

Counseling and Health Records

Excluded from classification as “educational records” under FERPA are medical and psychological records. Mandates beyond FERPA (such as licensing laws and federal legislation regarding patients’ rights) require that a higher level of privacy be applied to Health and Counseling Services’ records. These areas must maintain strict confidentiality of all information (including identity) related to students who are utilizing those services.

There are several reasons for these tighter restrictions on Health and Counseling Services’ records:

Ethical and Licensing Standards - Health and Counseling Services staff members are bound by the ethical standards which apply to the provision of college health and counseling, as well as standards of the applicable licensing boards and professional associations to which they belong. Each of these states unequivocally that, with certain specific exceptions, strict confidentiality is to be maintained of all information related to an individual’s medical/psychological treatment. In cases where confidentiality must be broken (e.g., imminent danger to self or others) information may only be released to those individuals who would be directly involved with securing or providing treatment: hospital personnel, emergency service workers, etc.

Practical Considerations - Students will not utilize the full range of services available – particularly in areas such as counseling, sexual health and substance use – if they believe that others will be told that they received these services.

Legal Mandates - From the age of 18 individuals have the legal authority to consent to their own medical and psychological treatment. According to state and federal laws, treatment providers are mandated to safeguard the privacy and confidentiality of all consenting patients. To release information without specific consent is a violation of the law. The potential consequences to the provider and agency engaging in such action include civil penalties and loss of license to practice.

Sample Reference Request and FERPA Release

Student Name (please print): \_\_\_\_\_

I request \_\_\_\_\_ to serve as a reference for me. The purpose(s) of the reference is (are) (check all that apply):

- ☐ application for employment
- ☐ all forms of scholarship or honorary awards
- ☐ admission to another education institution

The reference may be given in the following form(s):

- ☐ written
- ☐ oral

I authorize the above person to release information and provide an evaluation about any and all information from my education records at SUNY Geneseo, including information pertaining to my education at other institutions I have previously attended which is part of my education records at SUNY Geneseo, deemed necessary by said employee to provide the above reference to: (check all applicable spaces)

- 1. ☐ all prospective employers OR ☐ specific employers (list on reverse)
- 2. ☐ all educational institutions to which I seek admission OR ☐ specific educational institutions (list on reverse)
- 3. ☐ all organizations considering me for an award or scholarship OR ☐ specific organizations (list on reverse)

I understand further that: (1) this consent shall remain in effect until revoked by me, in writing, and delivered to the above employee, but that such revocation shall not affect disclosures previously made by said employee prior to the employee’s receipt of any such written revocation; (2) I have the right to receive a copy of any written reference upon request, unless otherwise waived; and (3) I have the right not to consent to the release of my education records.

Student’s Signature \_\_\_\_\_

Date \_\_\_\_\_

FERPA Danger Zones for Faculty & Staff:

DO NOT give out directory information about a student who has requested confidentiality.

DO NOT post grades or return graded work in ways that connect confidential information to “personally identifiable” information (e.g., leaving stacks of papers outside your office for students to pick up).

DO NOT re-disclose confidential information without authorization (i.e., sharing confidential information that was disclosed to you with someone, including a colleague, who does not have a legitimate educational interest or who was not authorized by the student).

DO NOT disclose records to parents, employers, or other students without permission.

DO NOT include personally identifiable information about student “A” in student “B’s” record without student “A’s” permission.

DO NOT provide protected information over the telephone or by email unless you are certain you are communicating with another Geneseo College official or the student her/himself.

DO encourage students to make written requests giving consent for letters of recommendation.

Have Additional Questions?

For more information on records maintained by the College, please refer to the Student Records Policy contained in the Geneseo Student Handbook and Geneseo Update, or available in the Dean of Students office or on-line at: <http://handbook.geneseo.edu>

For additional information on FERPA or for assistance in determining if you have a “legitimate educational interest,” contact the Dean of Students at (585) 245-5706, or the Family Policy Compliance Office in the U.S. Department of Education which enforces FERPA and maintains a website that contains a significant amount of information including text of the legislation, regulations, and legislative history at: <http://www.ed.gov/offices/OM/fpc/>

Portions of this document were taken from Marshall University Judicial Affairs’ Student Records and Students’ Rights: An At-a-Glance Guide to Federal and University Policy, and Synthesis: Law and Policy in Higher Education. (Fall 2001).



