



## **Operating Policy and Procedure**

**OP 30.002**      FERPA

**DATE:**            August 16, 2023

**PURPOSE:**      Colleges are required to follow the Family Educational Rights and Privacy Act (FERPA) of 1974 to protect the privacy of student records. The College FERPA policy identifies directory information, addresses the release of student information, and provides for student access to and amendment of education records. FERPA applies to all schools that receive funding under any program administered by the U.S. Department of Education.

**REVIEW:**        This OP will be reviewed in July for even-numbered years or when changes to the federal law warrant review by the Registrar, Student and Community Services Cabinet, and President’s Council, with revisions forwarded to the Board of Trustees through the Office of the President.

### **POLICY/PROCEDURE**

#### **1. General Policy**

- a.** Kellogg Community College (KCC) adheres to the Family Educational Rights and Privacy Act of 1974 (FERPA) by:
  - i.** Protecting the confidentiality of student education records, including restricting access to personally identifiable information contained in education records without the written consent of the eligible student, unless permitted by law;
  - ii.** Identifying “directory information” along with the exceptions under FERPA, where the College is permitted (but not required) to disclose personally identifiable information from education records without consent, including to those school officials with a legitimate educational interest and in compliance with the Solomon Amendment;
  - iii.** Providing eligible students access to their records to assure the accuracy of their contents;
  - iv.** Establishing a process for students to request amendment of their education records, and
  - v.** Notifying students on an annual basis of their rights under FERPA through the KCC Student Handbook of their rights under FERPA.

#### **2. Scope**

- a.** This Policy applies to all KCC employees and students as well as any contractors, consultants, volunteers, or others to whom KCC has outsourced institutional services or functions and has access to students’ education records.

### 3. Definitions

- a. *Directory Information:* Personally identifiable information contained in the education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed, including, but not limited to, the student's name, address, telephone listing, email address; photograph; date & place of birth; major field of study; grade level (e.g., freshman or sophomore); enrollment status (e.g., full-time or part-time); dates of attendance (semester or academic year); participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.
- b. *Education Record:* College records containing information directly related to a student and maintained by the College or by a party acting for the College. Education records do not include:
  - i. Records kept in the sole possession of the maker are only used for a personal memory aid and are not accessible or revealed to others except a temporary substitute for the person who made the record.
  - ii. Law enforcement records of KCC Public Safety.
  - iii. Records made and maintained in the normal course of business that are exclusively related to (and are used for) employment.
  - iv. Treatment records of an eligible student that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in a professional capacity.
  - v. Records received after an individual is no longer a student that does not directly relate to the individual's attendance as a student.
  - vi. Grades or peer-graded papers before they are collected and recorded by the instructor.
- c. *Eligible Student:* A student who has reached 18 years of age or is attending an institution of postsecondary education. Once an individual becomes an 'eligible student,' all rights formerly given to parents under FERPA transfer to the student. Applicants who do not enroll are not eligible students.
- d. *Financial Aid:* Payment of funds provided to a student that is conditioned on the student's attendance at a school.
- e. *Legitimate Educational Interest:* When the Registrar (or designee) determines that the review of an education record is necessary in order to fulfill a professional or organizational responsibility, then a legitimate educational interest exists.
- f. *Personally Identifiable Information:* Information that, alone or in combination, is linked or linkable to a specific person that would allow identification of that person with reasonable certainty (e.g. student's name; name of the student's parent or other family members; address of the student or the student's family; a personal identifier such as college ID number, social security number or any portion thereof; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name).

- g. *Record*: Any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.
- h. *School Official*: Staff who work within the College whom the Registrar (or designee) has determined to have legitimate educational interests. Contractors, consultants, volunteers, or other parties to whom the College has outsourced institutional services or functions may be considered a school official provided that the outside party: 1) Performs an institutional service or function for which the College would otherwise use employees; 2) Is under the direct control of the College with respect to the use and maintenance of education records; and, 3) Is subject to the requirements governing the use and redisclosure of personally identifiable information from education records.
- i. *Solomon Amendment*: The Solomon Amendment (10 U.S.C.) is a federal law that allows military recruiters to access some address, biographical, and academic program information on students aged 17 and older. The Department of Education has determined that the Solomon Amendment supersedes most elements of FERPA and permits the disclosure of student information.
- j. *Student*: Any individual who is or has been in attendance at the College.

