

SECTION VI: HIGHER EDUCATION AND PUBLIC ACTS RESPONSES

SECTION A: THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974 (FERPA) (Updated January 9, 2009)

I. PURPOSE

The purpose of these policies and procedures is to assure, at the University of Miami, access to any and all records kept by the University of Miami which are defined as "education records," as indicated in Section III. D below, and to assure the privacy of students by restricting the disclosure of information from education records to those persons authorized under the act.

II. NOTIFICATION TO STUDENTS

Students will be notified annually of their rights to access to all education records kept by the University of Miami, by publication of a summary of these Policies and Procedures. Copies of this Policy will be made available to any student upon request at the Office of the Registrar, UC 121 University Center. The policy can also be printed from our website at www.miami.edu/hea.

III. DEFINITIONS

A. "Attendance" at the University of Miami includes, but is not limited to:

1. Attendance in person and by correspondence including videoconference, satellite, internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and
2. The period during which a person is working under the College Work Study Program.

B. "Directory information" includes the following student information: the student's name, date of birth, address, telephone number, email address, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, photograph, date of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

C. "Disclosure" is defined as permitting access to or the release, transfer, or other communication of education records including class schedule and roster of the student or the personally identifiable information contained therein, orally, in writing, by electronic means, or by any other means to any party.

D. "Education Records" means those records, which are:

1. Directly related to the student, and

2. Maintained by the University of Miami or by a party acting for the University of Miami.

The term "education records" does not include:

- a. Records of instructional, supervisory, and administrative personnel and certain educational personnel which are in the sole possession of the maker thereof and are not accessible or revealed to any other individual except a substitute (with "substitute" defined as an individual who performs on a temporary basis the duties of the individual who made the record); example, instructor's grade book;
- b. Records of the University of Miami Department of Public Safety which are created and maintained by it solely for law enforcement purposes; PROVIDED that records of the University of Miami Department of Public Safety created and maintained by it for non-UM law enforcement purposes such as a disciplinary action or proceeding of the University are deemed education records;
- c. Records relating to an individual who is employed by the University of Miami which are made and maintained in the normal course of business, which relate exclusively to the individual in his or her capacity as an employee, and which are not available for use for any other purpose. This exclusion does not apply to an individual in attendance at the University of Miami who is employed as a result of his or her status as a student;
- d. Records relating to a student which are: created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional person acting in a professional or paraprofessional capacity; are created, maintained, or used solely in connection with the provision of treatment to the student, and not disclosed to anyone other than individuals providing such treatment, PROVIDED that the record can be personally reviewed by a physician or other appropriate professional person of the student's choice." Treatment" in this context does not include remedial education activities which are a part of the program of instruction at the University of Miami;
- e. Records that are created or received by an institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.

E. "Parent" includes a parent, guardian, or an individual acting as student's parent in the absence of a parent or guardian. The University of Miami may presume the parent has the authority to exercise the rights inherent in this act unless the University has been provided with evidence that there is a court order or a legally binding instrument which provides to the contrary.

F. "Personally identifiable" means that data or information which includes:

1. The name of the student's parent, including mother's maiden name or other name or other family member.
2. The student's place of birth or current address,
3. The student's telephone number,
4. A personal identifier, such as a student's Social Security Number, student number or biometric record,
5. A list of personal characteristics which would make the student's identity easily traceable, or
6. Any information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
7. Information sought by an individual who the institution reasonably believes knows the identity of the student to whom the education record relates.

G. "Record" means any information or data recorded in any medium, e.g. handwriting, print, tapes, film, microfilm, microfiche.

H. "Student" includes any individual with respect to whom the University of Miami maintains education records. The term does not include an individual who has not been in attendance at the University of Miami. An individual who has applied for admission to, but has never been in attendance at a particular component unit of the University of Miami, even if that individual is or has been in attendance at another component unit of the University of Miami, is not considered to be a student with respect to the component to which an admissions application has been made e.g., an undergraduate student at the University of Miami who has made application for Graduate School, Law School, or the School of Medicine, but who has been denied admission to any of those component units, does not have access to his or her admissions documents submitted to that component unit which has denied his or her admission.

IV. STUDENT RIGHTS

A. Access. Students in attendance at the University of Miami, and parents of such a student with prior written consent of the student, or without prior written consent if the student is a "dependent" (as defined under Section 152 of the Internal Revenue Code, meaning that the student is listed and qualified as a dependent on the parent's most recent tax return filed with the Internal Revenue Service), have access to, including the right of obtaining copies by paying copy fees as indicated in Section IX, any and all "educational records" maintained by the University of Miami, by following the procedures indicated under Section VII. Access may also be granted in compliance with a subpoena or in connection with some health or safety issue.

