

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES
FLORIDA BOARD OF GOVERNORS**

NOTICE OF PROPOSED AMENDMENT TO REGULATION

REGULATION NO.: **FIU-108**

REGULATION TITLE: **Access to Student Education Records**

SUMMARY: This regulation is being amended to clarify definitions, directory information categories, and provide updated information regarding the privacy of and access to student education records.

TEXT OF REGULATION: The full text of the proposed Regulation can be viewed below and on the website of The Florida International University Board of Trustees, <http://regulations.fiu.edu>. If you would like a copy of the proposed Regulation, please contact Eli Deville, Departmental Administrator, Office of the General Counsel, (305) 348-2103, devillee@fiu.edu.

AUTHORITY: Art IX, sec 7, Florida Constitution and BOG Regulation 1.001

NAME OF PERSON INITIATING PROPOSED REGULATION: Dr. Elizabeth Bejar, Senior Vice President for Academic and Student Affairs.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

CONTACT PERSON REGARDING THE PROPOSED REGULATION:
Eli Deville, Departmental Administrator, Office of the General Counsel
Florida International University, 11200 SW 8th Street, PC 511, Miami, FL 33199
Email: devillee@fiu.edu Phone: 305-348-2103, Fax: (305) 348-3272.

DATE OF PUBLICATION: January 24, 2020

THE FULL TEXT OF THE REGULATION IS PROVIDED BELOW:

FIU-108 Access to Student Education Records.

Florida International University (University) maintains Student education records in a confidential and secure manner in accordance with the Family Educational Rights and Privacy Act (FERPA) codified in 20 U.S.C. section 1232g, and sections 1002.225 and 1006.52, Florida Statutes.

The University will not release or permit access to education records, or the personally identifiable information contained therein, maintained on a Student except as otherwise permitted by law and this Regulation. Responsibility for custody of all Student educational records and personally identifiable information within them ultimately belongs to the University Registrar. Any University official in possession of education records is required to comply with FERPA and this Regulation. The University Registrar or designated custodian shall ensure that the procedures required by law and this Regulation are in place to control access to and disclosure of Student education records and personally identifiable information contained therein.

1. Definitions.

- a. Agent is any individual or organization who, pursuant to a written agreement, has expressed or implied authorization to represent or act for the University. All agreements designating an Agent with access to Education Records must be reviewed by the University Registrar.
- b. Custodian of Records is the University Registrar and any other designated University employee or agent in possession of education records.
- c. Directory Information means information designated by the University that may be, in the University's sole discretion, disclosed upon request without Student consent. Students may opt out of the University's ability to disclose such information by logging in to the myFIU portal.
- d. Education Records means records maintained by the University and its Agents that contain information directly related to a Student or applicant. A record is any information or data recorded in any medium, including, but not limited to handwriting, print, or digital/electronic, USB drives, or cloud storage. Education Records do not include:
 - i. Sole Possession Records. Personal records created by a University employee or agent that are created as a personal memory aid, kept in the sole possession of the University employee or agent who created it; and the record has not been disclosed to any other persons, including the Student, except to a temporary substitute.
 - ii. Employment Records. Records used only in relation to an individual's University employment. However, the following are education records rather than Employment Records:
 1. Records relating to a Student's University employment if the position in which the Student is employed depends on their status as a Student; and
 2. Records relating to a Student's University employment if the Student receives a grade or credit based on their performance as an

employee.

- iii. Alumni Records. Records created after a Student has graduated from the University.
- iv. Law Enforcement Records. Records created and maintained by the University Police Department used solely for law enforcement purposes. No member of the University Police Department shall have access to Education Records where this Regulation authorizes release.
- v. Treatment Records. Records made, used, or maintained by a physician, psychiatrist, psychologist acting in their University recognized professional capacity used only in connection with treatment of the Student, and disclosed only to individuals providing the treatment. For purposes of this definition, treatment does not include remedial educational activities or activities that are part of any academic program or activity.
- vi. Pre-enrollment Records are records relating to an individual's application for admission to the University prior to the individual's enrollment in the program for which the application was made. Although Pre-Enrollment Records are not considered education records under FERPA, section 1006.52, Florida Statutes, requires Pre-enrollment Records to be treated in accordance with FERPA.
- vii. Personally Identifiable Information means information which includes a personal identifier, such as the Student's social security number or a Student number, or a list of personal characteristics which would make the Student's identity easily traceable.
- viii. Student means an individual enrolled at the University, on or off-campus, including on-line courses and non-degree seeking Students.

