



MEMORANDUM

TO: NCCU Campus Community

FROM: Dr. Jerome Goodwin
University Registrar

DATE: November 23, 2020

SUBJECT: **Family Educational Rights and Privacy Act (FERPA) Annual Notification of Rights**

The Family Educational Rights and Privacy Act (FERPA) affords eligible students certain rights with respect to their education records. In accordance with FERPA, an "eligible student" is defined as a student who is 18 years of age or older or who attends a postsecondary institution at any age. As it relates to eligible students, their rights under FERPA include:

- 1. The right to review and inspect his/her/their own education records.** An eligible student has the right to inspect and review their own education records within 45 days after the day North Carolina Central University ("University") receives a request for access. A student should submit to the registrar, dean, head of the academic department, or other appropriate university custodian, a written request that identifies the record(s) the student wishes to inspect. The school official will then 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. The right to request an amendment of the education record.** An eligible student has the right to request amendment of the student's education records, if the student believes that information contained in their education record is inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.
 - a. A student who wishes to ask the institution to amend a record should write the school official or records custodian responsible for the record, clearly identify the part of the record the student wants changed, and specify why it should be changed.
 - b. 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. Additional information regarding the hearing procedures will be provided to the student when notified of their right to a hearing.
- 3. The right to provide written consent before the University discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent.**

FERPA permits the disclosure of PII from students' education records, without the student's consent, if the disclosure meets certain conditions found in § 99.31 of the FERPA regulations. The University may disclose education records without a student's prior written consent under the FERPA exception for disclosure to school officials with legitimate educational interests (§ 99.31(a)(1) (A)). According to FERPA, a school official is defined as someone who performs an authorized task or an activity that he/she/they undertake in the name of the university for which access to an education record is

necessary or appropriate to the operation of the university, or to the proper performance of the educational mission of the university. A school official typically has a legitimate educational interest if the official needs to review an education record in order to fulfill his/her/their professional responsibilities for NCCU.

More specifically, North Carolina Central University defines a school official as follows:

- a. an employee, agent or officer of the university or the University of North Carolina's Office of the President or System Office, in an administrative, supervisory, academic or research, or support staff position and acting in his/her/their official capacity, including but not limited to faculty members, staff members and administrators; a student who assists another school official in performing his/her/their tasks; law enforcement unit personnel; health or medical staff; and volunteers, contractors or consultants who perform a service for NCCU while under the direct control of NCCU;
- b. a person serving on university committees, boards, and/or councils, including a student serving on a disciplinary or grievance committee;
- c. another educational institution that requests records for a particular student who seeks or intends to enroll in the educational institution requesting such records; and
- d. a person or company with whom the university has contracted (e.g. internship and clinical facilities, attorney, auditor, or collection agent), but limited to only the specific student information needed to fulfill the contract.

In addition, the University may disclose a student's "Directory Information" without his or her consent, and without violating FERPA if the student has not restricted their personal information (§ 99.31(a)(11)).

North Carolina Central University considers the following to be "Directory Information":

- a. name
- b. local and permanent address
- c. email address
- d. telephone number
- e. date and place of birth
- f. class
- g. major field of study
- h. dates of attendance
- i. enrollment status
- j. degrees and awards (including scholarships) received
- k. participation in officially recognized activities and sports
- l. weight and height of members of athletic teams
- m. the most recent previous educational agency or institution attended

Directory information **does not** include the following:

- a. a student's Social Security Number
- b. a student's identification/Banner ID number

The University also may disclose PII from the student's education records without obtaining prior written consent of the student in the following circumstances:

- a. To officials of another institution 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)).
- b. 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).
- c. 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)).
- d. 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)).
- e. To accrediting organizations to carry out their accrediting functions (§ 99.31(a)(7)).
- f. To parents of an eligible student if the student is a dependent for IRS tax purposes (§ 99.31(a)(8)).
- g. To comply with a judicial order or lawfully issued subpoena. (§ 99.31(a)(9)).
- h. To appropriate officials in connection with a health or safety emergency, subject to § 99.36 (§ 99.31(a)(10)).
- i. 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)).
- j. To the general public, the final results of a disciplinary proceeding, subject to the requirements of § 99.39, if the institution 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)).
- k. 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 institution determines the student committed a disciplinary violation and the student is under the age of 21 (§99.31(a)(15)).

Except for disclosures made 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.

As a result of COVID-19 and moving classes and campus activities to the virtual space, questions have arisen about privacy protection under FERPA, and specifically as it relates to whether special consent is required for student participation in virtual classes, recordings of virtual classes, or the projection of a student's image, likeness, or identity as part of the virtual delivery of courses and student activities. A student's participation in a class is part of their education record under FERPA. While FERPA is a privacy statute, it explicitly provides only certain, limited protections.

- a. Virtual Classes. In the same way that there would not be an expectation of student privacy when participating in a course conducted on-campus and/or in-person prior to COVID-19, there now exists no expectation of privacy that would implicate FERPA when a student participates in the same course even though it is now conducted virtually. Access to virtual courses is limited to those who have enrolled in the particular course. Since no expectation of privacy arises simply due to a course moving to a virtual medium, no additional or special consent under FERPA is required.
- b. Recorded Classes. It is worth emphasizing that a class that has moved from an in-person format to an online or virtual format does not automatically become a "recording" because the mode of class delivery is now automated. Therefore, there is no requirement that classes removed from the in-person format to the virtual format be recorded by NCCU instructors. However, if such classes are recorded, there is no requirement that student consent be obtained by the University for such recordings when the recordings are used for a legitimate educational interest, such as documenting a lecture or providing a lecture to students enrolled in the class. As a note, the only potential requirement for recording classes is to provide assistance to students requiring ADA accommodations.

Where the instructor is the only person whose image is shown or voice is heard in a recorded class, there is no expectation of student privacy; therefore, there is no need to obtain student consent for recordings under FERPA. Further, and even in cases where a student's voice is heard or likeness is shared (such that others may be able to identify the student), FERPA is not usually implicated for classes recorded, if the recorded information will only be shared by the University with other course enrollees or appropriately credentialed members of the campus community.

- c. When Consent Is Needed. When courses are recorded and student images and/or voices provide an opportunity for the student's identity, ideas, or work product to be disclosed, such that the identity of the student would be known AND the instructor intends to re-release the recording for purposes other than (i) legitimate educational interests, as defined in FERPA, (ii) exceptions outlined in Subpart D of the FERPA regulation, or (iii) instruction of the instant course (e.g., to monetize, broadcast to a group of students separate from those participating in a particular class or section of a class, or share on a personal or professional website of the instructor's own), explicit written consent from the student is required. Students who do not agree to being recorded must clearly express such by opting out and withholding permission for the re-release of the class recording (their education record) by noting such on NCCU's Request to Prevent Disclosure of Directory Information ("Directory Hold") Form found at <https://www.nccu.edu/policies/retrieve/46>. Given this requirement, it should be noted that students who do not submit a form withholding permission are granting permission for the re-release of their education record.

4. **The right to file a complaint.** An eligible student has 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

Please see the [NCCU Family Educational Rights and Privacy Act \(FERPA\)](#) regulation (REG 10.04.1 on the Policies, Regulations and Rules website) for more information regarding the privacy of student education records.

JG/jk