

PROCEDURES MEMORANDUM

TO: MCC Staff

FROM: Office of the President

SUBJECT: The Family Education Rights and Privacy Act (FERPA)

DATE: August 5, 2022

PURPOSE: To establish a uniform process for student access to and review of their education records and for observing legal restrictions on disclosure of student education records.

SCOPE: This procedure applies to all College students, employees, and to members of the Board of Governors who may need to access education records for legitimate education purposes.

GENERAL PRINCIPLES:

These procedures implement Board Policy 50406 and are designed to comply with the Family Education Rights and Privacy Act ("FERPA" or "Act")

If a student believes the College is violating FERPA, the student has a right to file a complaint with the U. S. Department of Education. The address is:

U.S. Department of Education
Student Privacy Policy Office
400 Maryland Ave SW
Washington, DC 20202-8520

1. Definitions

As used in this Procedures Memorandum (PM), the following definitions apply:

- A. Student – An individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.
- B. Education Records – Any record (in handwriting, print, tape, film, or other medium) which is directly related to a student and which is maintained for the College by an employee of the College or an agent of the College. The term "education record" does not include:

- 1) A record kept by a College staff person or agent which meets both of the following tests:
 - a) It is kept in the sole possession of the person who made it; and
 - b) It is not accessible and has not been revealed to any other person except to the maker or their temporary substitute.
- 2) An employment record which meets each of the following tests:
 - a) It relates to an individual who is or was employed by the College;
 - b) It is made and maintained in the normal course of business;
 - c) It relates to the individual exclusively in the individual's capacity as an employee; and
 - d) It is not available for use for any other purpose.
- 3) Records connected with an individual's application for admission to the College or one of the campuses (or departments) within the College if the individual has never attended the College as a student.
- 4) Records which relate to an individual as an alumnus after he/she no longer attends or participates in an education activity for which the College awards a grade or credit and which only contain information about an individual after he or she is no longer a student at the College.
- 5) Records created and maintained by the College Public Safety/Police Department for law enforcement purposes.
- 6) Records of a student who is 18 years of age or older, which are made or maintained by medical or psychological professionals or paraprofessionals and maintained only for the provision of medical or psychiatric treatment of the student. In order to maintain these records, the College will enforce the following conditions:
 - a) No person other than the physicians, psychiatrists, psychologists, or other recognized professionals or paraprofessionals providing treatment will have access to information contained in the records without the student's prior consent. Such records may be disclosed to other persons under the procedures to meet a health and safety emergency as described in FERPA and this policy.
 - b) A physician or other appropriate professional of the student's choice may review these records.

- C. An employment record of a student is an education record if either of the following tests is met:
 - 1) The student is employed as a result of his or her status as a student; or,
 - 2) The student receives an academic grade or credit based on his or her performance as an employee.
- D. Personal Identifier – Any data or information that relates a record to an individual. This includes the individual's name, the name of the individual's parents or other family members, the individual's address, the individual's social security number, any other number or symbol which identifies the individual, a list of the individual's personal characteristics, or any other information which would make the individual's identity known or easily traceable could be used to label a record as the individual's.
- E. President – The President of the College or any employee of the College designated by the President.

2. Annual Notification

The College shall annually inform students of their rights under the Family Educational Rights and Privacy Act of 1974, as amended. This Act was designed to protect the privacy of education records, to establish the right of students to inspect and review their education records and to provide guidelines for the correction of inaccurate or misleading data through informal and formal hearings. Students also have the right to file complaints with the U.S. Department of Education concerning alleged failures by the institution in complying with the provisions of the Act.

3. Statement of Rights

- A. The College encourages students to exercise their rights under FERPA and this procedures memorandum. Since a student's education records will be used repeatedly by College officials and others to make important decisions affecting the student's academic program and future career, the student should assume a personal responsibility to make certain that his or her education records are complete and accurate. This procedures memorandum is intended to inform students about their rights to:
 - 1) inspect their educational records;
 - 2) have the right to a hearing to challenge the content of their educational records if they believe that the records contain information that is inaccurate or misleading;
 - 3) limit disclosure of information from their records to those who have their written consent or to officials specifically permitted within the law, such as College officials and, under certain conditions, local, state and federal officials;

- 4) report violations of FERPA to the U. S. Department of Education;
 - 5) be informed about their FERPA rights.
- B. The College has authorized the President to use the administrative resources of the College to carry out these procedures. Students who have problems or questions relating to these procedures should contact the Records Office.
- C. These procedures apply only to education records as defined in these procedures and the Act, and do not extend to the process of assignment of grades. Procedures for appealing grades have been established in the College catalog.