2. **Annual Notification.** The University will publish a notice of Student rights under FERPA on its website and in the graduate and undergraduate catalogs. Additional means of notification may be utilized including e-mails to Students. The notice will include, but is not limited to, Student rights relating to educational records, including the right to file complaints, the procedures to be followed in order to exercise such rights, and the types of information entered in the educational records maintained by the University.

3. **Location and Custodians of Education Records.** Education records are maintained throughout the University and there is no prerequisite for information to be maintained in a specific location for it to be considered an education record. The Student is responsible for specifically identifying their education records for review to the University Registrar or applicable Custodian of Records. The University Registrar shall serve or designate a University employee to serve as the Custodian of Records. The following University employees are designated as a Custodian of Records for the specified records. All records listed below are located at the Modesto Maidique Campus:

- a. **Academic Counseling** records are maintained by the Associate Provost for Academic and Career Success. Additionally, academic counseling records may be maintained by various departments or colleges depending on the Student's field of study.

- b. Academic Records are maintained by the University Registrar
 - c. Athletic Records are maintained by Athletics Compliance Office
 - d. College of Medicine Records are maintained by the College of Medicine Registrar.
 - e. Continuing Education Records are maintained by the Executive Director of Continuing and Professional Studies.
 - f. Disciplinary Records are maintained in the Student Conduct and Academic Integrity Office.
 - g. Housing Records are maintained by the Director of University Housing.
 - h. International Student Records are maintained by the Director, International Student Services.
 - i. Personal Non-Academic Counseling Records are maintained by the Director of, Counseling and Psychological Services.
 - j. Placement Records are maintained by the Director of Career and Talent Management.
 - k. Student Financial Aid Records are maintained by the Director of Financial Aid.
 - l. Student Financial Records are maintained by the Director of Student Financials.
 - m. Veteran Records are maintained by the Director of the Office of Veterans and Military Affairs.
4. Inspection of Education Records. Students who wish to review their education records should submit a written request to the University Registrar and/or designated Custodian of Records. The request must be in writing and sufficiently identify the education records sought.
- a. Educational records shall be open for inspection, only to the Student, or parents of dependent Students as defined in Section 152 of the Internal Revenue Code. The Custodian of Records shall require the Student, or parents of the Student when applicable, requesting access to present proper identification.
 - b. The University Registrar or designee shall advise the Student when and where the records will be available for review. Access to Education Records shall be granted within a reasonable period, but in no case later than forty-five (45) calendar days after the University Registrar or designee receives the Student's written request. The University Registrar or designee shall be present while the Student reviews the education records and retains custody of the records.
 - c. When Education Records contain Personally Identifiable Information about more than one (1) Student, a Student may only inspect the information which relates to that Student.
 - d. A Student's right to review their education records does not entitle the Student to copies of their records. In the sole discretion of the University Registrar or designee, the Student must demonstrate that failure to provide the Student with copies of requested education records will effectively deny the Student the right to review such records. In the majority of cases, copies will not be provided to the Student.
 - e. The University will charge the following fees for furnishing copies of Education Records, or any material included therein:
 - i. Copies of official transcripts – Ten dollars (\$10.00);

- ii. Copies of all other educational records – Fifteen cents (\$.15) per page for copying, plus any supplies and mailing costs.
- f. The University reserves the right to refuse a Student’s ability to review the following records:
 - i. The financial records of a Student’s parents or any information contained therein;
 - ii. Statements and letters of recommendation prepared by University employees or submitted with the Student’s application for admission placed in the Student’s file prior to January 1, 1975, or which the Student has waived their right of access; or
 - iii. Records excluded from the definition of Education Record.
- g. The University will maintain records of the individuals requesting access to Education Records.

