

# FERPA

## Family Educational Rights and Privacy Act and Related Procedures

### I. Scope and Application

A. Johnson & Wales University (JWU) has designed the policy and procedures to comply with the Family Educational Rights and Privacy Act (FERPA), including as it applies to (1) requests to review and amend student education records and for hearings related to such requests and (2) limitations on disclosures of education records protected under FERPA. The policy and procedures apply to all university employees and current and former university students.

### II. Policy

A. FERPA gives students the right to review their education record and the right to request amendment of an education record that contains any recording errors (i.e., clerical, ministerial, or scrivener's errors) or violates a student's privacy rights. If the university initially declines the student's request for an amendment, the student may request a hearing and, depending on the circumstances, the university may grant such a request. The policy and procedures describe the circumstances under which students may exercise such rights.

B. FERPA also gives students the right to limit disclosures of education records protected under FERPA subject to express exceptions under the law. The university's policy is to comply with the legal limitations on such disclosures.

### III. Procedures Related to Requests for Record Review

#### A. Requesting Education Record Review

1. A student wishing to review any part of the student's education record must make a written request to review the record to the university registrar or other appropriate university official who holds the record. If the record is not maintained by the registrar or other university official to whom the student submits the request, the registrar or other university official shall advise the student of the correct official to whom the request should be made. The registrar or other appropriate university official will respond to such requests within 14 days to schedule a date for the review to occur. The review date shall occur within 45 days of the request.

#### B. Requesting Education Record Amendment

1. After a student has reviewed the student's education record, the student may request to amend the record by submitting a written request to the university registrar or other appropriate university official who holds the record. If the record is not maintained by the registrar or other university official to whom the student submits the request, the registrar or other university official shall advise the student of the correct official to whom the request should be made. The university will only consider requests to amend where the information is inaccurately or misleadingly recorded or if the record violates a student's privacy rights. The university will not consider pursuant to this policy requests for substantive amendments such as changes to grades (when the alleged issue is not a recording error), the contents of evaluations, opinions, substantive decisions, or results of disciplinary proceedings.

2. To be considered, a request must:

- a) Clearly identify the part of the record to which the student is requesting an amendment; and
- b) Explain why the record is inaccurate or misleading or violates the student's privacy rights.

3. The university will not consider any request that does not satisfy these requirements.

4. Upon receipt of a proper request for amendment, the university (the registrar or the appropriate university official who holds the record, with appropriate consultation of other university officials as necessary) will make a prompt determination within a reasonable time, but not more than 30 days from the date of the request, as to whether the university will make the requested amendment. The university (the registrar or the appropriate

university official who holds the record) will notify the student of its decision; if the university denies the request, the university shall notify the student of the right to request a hearing, unless the request is for a substantive amendment not cognizable under this policy, in which case the university shall not grant a hearing.

#### C. Requesting a Hearing

1. If the university denies a student's request to amend, and the student wishes to request a hearing, the student must do so in writing and must direct the request to the university registrar.
2. The registrar will notify the student within a reasonable time after the request is received, but not more than 30 days from the date of the request, as to whether the university will grant the request for a hearing and, if so, the date, time and place of the hearing. In most circumstances, the hearing date will be within 45 days of such notice. The hearing may be in-person or remote, in the university's discretion and depending on the circumstances.

#### D. The Hearing and the Outcome

##### 1. Pre-hearing Procedures

- a) The student must provide the registrar with the name of any advisor the student wishes to accompany the student at the hearing no later than 10 days prior to the hearing.
- b) The student must provide the registrar with any documents the student wishes the hearing officer to consider no later than 10 days prior to the hearing and identify by name and title any witness the student wishes to present, along with a brief description of the witness testimony. Untimely requests may be denied.

##### 2. Conduct of the Hearing

- a) As a general matter, the university will allow no more than 1.5 hours for the hearing. In the sole discretion of the hearing officer, the hearing officer may shorten or lengthen that time, but grants of additional time will be rare.
- b) All participants must abide by the instructions of the hearing officer. Failure to do so may result in termination of the hearing or expulsion of the participant failing to follow the hearing officer's instructions.