B. Request to Amend Education Records. A dependent student's parent or a student may request that the University of Miami amend education records if either believes that information contained therein is inaccurate, misleading, or in violation of the privacy or other rights of the student, by following procedures under Section VIII. Following such a request for amendment, the University of Miami will determine whether or not records will be amended within a reasonable period of time. Should the University decide to refuse to amend the record in accordance with the request, it shall inform the dependent student's parent or the student of such refusal and inform the parent or student of the right to a hearing.

C. Right to a Hearing. A dependent student's parent or a student may petition for a hearing to challenge the contents of an "education record" listed in Appendix A under the procedures established in Section VIII.

V. UNIVERSITY OF MIAMI DISCLOSURE POLICIES

A. The University will not disclose personally identifiable information from the education records of a student without the prior written consent of the student except:

1. Personally identifiable information which has been designated as directory information:

a. The student's name, address, telephone number, birth date, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student.

b. The University of Miami will give public notice as to the information designated as directory information. The student has the right to prohibit the designation of any or all of the categories of personally identifiable information with respect to that student, provided that said student notifies the Office of the Registrar in writing that such personally identifiable information is not to be designated as directory information with respect to that student. Notification must be made to the Office of the Registrar within three days after the student registers each semester.

c. The University of Miami will disclose directory information from the education records of an individual who is no longer in attendance at the University of Miami without following the procedures under above Section B.

2. To other school officials at the University, including teachers, who have been determined to have legitimate educational interests in seeking access to those records.

a. "School officials" are defined as officers, employees and agents of the University of Miami." Agents" may include University Counsel and certain University students assigned to exercise a specific University function.

b. A contractor, consultant, volunteer, or other party to whom the University of Miami has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party

- i) Performs an institutional service or function for which the University of Miami would otherwise use employees;
- ii) Is under the direct control of the University of Miami with respect to the use and maintenance of education records; and
- iii) Is subject to the requirements of §99.33(a) governing the use and redisclosure of personally identifiable information from education records.

c. "Legitimate educational interest" is defined as those interests related to the academic, personal and social development of the student while enrolled at the University of Miami or as those interests related to legal, safety or health concerns of the University of Miami.

3. To a school in which a student intends to enroll. The University may also release information contained in the education record to another school if the student is simultaneously enrolled in that school and the University. However, the University will make a reasonable attempt to notify the student of the transfer of those education records and will provide a copy, upon request and the payment of a copying fee, of the records which were transferred.

4. To authorized representatives listed below, PROVIDED that such access is necessary in connection with the audit and evaluation of federally supported educational programs or in connection with the enforcement of or compliance with federal legal requirements which relate to these programs, or when such information is specifically authorized by federal law:

- a. The Comptroller General of the United States;
- b. The Secretary;
- c. The U.S. Commissioner of Education, the Director of the National Institute of Education, or the Assistant Secretary of Education;
- d. State educational authorities;
- e. Authorized representative of the Attorney General for law enforcement purposes.

5. In connection with financial aid for which a student has applied or for which a student has received, PROVIDED that personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

- a. To determine the eligibility of the student for financial aid;
- b. To determine the amount of financial aid;
- c. To determine the conditions which will be imposed regarding the financial aid; and,
- d. To enforce the terms or conditions of the financial aid.

6. To state and local authorities to whom information is required to be reported pursuant to any state statute.

7. To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating or administering predictive tests, administering student aid programs and improving instruction PROVIDED that such studies do not disclose the personal identification of students and their parents by individuals other than representatives of the organization, and that the information will be destroyed when no longer needed for the purpose of the study.

8. To accrediting organizations in order to carry out their functions.

9. To the Education Department's Family Policy Compliance Office ("FPCO").

10. To parents of dependent students as defined in Section 152 of the Internal Revenue Code of 1954. For purposes of making a determination as to the dependency of the student, the University will request that each student declare his or her dependency at the time of registration. This information will be maintained by Registrar. In the absence of this information, and when circumstances may warrant disclosure or access to a parent, the University will first solicit from the student a declaration of dependency; failing this, the University will require a written affidavit from the student's parent certifying that the student has been claimed as a dependent on the most recent income tax return filed with the Internal Revenue Service.

11. To comply with a judicial order, subpoena, or ex parte order PROVIDED that the University makes a reasonable effort to notify the student of the order or subpoena in advance of compliance therewith. There are instances in which the University will not be able to notify the student or student's parent of the existence of certain court orders, including a federal grand jury subpoena or a subpoena issued for a law enforcement purpose wherein the subpoena or court order indicates that the University is not to disclose to any person the existence or contents of the subpoena or any information furnished to a grand jury or law enforcement agency in response to the subpoena.