5. Access to and Release of Records without Consent. The following persons and organizations are considered “university officials” and may have access to personally identifiable information without the Student’s prior consent:

- a. Faculty, administrators, staff and Agents of the University, the Florida International University Board of Trustees, or the Florida Board of Governors whom the University Registrar of Custodian of Education Records has determined to have a legitimate educational interest in the record.
- b. Officials of other colleges and universities in which the Student intends to enroll.
- c. Persons or organizations providing financial aid for which the Student has applied or received, if the information is necessary for such purposes as to determine eligibility for aid, the amount of aid, conditions for aid, or to enforce the terms and conditions of the aid.
- d. Accrediting organizations carrying out their accrediting functions.
- e. Persons in compliance with a judicial order or lawfully issued subpoena. With the exception of subpoenas from federal grand juries or subpoenas issued for law enforcement purposes that order the University to not disclose the existence of the subpoena, the University will notify the Student before the compliance date.
- f. Disclosure to a court if a parent or Student has initiated legal action against the University or if the University has initiated a legal action against a parent or Student.
- g. Appropriate parties in connection with emergencies, as determined by the University, if knowledge of the information is necessary to protect the health or safety of the Student or other persons.
- h. An alleged victim of specific Student Conduct and Honor Code violations of the results of any disciplinary proceeding conducted by the University against the Respondent.
- i. Other persons who are authorized by federal and state law and regulations to have access to or receive copies of such information.

6. Directory Information. Directory Information is designated as:

- a. Student’s name;
- b. Major and minor fields of study;

- c. Student classification;
- d. Participation in officially recognized activities and sports;
- e. Weight and height of members of athletic teams;
- f. Dates of attendance;
- g. Degrees and/or awards;
- h. Most recent previous educational institution attended; and
- i. Student's photographic image.

7. Requests to Amend Educational Records.

Students who challenge the accuracy of their educational records shall file a written request for amendment with the Custodian of Records. The Student shall also present to the Custodian of Records copies of all available evidence relating to the information being challenged. The Custodian of Records shall consider the request and notify the Student in writing within fifteen (15) business days whether the request will be granted or denied and if denied the right to a hearing on the matter. During that time, any challenge may be settled informally between the Student, or the parents of a dependent Student, and the Custodian of Records, in consultation with other appropriate University employees. If an agreement is reached, it shall be in writing and signed by all parties involved. A copy of such agreement shall be maintained in the Student's records. A Student or the parents of a dependent Student shall not have the right to challenge through this process grades, disciplinary actions, grievances, or similar matters.

a. Hearing Rights and Procedures.

- i. **Rights of Appeal.** A Student whose request for amendment to educational records has not been settled or has been denied may file a request for a hearing within thirty (30) business days of the receipt of the letter of denial. The request shall be in writing and shall be filed with the Senior Vice President for Academic and Student Affairs. The request shall set forth the legal and factual basis for seeking correction of the Student's education records. Upon receipt, the Senior Vice-President shall appoint a disinterested University official to serve as a hearing officer. The hearing officer shall schedule a hearing within twenty-five (25) business days of the date of receipt of the request for a hearing. The Student shall be given written notice of the time, date, and place of the hearing.
- ii. **Hearing Procedures.** The hearing shall be informal in nature but shall afford the Student an opportunity to present evidence relative to the issues raised in the appeal. The Custodian of Records shall have the same rights as the Student.
- iii. **Hearing Officer's Recommended Order.** The hearing officer shall issue a recommended order within twenty-five (25) business days of the close of the hearing. In rendering a recommended order, the hearing officer shall consider only such evidence as was offered at the hearing. The hearing officer shall include in the recommended order a summary of the evidence presented and the reasons for his or her recommendations. The original report shall be filed with the Senior Vice President for Academic and Student Affairs and a copy of the recommended order shall be sent to the Student or the parents of a dependent Student and to the Custodian of Records. Upon receipt, the Senior Vice President shall have ten (10)

business days in which to issue a final determination on the issues raised in the appeal. If a determination is made that the information in the education record does not require correction, then the Student or a parent of a dependent Student shall have the right to place a statement in the record commenting that the information has been challenged and the reason for the challenge.

