Student or other individuals.
- xii. Disciplinary Hearing Results.
  - I. Disclosure to Victims: The University may disclose to an alleged victim of any crime of violence or a non-forcible sex offense (as those terms are defined in 34 C.F.R. 99.39), the final results of any disciplinary proceeding conducted by the University against the alleged perpetrator of such crime or offense with respect to such crime or offense, regardless of whether the alleged perpetrator was found responsible for violating the University's rules or policies with respect to such crime or offense.
  - II. Disclosure to Third Parties: The University may disclose the final results of any disciplinary proceeding against a student who is an alleged perpetrator of any crime of violence or non-forcible sex offense (as those terms are defined in 34 C.F.R. 99.39), if the student is found responsible for violating the University's rules or policies with respect to such crime or offense. Such disclosure shall include only the name of the student, the violation committed, and any sanction imposed by the University on that student. Such disclosure may include the name of any other Student, such as a victim or witness, only with the written consent of that other Student.

- III. Alcohol and Drug Violations. The University may disclose to a parent or legal guardian of a Student, information regarding any violation of any Federal, State, or local law, or of any rule or policy of the University, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the Student's Education Records, if the Student is under the age of 21 at the time of disclosure to the parent, and the University determines that the Student is responsible for a disciplinary violation with respect to such use or possession.
- xiii. Defense of Litigation or Complaints against the University. If a Student initiates legal action against the University, the University may disclose to the court or agency with jurisdiction over the complaint, without a court order or subpoena, the Student's Education Records that are relevant for the University to defend itself.
- xiv. Status as a Registered Sex Offender. The University may disclose information concerning a Student's status as a sex offender or other individual required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14071, if the information was provided to the University under 42 U.S.C. 14071 and applicable Federal guidelines.
- c. Consent of the Student. The University will release Education Records to, or allow access to those records by, a third party if the Student provides a valid Consent that is capable of verification that it was provided by the Student and names the third party as the person to whom the Education Records may be disclosed.
3. Disclosure to the Student.
- a. Student has the right, upon request, to review all materials that are in the Student's Education Records, except:
- i. Financial information submitted by the Student's parents;
  - ii. Confidential letters and recommendations associated with admissions, employment or job placement, or honors, to which the student has waived rights of inspection and review or which were made part of the Student's Education Records prior to January 1, 1975, provided those letters were collected under established policies of confidentiality and were used only for the purposes for which they were collected;
  - iii. Education records containing information about more than one Student, in which case the University will permit access only to that part of the record that pertains to the inquiring student; and
  - iv. Records that are subject to an attorney-client privilege which belongs to the University.
- b. Process for Students Requesting Access to Their Education Records. The Chief Legal Officer is designated as the Records Management Officer of University's Education Records. Copies of official transcripts are available through the Registrar. Except where pre-empted by a specific provision of FERPA or a request for an official copy of Student's transcript is requested, a Student's right to access and/or request a copy of his or her

Educational Records is co-extensive with the Student's right to access records under the Texas Public Information Act (TPIA).

- i. Requests by a Student for Education Records that are available to a Student under an applicable provision of the Texas Public Information Act (TPIA) shall be processed by the University in accordance with policies for access to records under the TPIA.
  - ii. Records pre-empted from availability under the TPIA by FERPA will be made available within forty-five days of the request.
  - iii. Requests for official copies of transcripts or other academic records will not be released for students who have a delinquent financial obligation or financial "hold" at the University.
4. Record of Disclosures. The University will maintain with the Student's Education Records a record for each disclosure request and each disclosure, except disclosures:
- a. to the Student;
  - b. pursuant to the written consent of the Student;
  - c. pursuant to the exception for University Officials with a Legitimate Educational Interests;
  - d. pursuant to a law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed or the order is concerning an authorized investigation or prosecution of domestic or international terrorism; or
  - e. of Directory Information.
5. Requests to Amend Records. A Student who believes that an Education Record maintained about the Student is inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA, may request amendment of the record. However, substantive judgment of a faculty member about a student's work, expressed in grades and/or evaluations, is not within the purview of this right.
- a. Informal requests. A Student may request the opportunity to informally discuss amendment of the record with the University office concerned with the particular record. If agreement is reached with respect to the student's request, the appropriate records will be amended. If the record is not amended pursuant to the Student's request, the University will inform the Student of its decision and of the Student's right to request a formal hearing.
  - b. Requests for a hearing. A request must be made in writing to the Records Management Officer, who within a reasonable period of time after receiving such request, will inform the Student of the date, place, and time of the hearing. The hearing officer that will adjudicate such challenges will be appointed by the President or President's designee.
  - c. A Student may present evidence at the hearing 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 attorneys, at the Student's expense.

- d. The decision of the hearing officer will be final, will be based solely on the evidence presented at the hearing, and will consist of a written statement summarizing the evidence and stating the reasons for the decision, and will be delivered to all parties concerned.
  - e. If the decision is in favor of the Student, the Education Records will be corrected or amended in accordance with the decision of the hearing officer.
  - f. If the decision is unsatisfactory to the Student, the Student may place with the Education Record a statement commenting on the information in the record or a statement setting forth any reasons for disagreeing with the decisions of the hearing officer, or both. The statement will be maintained as part of the Student's Education Records, and released whenever the record(s) in question is disclosed.
  - g. Students who believe that the adjudications of their challenges were unfair or not in keeping with the provisions of FERPA may request in writing, assistance from the President or President's designee.
6. Complaints. Complaints regarding alleged violations of the rights accorded students by the Federal Family Educational Rights and Privacy Act may be filed with the Family Policy and Regulations Office, US Department of Education, 400 Maryland Ave. SW, Washington, D.C. 20202.

**F. Appendices**

[Appendix A- Notice of Student Rights under FERPA and Notice Concerning Directory Information](#)

**G. Relevant Federal and/or State Statute(s), Board of Regents' Rule(s), UTS Policy(ies), and/or Coordinating Board Rule(s)**

Family Educational Rights and Privacy Act, 20 U.S.C. 1232g

Family Educational Rights and Privacy Act, 34 C.F.R. Part 99

**H. Dates Reviewed or Amended**

May 13, 2022 - Reviewed and amended (non-substantive: updated responsible executive).