12. In compliance with the Campus Sex Crimes Act pertaining to the disclosure of information regarding registered sex offenders.

13. To appropriate parties in a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals, taking the following factors into account:

- a. The articulable and significant threat to the health or safety of the student or other individuals;
- b. The need for the information to meet the emergency;
- c. Whether the parties to whom the information is disclosed are in a position to deal with the emergency;
- d. The extent to which time is of the essence in dealing with the emergency, and
- e. The totality of the circumstances pertaining the threat to the health or safety of a student or other individual.

14. To a parent/legal guardian of a student, information regarding any violation of any federal, state, or local law, or any rule or policy of the University of Miami 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:

- a. The student is under the age of 21, and,
- b. The institution determines that the student has committed a disciplinary violation with respect to such use or possession.

B. Redisclosure. Personally identifiable information from the student's education record may be disclosed under Section a. above, upon the condition that the party to whom the information is disclosed will not disclose information to any other party without the prior written consent of the student and the releasing office except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employers, and agents, but only for the purposes for which the disclosure was made.

VI. POLICY - RECORD OF DISCLOSURE

A. Maintenance of Record

1. The University shall, for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record of such requests and disclosures to be kept with the education records of the student.

2. A record of disclosure is not required for disclosures of:
 - a. Directory information,
 - b. Disclosures of personally identifiable information to which the student or parent of a dependent student has granted written consent of access when the consent is specific with respect to the party or parties to whom the disclosure is to be made, and
 - c. Disclosures made to other University of Miami school officials pursuant to Section V.A. 2 above.

B. The record of disclosure shall include the following information:

1. The names of the parties requesting or obtaining personally identifiable information from the student's education records;
2. The titles of said parties seeking this information and the organization or agency they represent, if appropriate;
3. The legitimate interests (reasons) these parties had in requesting or obtaining the information;
4. The date of disclosure; and
5. The signature of the person making the disclosure.

C. The record of disclosures shall be maintained in the education record of the student and shall be considered to be a part of the education records; therefore, the record of disclosures must be retained as long as the education records of the student are retained by the University.

D. The record of disclosures may be inspected:

1. By the student or the parent of a dependent student;
2. By the school official and his or her assistants who are responsible for the custody of records; and
3. For the purpose of auditing the record-keeping procedures of the University by the following:
 - a. Other school officials within the University, including teachers, who have been determined by the University to have legitimate educational interests; and
 - b. Authorized representatives of:
 - i) The Comptroller General of the United States;

- ii) The Secretary;
- iii) State educational authorities: Subject to the conditions that any data collected by the aforementioned officials (i-iii) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials named, and that personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with federal legal requirements.

VII. REVIEW AND INSPECTION

A. A student who is or has been in attendance at the University may inspect and review his or her education records by making either an oral or written request of the University official who is responsible for maintaining those records. Whether the request is oral or written rests upon the discretion of the appropriate University official in each case. In no instance will a request not be fulfilled in excess of 45 days from the date of the request.

B. The student making a reasonable request for an explanation or interpretation of his or her records is entitled to the same from the appropriate University official.

C. If the student is unable to inspect personally his or her education records, the University is obligated to provide a copy of the record requested. The University may charge the student a fee for copies of records. (A fee schedule is contained in Section IX below.)

D. A University official or designated representative may be present during a student's review and inspection of any education records.

E. Parents of students who are currently claimed as "dependents" as defined under Section 152 of the Internal Revenue Code of 1954, are entitled to inspect and review the education records of the student without the written consent of the student. For the purposes of making a determination as to the dependency of the student, the University will request that each student declare his or her dependency at the time of registration. This information will be maintained by the Registrar. In the absence of this information, and when circumstances may warrant disclosure or access to a parent, the University will first solicit from the student a declaration of dependency; failing this, the University will require a written affidavit from the student's parent certifying that the student has been claimed as a dependent of the parent's most recent income tax return filed with the Internal Revenue Service. The University presumes that either parent has the right of access to the records of their dependent or minor child unless the University is provided with evidence that there exists a legally binding instrument governing such matters as divorce, separation, or custody, which provides to the contrary.