8. Waiver of Right of Access.

Students and parents of dependent Students have the right to waive their right of access to confidential letters of recommendation and other documents that evaluate Student academic performance.

- a. Such waivers shall be in writing and made a part of the official academic record. A waiver of right to access shall be effective only when the Student or the parents of a dependent Student are notified, upon request, of the names of all persons who are submitting confidential recommendations or evaluations and when the confidential letters of recommendation and other evaluative documents are used solely for the purpose intended.
- b. The University may not condition admission, financial aid, or receipt of any other service or benefit offered by the University, by another public educational institution in Florida or by any other public agency upon being provided a waiver of the right to access by the Student or the parents of a dependent Student.

9. Requests for Education Records in Research or Contracts.

- a. All requests for academic research or contracts dealing with information from Education Records shall be referred to the University Registrar. Such requests must be in writing and specifically set forth specifically the type(s) of information to which access is requested and the intended scope of the research project or contract.
- b. The applicable Custodian of Records and the University Registrar shall determine whether to grant the request, in whole or in part, and may condition access upon a guarantee that the researcher or agent will appropriately safeguard the data, no Personally Identifiable Information is published or made available to others, or other reasonable conditions.

10. Violations

Any violations of this Regulation must be reported to the University Registrar at ferpa.fiu.edu or confidentially reported to the Ethical Panther Line by visiting compliance.fiu.edu/hotline.

Specific Authority: Art. IX, sec. 7, Fla. Const. History—Formerly 6C8-1.06(3), Amended 4-3-84, 11-2-89, 1-3-93, 11-3-02, Formerly 6C8-11.003, Amended 9-12-08, Amended _____

FIU-108 Access to Student Education Records.

(1) ~~General. The University will not release or permit access to education records and personally identifiable information kept on a student except as otherwise permitted by law and this regulation. Responsibility for custody of all student educational records belongs to the vice president or other University officials in charge of the area in which the records are maintained. Each vice president or designated custodian shall ensure that the procedures required by federal and Florida law, and this regulation are in place to control access to and disclosure of student education records and personally identifiable information contained therein.~~

(2) ~~Categories and Custodians of Education Records. The following categories of student education records are maintained by the University and are kept under the supervision and control of the designated custodian(s):~~

(a) ~~Cumulative Academic Records are maintained by the University Registrar whose office is located on the University Park campus. At times the dean, chairperson or faculty of the department in which the student completed coursework may have unofficial copies of academic records relating to specific coursework.~~

(b) ~~Law Enforcement Records are maintained by the Director, University Public Safety Department, whose office is located on the University Park campus.~~

(c) ~~Placement Records are maintained by the Director, Career Planning and Placement, whose office is located on the University Park campus.~~

(d) ~~Continuing Education Records are maintained by the Executive Director of Continuing and Professional Studies whose office is located on the Biscayne Bay campus.~~

(e) ~~Housing Records are maintained by the Director of University Housing whose office is located on the University Park campus.~~

(f) ~~Disciplinary Records are maintained in the Student Conduct and Conflict Resolution Office located on the University Park campus.~~

(g) ~~Personal Non-Academic Counseling records are maintained by the Director, Counseling Center, whose office is located on the University Park campus.~~

(h) ~~Student Financial Aid records are maintained by the Director of Financial Aid, whose office is located on the University Park campus.~~

(i) ~~International Student Records are maintained by the Director, International Student and Scholar Services, whose office is located on the University Park campus and the Associate Director of International Student and Scholar Services whose office is located on the Biscayne Bay campus.~~