#### **4. Release of Education Record**

- a. A written release of education records is provided to the KCC Registrar's Office and must contain the specific records that may be disclosed (i.e., academic transcript), the party to whom the records are disclosed, and the student's signature authorizing the disclosure.
  - i. KCC reserves the right to deny records disclosure to a third party when the student has an unpaid financial obligation to the College.

#### **5. Non-Consensual Disclosure of Education Records and Personally Identifiable Information**

- a. Under FERPA, there are a number of exceptions where schools are permitted to disclose personally identifiable and other information from education records without consent, though they are not required to do so. These exceptions include:
  - i. School officials with a legitimate educational interest as determined by the Registrar (or designee).
  - ii. Transfer school to which the student seeks or intends to enroll, or is already enrolled, so long as the disclosure is for purposes related to the student's enrollment or transfer.
  - iii. In connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to determine the eligibility for the aid, determine the amount of the aid, determine the conditions for the aid; and/or enforce the terms and conditions of the aid.
  - iv. State and local officials or authorities to whom this information is specifically allowed to be reported or disclosed pursuant to State statute.
  - v. Authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the U.S. Secretary of Education, and State and local educational authorities for audit or evaluation of Federal or State-supported

education programs or for the enforcement of or compliance with Federal legal requirements that related to those programs.

- vi.** Organizations conducting studies for, or on behalf of, the College to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction.
- vii.** Accrediting organizations to carry out their accrediting functions.
- viii.** In compliance with a judicial order or a lawfully issued subpoena. This release requires the College to make a reasonable attempt to notify the student of the order or subpoena in advance of compliance so that the student may seek protective action unless the disclosure is in compliance with a Federal grand jury subpoena or issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or an *ex parte* court order obtained by the US Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.
- ix.** Appropriate parties, including but not limited to parents, in connection with a health or safety emergency involving the student.
- x.** Parent of a student who is under the age of 21 at the time of the disclosure regarding the student's violation of any Federal, State, or local law or of any rule or policy of the College governing the use or possession of alcohol or a controlled substance.
- xi.** Disclosure is to a victim of an alleged perpetrator of a crime of violence (arson; assault; burglary; criminal homicide—manslaughter; criminal homicide—murder and nonnegligent manslaughter; destruction/damage/vandalism of property; kidnapping/abduction; robbery; forcible sex offenses) or a non-forcible sex offense (statutory rape or incest). The disclosure may only include the final results of the disciplinary proceeding conducted by the College with respect to that alleged crime or offense. The College may disclose the final results of the disciplinary proceeding, regardless of whether the College concluded a violation was committed.
- xii.** Disclosure in connection with a disciplinary proceeding at the College related to a crime of violence (arson, assault, burglary, criminal homicide—manslaughter, criminal homicide—murder and nonnegligent manslaughter, destruction/damage/vandalism of property, kidnapping/abduction, robbery, forcible sex offenses) or a non-forcible sex offense (statutory rape or incest). The College must not disclose the final results of the disciplinary proceeding unless it determines that the student (i.e., respondent) is an alleged perpetrator of a crime of violence or non-forcible sex offense, and with respect to the allegation made against him or her, the student has committed a violation of the College's rules or policies. The disclosure of final results must include only the name of the student, the violation committed, and any sanction imposed by the College against the student. The disclosure must not include the name of any other student, including a victim or witness, without the written consent of that other student.

- xiii. Disclosure which concerns sex offenders and other individuals required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14071, and the information was provided to the College under 42 U.S.C. 14071 and applicable Federal guidelines.

