

## GUIDELINES FOR COMPLIANCE WITH THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

### I. Background

Among its several purposes, the Family Educational Rights and Privacy Act of 1974 (FERPA) was enacted to protect the privacy of students' education records, to establish the rights of students to inspect and review their education records, and to provide students with an opportunity to have inaccurate or misleading information in their education records corrected. FERPA also permits the disclosure by an institution without a student's prior consent of so-called directory information about that student. Students have the right to file complaints with the Department of Education's Family Policy Compliance Office concerning alleged failures by an institution to comply with FERPA. In accordance with the statute and the FERPA regulations issued by the Department of Education, South Texas College of Law Houston (the College) has adopted the following guidelines and procedures.

### II. Applicability

"Student" includes any person who is or has been in attendance at the College and with respect to whom the College maintains an education record. Persons who have not been in attendance are not "students" entitled to review their records. Thus, persons who have applied to and been admitted by the College, but who have not yet begun to attend classes, are not eligible to review their records.

### III. Education Records

"Education records" available for review are defined as those records that contain information directly related to a student and that are maintained by the College or by a party acting on behalf of the College. A "record" is any information recorded in any way, including but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm or microfiche.

1. Under FERPA and its related regulations the following types of College records are not "education records" and are, therefore, not available for student review:
2. Personal notes or records (including computerized files) that are kept in the sole possession of an individual College employee or faculty member, are used only as a personal memory aid, and are not accessible or revealed to others, except to a temporary substitute for the maker of the record.

3. Records of the law enforcement unit of the College used for law enforcement purposes.
4. Records that relate to an individual who is employed by the College and that (a) are made and maintained in the normal course of business, (b) relate exclusively to the individual in that individual's capacity as an employee, and (c) are not available for use for any other purpose. If an employee enrolls at the College, the employee's personnel files are not education records. This exception does not apply to records that relate to a student in attendance at the College who is employed as a result of his or her status as a student.
5. Medical and psychiatric records created, maintained, and used only in connection with the treatment of a student and that are not available to anyone other than the persons providing such treatment. Such records can be personally reviewed by a physician, psychologist, or other appropriate health professional of the student's choice.
6. Records that contain information created or received by the College after an individual is no longer a student at the College and that are not directly related to the individual's attendance as a student, i.e., alumni records.
7. Grades on peer-graded papers before they are collected and recorded by an instructor.

Also, the College does not have to permit a student to review education records that are:

1. Financial records of the parents of a student.
2. Confidential letters and statements of recommendation placed in the education records of a student (a) prior to January 1, 1975, as long as they are used only for the purposes for which they were specifically intended; and (b) after January 1, 1975, if the student has waived access to such letters and statements and if such letters and statements relate to the student's admission to an educational institution (including admission to the College), application for employment, or receipt of an honor or honorary recognition (see Section V, Waivers).

#### IV. Access to Records

At the College, FERPA is administered by Associate Dean for Academic Affairs. Except as noted below, requests to review education records, for copies of the statute or its attendant regulations, or for additional information concerning FERPA, should be directed to the Associate Dean for Academic Affairs.

Students who wish to review their education records must file a written records request with the Registrar's Office. The request should specify what education records are to be inspected. Upon receipt of a request, the Assistant Dean and Registrar notifies the office(s) maintaining the requested education records, arranges for the transmittal of the education records, sets up an appointment for the student's review of such records,

and supervises the review. Students are provided with this review opportunity within a reasonable time, not to exceed forty-five (45) days from the date of receipt of the request by the Assistant Dean and Registrar. If any material or document in the education records of a student includes information on more than one student, the student may inspect and review or be informed of only that part of the material or document relating to the student's own information. Students will not be permitted to remove the original education records from the Registrar's Office. At the conclusion of the review the education records are returned to the office(s) that maintains them.

If a student is physically unable to come to the Registrar's Office, and if this inability would effectively deny the student access to the education records, the student may file an education records request by writing or emailing the Assistant Dean and Registrar. The Assistant Dean and Registrar will make special arrangements for the review.

At the discretion of the Assistant Dean and Registrar, a fee may be charged for photocopying and shipping of any education records.