F. Limitations on the right to inspect and review education records.

1. Education records are records related directly to a student and maintained by the University. The following records may not be inspected or reviewed by students, former students or their parents:

- a. Records which are not educational records as defined in Section III.D.;
- b. Financial records and statements of the parents of students or any information contained in such records or statements;
- c. Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; PROVIDED that:
 - i) The letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality; and
 - ii) The letters and statements are used only for the purposes for which they were specifically intended;
- d. Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975, and to which the student has, in writing, waived his/her right of access
 - i) Respecting admission to an educational institution;
 - ii) Respecting an application for employment; or
 - iii) Respecting the receipt of an honor or honorary recognition; PROVIDED that the student has waived his or her right to inspect and review those letters and statements of recommendation.

2. If the education records of a student contain information on more than one student, the parent of a dependent student or the student may inspect and review or be informed of only the specific information which pertains to that one student.

G. No records may be destroyed, regardless of age, when there is a pending request to review and inspect those records.

H. An individual who has not been in attendance at the University is not a student, and therefore does not have a right to inspect or review his or her records. A person who has applied for admission to, but has never been in attendance at another component unit of the University (such as the various colleges or schools which comprise the University) even if that individual is or has been in attendance at another component unit of the University, is not considered to be a student with respect to the component to which an application for admission has been made and therefore does not have a right to inspect or review his or her records with respect to that component unit of the University to which an application for admissions has been made.

VIII. PROCEDURES FOR SEEKING AN AMENDMENT TO RECORDS AND FOR STUDENT HEARING TO CHALLENGE THE CONTENTS OF EDUCATIONAL RECORDS

A. Amendment of Records

1. A student who believes that information contained in his or her records is inaccurate, misleading, or in violation of the privacy or other rights of the student, may request that the University official who maintains the records amend them.
2. The University will decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request. The official who maintains the records has a responsibility to consult with appropriate officials of the University for further determination or confirmation.
3. If the University decides not to amend the education records of the student in accordance with the request, it will so inform the student of the refusal, and advise the student of the right to a hearing under Section (B.) below.
4. A hearing under Section (B.) below may not be used to challenge the assignment of a grade; however, a hearing may be requested by a student to contest whether or not the assigned grade was recorded accurately in the education records of the student.

B. Hearing to Challenge Contents of Records

1. The University's Buckley Amendment Steering Committee will, upon request, provide an opportunity for a hearing in order to challenge the content of a student's education records to ensure that information in the education records of the student is not inaccurate, misleading, or otherwise in violation of the privacy or the rights of a student.
2. The hearing will be held within a reasonable period of time after the University has received the request, and the student shall be given notice of the date, place, and time reasonably in advance of the hearing.
3. The hearing will be conducted by an appropriate official of the University who does not have a direct interest in the outcome of the hearing.
4. The student will be afforded a full and fair opportunity to present evidence relevant to the issues, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney.
5. The University shall make its decision in writing within a reasonable period of time after the conclusion of the hearing.

6. The decision of the University shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decisions.

7. If, as a result of the hearing, the University decides that the information in the education records is inaccurate, misleading, or otherwise in violation of the privacy or other rights of a student, it will amend the education records of the student accordingly, and so inform the student in writing.

8. If, as a result of the hearing, the University decides that the information in the education records is not inaccurate, misleading, or otherwise in violation of the privacy or the rights of a student, it will inform the student of the right to place in his or her education records a statement commenting upon the information therein setting forth any reason(s) for disagreeing with the hearing decision of the University.

9. Any explanation placed in the education records of the student under paragraph (8) of this section shall:

a. Be maintained by the University as part of the education records of the student as long as the record or contested portion thereof is maintained by the University; and,

b. If the education record of the student or the contested portion thereof is disclosed by the University to any party, the explanation will also be disclosed to that party.

IX. SCHEDULE OF FEES AND PROCEDURES FOR OBTAINING COPIES OF EDUCATIONAL RECORDS

A. Procedures

1. The right of access in some cases includes the right to obtain copies of the education records, when physical distance would prevent the actual viewing of the record. In those cases where distance would prevent actually viewing and inspecting the record copies may be requested by the dependent student's parent, or by the student, in writing, to the records.

2. The university will authorize copies to be made only in those cases where failure to provide copies would effectively prevent a dependent student's parents, or the student, from exercising the right to inspect and review the education records.

B. Schedule of Fees for Obtaining Copies of Education Records

1. The copying fee for each side of a page, or of each page if a record is maintained on only one side of the page, is \$.50 per side, subject to change upon appropriate notice.

2. Copies are to be provided by the "responsible official" who is the custodian of record, upon receipt of a written request from the parent of a dependent student, or a student, and upon the payment of \$.50 per side of the document reproduced. Any and all moneys received for the copied of education records furnished by responsible officials will be deposited to the account number which is charged by this official for copying done by his or her school, department, or office.

X. GENERAL PROVISIONS OF POLICY AND COMPLAINT