## **6. Release of Directory Information**

- a. A school may disclose directory information without consent if it has given public notice of the types of personally identifiable information it has designated as directory information, the eligible student's right to restrict the disclosure of such information, and the period of time within which an eligible student has to notify the school that they do not want any or all of those types of information designated as directory information.
  - i. KCC has designated as directory information the following: student name; address; telephone listing; KCC e-mail address; photograph; date and place of birth; major field of study; grade level (freshman or sophomore); enrollment status (full- or part-time); dates of attendance (semester; academic year); participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and, the most recent educational agency or institution attended.
  - ii. Students may submit a written request to the Registrar's Office prior to the first day of the semester to not have their directory information, or portions thereof, released.

## **7. Recordkeeping Requirements for Disclosures**

- a. The College must maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student, as well as the names of State and local educational authorities and Federal officials and agencies that may make further disclosures of personally identifiable information from the student's education records without consent.
  - i. The College shall maintain the record with the student's education records as long as the records are maintained.
  - ii. The record must include the parties who have requested or received personally identifiable information from the education records and the legitimate interests the parties had in requesting or obtaining the information.
  - iii. Under the health or safety emergency exception, the College must record the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure, the parties to whom the disclosure was made, and the personally identifiable information that was disclosed.

## **8. Student Access to and Request for Amendment of Education Records**

- a. Under FERPA, a school must provide an eligible student with an opportunity to inspect and review their education records within a reasonable period of time, but not more than forty-five (45) days following receipt of a request.
- b. The school is not required to provide the following:
  - i. Copies of education records unless failure to do so would effectively prevent the eligible student from obtaining access to the records.

- ii. Information that is not maintained or to create education records in response to an eligible student's request.
  - iii. Updates on the eligible student's progress in a course (including grade reports) or in school unless such information already exists in the form of an education record.
  - iv. Financial records, including information from those records about the eligible student's parents.
  - v. Confidential letters or statements of recommendation, if the student waived his/her right to inspect and review those letters or statements, and they are related to the student's admission, application for employment, or receipt of an honor or honorary recognition.
- c. The eligible student has the right to request that information in the education record that is factually inaccurate, misleading, or in violation of the student's privacy rights be amended. This request is made in writing to the KCC Registrar's Office.
  - i. KCC will consider the request and is not required to amend education records in accordance with the request.
  - ii. The eligible student does not have the right to challenge substantive decisions made by the school about a student, such as a grade or other evaluation of the student.
  - iii. The final decision of the College on whether to amend the record will be provided to the student in writing. If KCC decides not to amend a record in accordance with the request, the eligible student has a right to appeal that decision.
  - iv. FERPA was intended to require only that schools conform to fair recordkeeping practices and not override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations.

## **9. Appeals**

- a. If FERPA's amendment procedures are not applicable to an eligible student's request for amendment of education records, the College is not required under FERPA to consider an appeal.
- b. If applicable, the eligible student may appeal the decision to not amend the education record within five (5) business days of the final decision.
- c. The appeal is submitted in writing to the Vice President for Student and Community Services (or designee) and must be based on the following elements:
  - i. The education record is factually inaccurate.
  - ii. Information in the education record is misleading.
  - iii. The eligible student's privacy rights have been violated.
- d. The burden shall lie with the eligible student to show that the College should have made the requested amendment(s) or that a violation of the student's rights under FERPA has occurred.