## V. Waivers

A student may waive the right to access to confidential recommendations for any of the following: admission to an educational institution; employment; or receipt of an honor or honorary recognition. The waiver must be in writing and must be signed by the student. If a student waives the right to access, the recommendations must be used solely for the purposes for which they were intended, and, if the student so requests, the College will give the student the names of the individuals who made the recommendations. Recommendations mailed to third parties should include a copy of the signed waiver, so that the third party is aware that the student has waived access to the recommendation, and, hence, cannot obtain access to it from the third party's records in the future. The College does not have the right to make the student's waiver a condition to the student's receipt of any service or benefit from the College. Waivers may be revoked by the student, but the revocation will not enable the student to gain access to confidential recommendations made while the waiver was in effect.

## IV. Amendment of Records

Only the Registrar, upon consultation with the Associate Dean of Academic Affairs, may authorize a correction in an education record within the academic file of a student. Similar consultative responsibility is exercised by the Assistant Dean of Admissions, Chief Financial Officer, and Controller, for the education records which are maintained under their authority.

If a student believes that any of the education records relating to the student contain information that is inaccurate, misleading, or in violation of rights of privacy, the student may ask the College to correct or delete such information. The student may also ask that

additional explanatory material be inserted in the education records. The right to challenge the contents of the educational records may not be used to question substantive educational judgments that have been correctly recorded. For example, a hearing may not be requested to contest the assignment of a grade. Grades given in the course of study include written evaluations that reflect institutional judgment of the quality of a student's academic performance.

The student should submit requests for amendment of the education records or the addition of explanatory material at the conclusion of the record review in writing to the Registrar's Office. The reasons for the request should be set forth and should clearly identify the part of the education records the student wants changed and specify why it is inaccurate or misleading. There is no obligation on the part of the College to grant such a request. Any disagreement about the contents of the education records should be resolved informally, if possible.

If the College declines to amend the education records as requested by the student, it will so inform the student, and the student may request a hearing.

## VII. Hearings

If the College declines to amend a student's education records as requested, the student has thirty (30) days to appeal the decision to the Dean and request a hearing. The Dean shall designate a hearing committee. The committee will include three (3) faculty members and two (2) students and the Dean shall designate one (1) of the faculty members as the chair of the committee. The Dean shall appoint the student members of the special committee in consultation with the President of the Student Bar Association. Each student on the committee shall be in good academic standing and shall have expressed a willingness to serve on the committee. The hearing committee will notify the student, reasonably in advance, of the date, place and time of the hearing, which will be held within a reasonable time after the Dean receives the student's request for it. At the hearing, the student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records. The student may be assisted or represented by one or more individuals, including legal counsel, of the student's choice at the student's expense. The sole function of such counsel (or other individual) shall be (i) to be present at the hearing, (ii) to give advice to subject student concerning what the student should or should not say, and (iii) to summarize the case for the student in a closing statement addressing whether the education records should be amended. The hearing committee shall call and question such persons and examine such other evidence it considers relevant to the issues to be determined. Only members of the hearing committee may question persons appearing before it. All hearings shall be closed to persons not participating in the hearings. Within a reasonable time following the hearing, the hearing committee will make its recommendation(s) in writing to the Dean. This recommendation, and the written decision of the Dean on behalf of the College, will be

based solely on the evidence presented at the hearing and will include a summary of that evidence and the reasons for the conclusions reached. If the decision of the Dean is to amend the education records, the education records will be amended and the student will be given written notice of the amendment. If the decision of the Dean is not to amend the education records, the student will be informed that the student has the right to place a written statement in the education records, which will be kept in the file as long as the file itself is kept. The statement may comment on the contested portion of the file or say why the student disagrees with the decision of the Dean, or do both. If the contested portion of the file is disclosed to anybody, the student's statement will also be disclosed.

### VIII. Disclosure of Personally Identifiable Information

Prior to disclosing personally identifiable information from a student's education records, the College will obtain the student's signed and dated written consent to such disclosure, unless consent is not required by law. The student's written consent must specify the records that may be disclosed; state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made. Signed and dated written consent "may include a record and signature in electronic form that identifies and authenticates" the student as the source of the consent and indicates the student's "approval of the information contained in the electronic consent."

In the case of certain offices, such as the career services or pre-professional committees, students can sign a blanket consent for disclosure of education records to "appropriate third parties."