(j) ~~Academic Counseling records are maintained by the Vice President of Student Affairs and Undergraduate Education, whose office is located on the University Park campus. Additionally, academic counseling records may be maintained by departments for students who are majoring in fields of study taught by the department.~~

(3) ~~Policies and Procedures for Access and Release. Personally identifiable information contained in student education records shall be released, or open for inspection, only to the student, or parents of dependent students as defined in Section 152 of the Internal Revenue Code of 1986. "Personally identifiable" means that the data or information includes the name of a student, the student's parent, or other family member, the address of the student, a personal identifier, such as the student's social security number or a student number, a list of personal characteristics which would make the student's identity easily traceable or other information which would make the student's identity easily traceable. The custodian of the~~

~~records shall require the student, or parents of the student when applicable, requesting access to or release of the records to present proper identification such as a valid driver's license or passport. The request must be in writing and signed by the person seeking access or release. A copy of the request for access or release shall be retained in the student's file. The custodian shall have thirty~~

~~(30) days in which to comply with the request. When the record includes information on more than one student, the custodian shall release, or permit access to only that part of the record which relates to the student who is the subject of the request. Students requesting the release to others of personally identifiable information contained in the student's education records must provide the custodian of such records with a signed, written request specifying the information to be released, the purpose(s) for such release, and the person or organization to whom such information shall be released. A copy of all requests for access and release shall be retained by the custodian of the records and shall be available for inspection and review by the student or a parent. The University reserves the right to deny a request for copies of education records made by a student or a parent when there is an financial obligation to the University which has not been satisfied or when there is an unresolved disciplinary action pending against the student.~~

~~(4) Access to and Release of Records Without Consent. The following persons and organizations are considered "university officials" and may have access to personally identifiable information without the student's prior consent:~~

~~(a) Faculty, administrators, staff and consultants employed by the University, the Florida International University Board of Trustees, or the Florida Board of Governors whose work involves:~~

- ~~1. Performance of administrative tasks which relate to students;~~
- ~~2. Performance of supervisory or instructional tasks which relate to students; or~~
- ~~3. Performance of services which benefit students.~~

~~(b) Other persons who are authorized by federal and state law and regulations to have access to or receive copies of such information:~~

~~(5) Directory Information.~~

~~(a) It is the University's policy to release and publish directory information regarding its students. "Directory Information" includes:~~

- ~~1. Student's name, local and permanent address, and telephone number(s);~~
- ~~2. Date and place of birth;~~
- ~~3. Student classification and major and minor fields of study;~~
- ~~4. Participation in officially recognized activities and sports;~~
- ~~5. Weight and height of members of athletic teams;~~
- ~~6. Dates of attendance, degrees and awards received;~~
- ~~7. The most recent previous educational agency or institution attended by the student; and~~
- ~~8. Photographic image.~~

~~(b) In order to prevent access to or release of directory information, a student, or the parents of a dependent student, must so notify the designated custodian of record in writing within the time provided in the annual Notice of Rights. Access to, or release of directory information will be withheld until further written instruction is received from the student, or the parents of a dependent student.~~

~~(6) Requests to Amend Education Records.~~

~~(a) Students who challenge the correctness of student education records shall file a written~~

~~request for amendment with the custodian of the records. The student shall also present to the custodian of the records copies of all available evidence relating to the data or material being challenged. The custodian of the records shall consider the request and shall notify the student in writing within fifteen (15) school days whether the request will be granted or denied. During that time, any challenge may be settled informally between the students, or the parents of a dependent student and the custodian of the records, in consultation with other appropriate University officials. If an agreement is reached, it shall be in writing and signed by all parties involved. A copy of such agreement shall be maintained in the student's records. If an agreement is not reached informally, or, if the request for amendment is denied, then the student or the parents of a dependent student shall be informed in writing of the denial and the right to a hearing on the matter. A student or the parents of a dependent student shall not have the right to challenge through this process the evaluation reflected by a grade which an instructor has assigned to student coursework.~~