- e. The College will conduct the appeal as a review of written documentation and will select a reviewer who does not have a direct interest in the outcome of the appeal.
  - i. FERPA allows for the student to request a live hearing where the student may present evidence and be represented by one or more individuals of their choice, including an attorney (at their own expense).
  - ii. The student would request a live hearing as part of their written appeal.
  - iii. Within fifteen (15) business days of receipt of the appeal, the College will hold a hearing.
  - iv. The College will notify the student of the date, time, and place of the hearing at least ten (10) business days before the hearing date.
  - v. At the hearing, the student will have full and fair opportunity to present evidence relevant to whether the education record contains factually inaccurate or misleading information or information that violates the student's right to privacy.
- f. The Vice President (or designee) will assign a reviewer/hearing officer who does not have a direct interest in the outcome of the appeal.
  - i. The reviewer/hearing officer will consider the information presented and render a recommendation to the Vice President (or designee) within ten (10) business days, including a summary of the information presented and the reasons for the recommendation.
  - ii. The Vice President (or designee) will make a final determination and notify the eligible student in writing of the final decision.
- g. If the College determines that the information in the education record is inaccurate, misleading, or otherwise in violation of the student's privacy rights, the decision is made to amend the education record accordingly.
  - i. The student will be informed of the amendment in writing.
- h. If the College determines that the information in the education record is not inaccurate, misleading, or otherwise in violation of the student's privacy rights, the decision is made to not amend the education record.
  - i. The eligible student will be notified of their right to insert a statement in the record commenting on the contested information in the record or stating why they disagree with the decision. The statement must remain with the contested part of the eligible student's record for as long as the record is maintained.

#### **10. KCC Public Safety and Law Enforcement Unit Records**

- a. KCC Public Safety is officially authorized to enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization or to maintain the physical security and safety of the school.

- i. Records created by KCC Public Safety are considered law enforcement unit records and are not education records subject to the privacy protections of FERPA.
- ii. KCC Public Safety may refuse to provide an eligible student with an opportunity to inspect and review law enforcement unit records, and it may disclose law enforcement unit records to third parties without the eligible student's prior written consent.
- iii. Education records, or personally identifiable information from education records, which the school shares with KCC Public Safety, do not lose their protected status as education records because they are shared with the law enforcement unit.
- iv. Law enforcement unit records that become part of a student code of conduct investigation are protected as part of the education record.

### **11. FERPA Complaints**

- a. Eligible students have the right to file a complaint with the U.S. Department of Education concerning alleged failures by KCC to comply with the requirements of FERPA.
  - i. Complaints are filed in writing with the Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue SW, Washington DC 20202 or at <https://studentprivacy.ed.gov/file-a-complaint>

### **12. Annual FERPA Notification**

- a. The College shall annually notify eligible students currently in attendance of their FERPA rights and procedures to exercise their rights, including:
  - i. The right to review their education records.
  - ii. The right to seek an amendment to their education records.
  - iii. The right to consent to disclosures of personally identifiable information contained in their education record, except where FERPA authorizes disclosure without consent.
  - iv. The right to file with the Department of Education a complaint concerning alleged failures by the College to comply with the requirements of FERPA.
  - v. The procedure for exercising the rights to inspect and review education records.
  - vi. The procedure for requesting amendments of records.
  - vii. The criteria for determining who qualifies as a "school official" and what constitutes "legitimate educational interest."

### **13. Forms**

- a. FERPA Waiver of Directory Information
- b. KCC Authorization of Student Release

### **14. Roles and Responsibilities.**



- a. The Registrar is responsible for keeping abreast of changes and updates to FERPA, providing FERPA training for College staff, and participating in investigations regarding violations of the FERPA policy.
- b. The Dean of Student Services is responsible for addressing reports of student FERPA violations under the Student Code of Conduct.
- c. The Chief Human Resources Officer is responsible to address reports of employee FERPA violations under the Employee Standards of Conduct.

**15. Persons/Departments Affected:**

- a. All employees and students.

**16. Related Policies**

- a. OP 12.001 Employee Standards of Conduct
- b. OP 30.001 Student Code of Conduct

**17. Authoritative References**

- a. Student Privacy at the U.S. Department of Education <https://studentprivacy.ed.gov/?src=rn>
- b. 34 CFR Part 99 – FERPA <https://studentprivacy.ed.gov/node/548/>
- c. FERPA General Guidance for Students <https://studentprivacy.ed.gov/resources/ferpa-general-guidance-students>

**18. Right to Change Policy.** The College reserves the right to interpret, change, modify, amend, or rescind this Policy, in whole or in part, at any time, without prior notice.

**19. Approval Date:** August 16, 2023

**20. Past Revisions**