Such consent is not needed for disclosure of directory information (see Section IX below) or for disclosure:

1. to the student;
2. to school officials with legitimate educational interests; school officials include any College employee acting within the scope of employment, and any duly appointed agent or representative of the College acting within the scope of the appointment. The Associate Dean of Academic Affairs will make a determination as to which school officials has a legitimate educational interest in the education records;
3. to accrediting, testing, and similar organizations, as specified in the FERPA regulations;
4. to parents of dependent students (see Section XI below);
5. to certain federal, state, and local officials and authorities, in each case as specified in the FERPA Regulations;
6. in connection with financial aid for which the student has applied or received, under the conditions specified in the FERPA Regulations;

7. to comply with a subpoena or judicial order, provided that the College will make a reasonable effort to notify the student of the order or subpoena before complying with it unless, in the case of a Federal grand jury subpoena or other subpoena issued for a law enforcement purpose, the subpoena orders that such notification not be made, or the order is an ex parte order obtained by the Attorney General of the United States or to his designee in connection with the investigation or prosecution of terrorism crimes as specified in Title 18, U.S. Code, Sections 2331 and 2332 (g) (5) (B);
8. to a court without a court order or subpoena when the College has initiated legal action against a parent or student or when necessary for the College to defend itself when a parent or student has initiated action against it;
9. in a health or safety emergency where there is an articulable and significant threat to the health or safety of the student or other individuals, to appropriate parties whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. In such cases, the College will maintain a record of the articulable and significant threat which formed the basis for disclosure and the parties to whom the information was disclosed;
10. to the officials of another institution (a) in which a student seeks or intends to enroll if that institution requests such education records, or (b) in which the student is already enrolled or from which the student receives services, provided that the disclosure is for purposes related to the student's enrollment or transfer. Although the student's consent is not required for such disclosure, nor is any other notice of the transfer required, a copy of each education record so disclosed will be provided to the student if the student asks for it;
11. of the final results of any College disciplinary proceeding relating to a crime of violence or non-forcible sex offense allegedly perpetrated by a student of the College to an alleged victim of that crime or offense, regardless of whether or not it is concluded that a violation was committed;
12. of the final results of any College disciplinary proceeding reached on or after October 7, 1998 if it is determined that a student is an alleged perpetrator of a crime of violence or non-forcible sex offense and the student has committed a violation of the College's rules or policies with respect to the allegation. The names of other students, including the victim or witnesses, may not be disclosed without their prior written consent. If the recipient is the victim of an alleged crime, the disclosure may be made whether or not the College concluded a violation was committed; and
13. of information concerning registered sex offenders, provided to the College under the Wetterling Act, including information made available under State sex offender registration and community notification programs.

The College will maintain a record of each request for and disclosure of personally identifiable information from the education records of a student to persons outside the College for as long as such education records are maintained. The record will indicate the parties who have requested or obtained the personally identifiable information and

the legitimate interest these parties had in requesting or obtaining the information. If the disclosure was under the health and safety emergency exemption, the College will also record the articulable and significant threat that formed the basis for the disclosure.

The student has the right to inspect and review this record of requests. The requirement to keep records of requests does not apply to: disclosures to the student; disclosures made pursuant to the written consent of the student; disclosures to College employees determined by the College to have legitimate educational interests; disclosures of directory information; or disclosures made in compliance with a Federal grand jury or other law enforcement subpoena which orders that the existence or the contents of the subpoena or the information furnished not be disclosed to the student.

In instances where disclosure of personally identifiable information from an education record to a third party is permitted (see above), the third party is subject to the requirements of the FERPA Regulations with respect to possible redisclosure of that information and the College will inform the third party.

When a student gives written consent to the disclosure of personally identifiable information from the education records to persons outside the College, the student may request that the College provide him or her with a copy of any education records thus disclosed, and the College will do so.

The purpose of the consent form is to permit the student to have some control over the disclosure of personally identifiable information in the education records. The fact that a student signs a consent form, whether specific or "blanket," does not, however, bind the College to make the student's education records available to the third party or parties who have obtained the student's consent to their review of the files. The student's records are still the property of the College and, even if a consent has been signed, the College will exercise its discretion in each case by disclosing to the third party only such information, records, and files, if any, as the College deems appropriate in light of the reason that the third party is seeking access to the student's education records.