~~(b) Hearing Rights and Procedures.~~

~~1. Rights of Appeal. A student whose request for amendment to education records has not been settled or has been denied may file a request for a hearing within thirty (30) days of the receipt of the letter of denial. The request shall be in writing and shall be filed with the Vice-President for Academic Affairs. The request shall set forth the legal and factual basis for seeking correction of the student's education records. Upon receipt, the Vice-President shall appoint a disinterested University official to serve as a hearing officer. The hearing officer shall schedule a hearing within twenty five (25) days of the date of receipt of the request for a hearing. The student shall be given written notice of the time, date and place of the hearing allowing sufficient time for the student to prepare his or her appeal.~~

~~2. Hearing Procedures. The hearing shall be informal in nature but shall afford the student a full and fair opportunity to present evidence relative to the issues raised in the appeal. The student shall be entitled to be assisted or represented by an individual of his or her choice and expense, including an attorney. The custodian of records shall have the same rights as the student.~~

~~3. Hearing Officer's Recommended Order. The hearing officer shall issue a recommended order within twenty five (25) days of the close of the hearing. In rendering a recommended order, the hearing officer shall consider only such evidence as was offered at the hearing. The hearing officer shall include in the recommended order a summary of the evidence presented and the reasons for his or her recommendations. The original report shall be filed with the Vice-President and a copy of the recommended order shall be sent to the student or the parents of a dependent student and to the custodian of records. Upon receipt, the Vice-President shall have ten (10) days in which to issue a final determination on the issues raised in the appeal. If a determination is made that the information in the education record does not require correction, then the student or a parent of a dependent student shall have the right to place a statement in the record commenting that the information has been challenged and the reason for the challenge.~~

~~(7) The University will charge the following fees for furnishing copies of student records and reports, or any material included therein:~~

~~(a) Copies of official transcripts — Ten dollars (\$10.00).~~

~~(b) Copies of all other educational records — Fifteen cents (\$.15) per page for copying, plus any administrative costs incurred for search, retrieval and mailing.~~

~~(8) The University shall provide notification annually to students of their rights relating~~

~~to education records, including the right to file complaints, the procedures to be followed in order to exercise such rights, the types of information entered in the education records maintained by the University, and the University's policy to support the law. Notifications are published in the University catalog, the Student Handbook and the Fall semester class schedule.~~

~~(9) Waiver of Right of Access.~~

~~(a) Students and parents of dependent students have the right to waive their right of access to confidential letters of recommendation and other documents which evaluate student academic performance. Such waivers shall be in writing and made a part of the official academic record. A waiver of right to access shall be effective only when the student or the parents of a dependent student are notified, upon request, of the names of all persons who are submitting confidential recommendations or evaluations and when the confidential letters of recommendation and other evaluative documents are used solely for the purpose intended.~~

~~(b) The University may not condition admission to the University, grants of financial aid, or receipt of any other service or benefit offered by the University, by another public educational institution in the State of Florida or by any other public agency upon being provided a waiver of the right to access by the student or the parents of a dependent student.~~

~~(10) Requests for Information in Connection with Research.~~

~~(a) All requests for academic research dealing with data from student education records shall be referred to the University Registrar and to the Provost. Such requests must be in writing and must set forth specifically the type(s) of information to which access is requested and the intended scope of the research project.~~

~~(b) The applicable custodian of records and the Provost shall determine whether to grant the request, in whole or in part, and may condition access upon a guarantee that the researcher will appropriately safeguard the data; that no personally identifiable information about any individual will be published or made available to others; or, upon other reasonable conditions.~~

~~*Specific Authority Resolution of the Florida Board of Governors dated January 7, 2003. History Formerly 6C8-1.06(3), Amended 4-3-84, 11-2-89, 1-3-93, 11-3-02, Formerly 6C8-11.003, Amended 9-12-08.*~~