##### 3. Students have the following rights at hearings:

- a) To present documentary evidence concerning a recording error or violation of the privacy rights of the student in the education record.
  - (1) Evidence about substantive decisions by university employees, including but not limited to grading or evaluation of academic work or outcomes of disciplinary proceedings, will not be considered.
  - (2) Students are solely responsible for presenting such evidence (and may only present such evidence if they previously provided it to the hearing officer as outlined above).
- b) To present witness testimony concerning a recording error or violation of the privacy rights of the student in the education record.
  - (1) Witness testimony about substantive decisions by university employees, including but not limited to grading or evaluation of academic work or outcomes of disciplinary proceedings, will not be considered.
  - (2) Students are solely responsible for arranging for attendance of any witness they wish to present (and may only present such testimony if they previously provided information about the witness at issue to the hearing officer as outlined above).
  - (3) Only the student (not any advisor acting on the student's behalf) or the hearing officer may examine witnesses.

(4) Witnesses who are not parties may only be present while testifying.

- c) To have a hearing officer who does not have a direct interest in the outcome of the hearing.
- d) To have one advisor, including counsel, present; provided, however, that no such advisor may participate in any manner in the proceedings.
- e) To receive, within a reasonable period of time, but not more than 30 days after the hearing, a written decision on the request for amendment.
- f) To submit a statement commenting on the disputed portion of the record, which the university will provide to any person who later views that portion of the record, if the amendment is denied.

4. The university has the following rights and responsibilities in connection with hearings:

- a) To select a hearing officer who may be any university official without a direct interest in the outcome of the hearing. A hearing officer may be the university registrar, a dean, or such other official as the university deems appropriate.
- b) To deny a request for a hearing when the proposed amendment to the education record includes anything more than correcting recording errors or a violation of the privacy rights of the student.
- c) To schedule a hearing within a reasonable time, not more than 30 days after receiving the hearing request.
- d) To provide evidence or testimony to support the determination not to amend the student's education record.

5. The role of the hearing officer is as follows:

- a) To control the hearing, without reference to formal rules of evidence or procedure.
- b) To allow the student the opportunity to present non-duplicative, relevant evidence or testimony in accordance with the procedures outlined herein. The hearing officer has the right to determine whether particular evidence presented is non-duplicative and relevant and to refuse to consider evidence the hearing officer deems duplicative or irrelevant.
- c) To consult other university personnel, as the hearing officer deems appropriate (e.g., for legal advice, for relevant factual information, etc.).
- d) To provide the student with a timely written decision, including a summary of the evidence and reason for the decision.

6. Hearing Outcome

- a) If the hearing officer finds that the record is inaccurate, misleading, or in violation of the privacy rights of the student, the university will amend the record accordingly.
- b) If the hearing officer finds that the information in the education record is not inaccurate, misleading, or in violation of the privacy rights of the student, the university will not amend the record.
- c) In either case, the university will notify the student of the outcome and will notify the student of the right to place a statement in the record commenting on the contested portion of the record or stating why he or she disagrees with the decision not to amend.
- d) The hearing officer's decision shall be final and non-appealable.

#### IV. Procedures Related to Education Record Disclosure

A. The university's policy is not to disclose personally identifiable information (PII) from a student's education record without a student's

prior written consent except as permitted under the applicable FERPA exceptions. Such exceptions include, among others, the following:

1. The university may disclose PII from education records without consent to university officials with legitimate educational interests. A university official is a person employed by the university in an administrative, supervisory, academic, research or support staff position (including law enforcement personnel and health staff); a person serving on the board of trustees; or a student serving on an official committee, such as a disciplinary or grievance committee. A university official also may include a volunteer or contractor outside of the university who performs an institutional service or function for which the university would otherwise use its own employees and who is under the direct control of the university with respect to the use and maintenance of personally identifiable information from education records, such as an attorney, auditor or collection agent, or a student volunteering to assist another university official in performing his or her tasks. A university official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibilities for the university.
2. Upon request or if the disclosure is initiated by the student, the university may disclose PII from education records without consent to officials of another school in which a student seeks or intends to enroll.
3. The university may disclose PII from education records without consent: to comply with a judicial order or a lawfully issued subpoena; to the victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense concerning the final results of a disciplinary hearing with respect to the alleged crime; and to any third party the final results of a disciplinary proceeding related to a crime of violence or non-forcible sex offense if the student who is the alleged perpetrator is found to have violated the school's rules or policies.
4. The university may disclose PII from education records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. The university complies with the changes made to FERPA as a result of the USA Patriot Act.
5. The university may disclose directory information about a student, unless the student has opted out of such a disclosure. The university lists which information is considered directory information in the Student Handbook.

B. The university retains discretion to decline to disclose PII from education records to a third party even with a student's prior written consent or even if permitted by law, unless disclosure is required by law.

#### V. Complaints

A. Students have 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: Student Privacy Policy Office, U.S. Department of Education, 400 Maryland Avenue, SW Washington, DC 20202. Phone: 800-USA-LEARN (800-872-5327)