Thus, all consents obtained directly from students by third parties must include a specification of the education records to be disclosed, the purposes of the disclosure, and the person or groups of persons to whom disclosure may be made. The signed consent must be provided to the College by the third party at the time the request for access is made. The College will retain the consent. Records to which students are denied access because they are not "education records" usually will not be made available to an outside party.

In addition, a third party generally will not be permitted to make copies of education records to which the third party is granted access, even if the consent signed by the

student explicitly gives permission for such copies to be made. If the student wishes the third party to have copies of documents in the education records, or if there are other documents to which the third party has not been granted access by the College but which the student wishes the third party to have, the student may copy those education records (see Section IV above) and provide such copies to the third party directly.

## IX. Directory Information

The College has designated the following student information as "directory information." Under federal law, street (not email) address information, telephone listings, and date and place of birth are also considered directory information for military recruitment purposes. Directory information may be disclosed for any purpose, at the discretion of the College.

- a. Name, street and email addresses, telephone numbers and a photograph of a student.
- b. Date of attendance and degrees earned at the College and prizes, honors, awards and past and present participation in officially recognized activities, including positions held.

Currently enrolled students may refuse to permit disclosure of this information. A student desiring to exercise this right shall submit in duplicate to the Registrars Office's a signed "Student Directory Information Opt-Out Procedure and Form." A hold will be placed on the release of directory information, which will remain in effect until the student files a written request with the Registrar's Office to remove it.

A student may not use the withholding of directory information to prevent the College from disclosing or requiring the student to disclose his or her name, identifier, or institutional e-mail address in a class in which the student is enrolled.

Students should consider very carefully the effect of a decision to withhold directory information. If that decision is made, any requests for such information from non-College persons or organizations will be refused (subject to the exceptions stated in Section VIII above or unless the student has subsequently removed the hold by notifying the Registrar's Office in writing). If a student does not specifically request the withholding of directory information by filing the specified form, the College assumes that the student approves of the disclosure of such information. The College disclaims any and all liability for inadvertent disclosure of directory information designated to be withheld.

## X. Review by Government Agencies

Authorized representatives of government agencies may occasionally ask to see a student's education records. Such requests are usually made when a student or former

student has applied for a government job. The government agent should be referred to the Registrar's Office. Generally, the College will handle such requests in the same manner as other requests for access to student records by third parties (see Section VIII), provided that the government agent shows official identification and provides a signed release from the student or former student, a copy of which will be retained by the College.

If a government agent has a subpoena, the agent should be referred to the Office of General Counsel. Under the FERPA regulations, the College is required to make a reasonable attempt to notify the student prior to complying with the subpoena unless, in the case of a subpoena issued for law enforcement purposes, the subpoena orders that such notification not be made. (See Section VIII above.)

## XI. Requests from Parents

Occasionally, a parent will request information from a student's education records or a copy of the student's transcript. Under FERPA, institutions are not required to disclose such information to the student's parent, but may do so if: (a) there is written consent to the disclosure from the student, or (b) the parent requests the information in writing and provides evidence that the student is the parent's dependent under the Internal Revenue Code of 1986 (See Section VIII above.),

If the procedure indicated under (b) is followed, the College's practice is to ask the parent to establish dependency by providing a copy of the parent's latest federal income tax return. Confidential information on the return may be expunged, provided that the information that remains is sufficient for the College to ascertain that the parent has claimed the student as a dependent. Further, it is also the practice of the College (except in a health or safety emergency) to inform the student of such a request and of the information requested before deciding whether to provide the requested information to the parent. "Parent" is defined by FERPA as "a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian."

## XII. Annual Notice

The College will inform students of these Guidelines and of their rights under FERPA and the Department of Education's FERPA regulations by placing a notice about them in the Student Handbook and the Class Schedule each semester, and on the Academic tab on STANLEY. For the Annual Notice, go to <http://www.stcl.edu/registrar/FERPA.htm>.

For additional information or a copy of the statute, the FERPA regulations, or these Guidelines, please contact the Registrar's Office or go to <http://www.stcl.edu/registrar/FERPA.htm>.