Student Records and Students’ Rights:

WHAT FACULTY AND STAFF SHOULD KNOW ABOUT FERPA

GENESEO

— Division of Student and Campus Life —

Commonly known as the **Buckley Amendment or FERPA, the Family Educational Rights and Privacy Act** provides for the confidentiality of a student's educational record and any personally identifiable information. In essence, FERPA is civil rights legislation for college students. FERPA identifies four fundamental rights of students:

- the right to have access to their educational records;
- the right, through consent, to specify which third parties may access their records;
- the right to challenge/correct information in their records; and
- the right to be informed of their privacy rights.

**These rights apply to all students, regardless of their age.** With the exception of directory information, no information may be released without a student's prior authorization.

At Geneseo, “Non-Confidential Directory Information” includes:

- name
- local Address
- e-mail address
- photographs
- major field of study
- dates of attendance
- participation in officially recognized activities
- degrees, honors, and awards
- most recent educational institution attended
- weight and height (student-athletes)

The information that the College has identified as directory information and may be released without a student's explicit permission can also be made confidential at a student's request. Students must put their request in writing to the Dean of Students before the first Friday of each semester. Additionally, the College can refuse to release such information if a request seems improper, e.g., for commercial exploitation.

Educational records maintained by SUNY Geneseo or any agent of the College include any record directly related to a student. **Confidential educational records**, including BANNER data, subject to federal legal protections and exceptions **include**:

- grades
- test scores
- I.D. numbers or social security numbers
- financial records
- class schedules
- semester, cumulative, or major GPA
- housing information
- conduct records (or results of reviews)
- date and place of birth
- enrollment status
- class attendance information

It is prohibited to provide any of this information to any third party (non-college official), including parents, without a student's written permission. Disclosure of information from confidential educational records is limited to the eligible student or to others:

- who have a “Legitimate Educational Interest”\*\*;
- to whom the eligible student releases the records;
- who are entitled or permitted to know the content of the records by virtue of one or more FERPA “exceptions.”

*\*\*The Department of Education does not specifically define the term “legitimate educational interest.” However, the Department provides a sample definition that many institutions have adopted. The sample definition states that officials have a “legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.” For example, a faculty member whose responsibilities include academic advising for students could have lawful access to an advisee’s “education record” for the purpose of providing appropriate academic advising.*

Additionally, this definition extends to other students (e.g., work/study help) assisting a college official in performing her/his tasks. Students working in campus offices should, therefore, be advised about the importance of maintaining confidentiality and the integrity of office records, and all student workers should complete the Information Security 101 course.

### Letters of Recommendation

FERPA's prohibition of the disclosure of personally identifiable information from an education record of a student applies to any kind of non-directory information (e.g., performance in class, grades, attitude, motivation, abilities, background) conveyed in writing, in person, or over the telephone or e-mail to third parties. Although such information is usually conveyed by faculty members (e.g., in letters of recommendation) at the informal request of the student and is usually positive, the better practice would be to request a written consent from the student, meeting the FERPA requirements, before providing the information. An example of a written consent form is provided at the end of this brochure.

Letters of recommendation following FERPA guidelines often have forms accompanying them that indicate whether or not the student is waiving his/her right of access to your letter. While the institution cannot require students to sign such a waiver, you may decline to write a letter without it. Be aware, this waiver is not the equivalent of permission to write the letter in the first place. The waiver of right to access indicates whether or not your letter is “confidential” even to the student. It is the written consent that gives you permission to share information from the student's educational records with a third party, regardless of whether it is confidential to/from the student.

### Inspection of Education Records

FERPA permits a student the right to inspect her or his educational record by writing to the individual responsible for keeping the record (see College Records Policy). The written request should identify as precisely as possible the record or records she/he wishes to inspect. An appointment must be made for the student within 45 days of the request. Test papers and final examinations are part of a student's educational record and subject to the regulations of the policy.

Disclosure of records does not usually require giving copies of records.

### Private Personal Records

FERPA excludes from students' education records “records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.” This means that private and personal records (such as your personal notes) defined in this exception are not subject to examination by students under FERPA.

### E-mail

E-mail messages, if they contain information directly related to a student, would be included within the definition of “education records.” For example, if you sent an e-mail message to another faculty member outlining your concerns about John Jones' performance in your class and questioning whether Jones had the necessary intellectual skills to succeed in your program, that message would be considered part of Jones' “education record” to which Jones would have a right of access.