4. Locations of Education Records

TYPE	LOCATION	CUSTODIAN
Cumulative Academic Records	Records Office	Registrar
Financial Aid Records	Financial Aid and Veteran Services Office	Director of Financial Aid & Veteran Services
Disciplinary Records	Dean of Student Advocacy and Accountability	Dean of Student Advocacy and Accountability

5. Procedure to Inspect Education Records

- A. The College encourages students to inspect and review their education records. Students should submit written requests to review their records to the Records Office and identify the record(s) they wish to inspect. Staff shall make arrangements for access to the records and notify the student of the time and place where the records may be inspected. If the requested record(s) are not maintained in the Records Office, students will be notified of the correct official to whom the request should be addressed.
- B. If it is mutually convenient, the record custodian will allow the student to inspect the record(s) at once. In other instances, the official responsible for responding to the request will discuss possible arrangements for the inspection with the student. This discussion will deal with such items as location, time, records security, and whether the student will need a resource person to explain and interpret certain records.
- C. The record custodian will make the needed arrangements and advise the student when and where the records will be available. The procedure will be completed within a reasonable period of time and in all cases the student will be permitted to inspect the records within forty-five (45) calendar days after the date the student's request is received.

- D. Copies of education records shall be provided to students when requested or whenever failure to provide such copies would have the effect of preventing the student from exercising the right to inspect and review the records. The College will not charge a fee to search for or retrieve a student's education records. However, unless imposition of copying charges would effectively prevent the student from inspecting their other education records, the College will charge a fee of five cents per page for photocopying.
- E. The College reserves the right to refuse to permit a student to inspect and review the following education records:
 - 1) Financial records of the student's parent(s), including any information those records contain;
 - 2) Confidential letters and confidential statements of recommendation placed in the student's education records before January 1, 1975, as long as the letters and statements are used only for the purposes for which they were specifically intended;
 - 3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, which relate to the student's admission to an educational institution, application for employment, or receipt of an honor or honorary recognition, if the student has voluntarily waived his or her right to inspect and review those records in a signed written document. Where the student has signed such a waiver the College will, on request, provide the student the names of individuals who provided such letters and statements of recommendation, and use such records only for the purpose for which they were intended. Any such waiver by the student may be revoked in writing, but only respecting letters or statements placed in the student's education records after the College's receipt of the revocation of waiver.
 - 4) Those records which are excluded from the FERPA definition of Education Records.

6. Outstanding Financial Obligations

- A. The College reserves the right to deny a request for an official transcript and the release of diploma/certificate if the requestor has an unpaid financial obligation to the College.

7. Confidentiality of Student Records

- A. All officials of the College will follow a strict policy that information contained in a student's education record is confidential and may not be disclosed to third parties

without the student's prior written consent except as otherwise provided in or under FERPA.

8. Directory Information

A. The College will not disclose any personally identifiable information about students (except directory information listed below, at the discretion of the College) without the written consent of the student. MCC's directory information may include, at the discretion of the College:

- 1) Major Field of Study
- 2) Credit Hour status (full or part time for the term)
- 3) Start and end dates of attendance (Start date of first quarter of when classes were taken and end date of the last quarter when classes were completed only)
- 4) Degrees, honors and awards received
- 5) Student's Name
- 6) MCC email address
- 7) Photographs, audios and videos of students participating in official school activities and events*

*In consideration of acceptance of enrollment, students authorize Metropolitan Community College to use their image, likeness, name, and comments in, but not limited to, photographs, videos and audio recordings created or used for the purposes of publicity/marketing and advertising for the College.

- a) Students have the right to restrict access to their directory information by completing a Request to Opt Out of Directory Information form.
- b) If the Records Office receives a student's request to opt out of directory information, the Registrar will mark their records accordingly, and not make any further disclosures of those items of information about that student without the student's prior written consent, except as otherwise permitted or required by these procedures or by FERPA.

9. Use of Student Education Records by College Officials

To carry out their responsibilities, College Officials will have access to student education records for legitimate educational purposes. Persons at the College who are considered College officials for this purpose include but are not limited to:

- A. A member of the College Board of Governors;
- B. An employee serving in an academic or research faculty position;
- C. An employee serving in an administrative, supervisory or support staff position, including Public Safety/Police personnel;
- D. A person employed by the College as a temporary substitute for an exempt staff member or faculty member. This person is considered a qualified official, however, only for the period of his or her performance as a substitute;
- E. A person employed by the College to perform a special administrative task. This would include secretaries, assistants, clerks, attorneys, auditors, collection agencies, students serving on disciplinary or grievance committees, and consultants, but only for the period of their performance of the administrative task;
- F. Persons qualifying as College officials will have access to the records only if they have legitimate education interest in doing so. A "legitimate education interest" exists if the person needs to have access to the records in order to fulfill his or her professional responsibility.

10. Other Disclosures Permitted Without Student Consent

The College also reserves the right to make disclosures of personally identifiable information in a student's education records, without the consent of the student, in the following circumstances:

- A. To officials of another school, school system, college or university in which the student seeks or intends to enroll;
- B. To authorized federal, state and local educational officials who need information in order to audit or evaluate federal or state supported educational programs, or to enforce federal legal requirements relating to those programs;
- C. To parties who provide or have been requested to provide financial aid to the student, for purposes such as to:
 - 1) Determine the student's eligibility for the aid;
 - 2) Determine the amount of financial aid;
 - 3) Determine the conditions for the receipt of the financial aid; or,
 - 4) Enforce the terms of the agreement between the provider and the receiver of

the financial aid.

- D. To an organization that has entered into an agreement with the College to conduct a study on behalf of the College to develop, validate or administer predictive tests, administer student aid or improve instruction;
- E. To accrediting organizations to carry out their accrediting functions;
- F. To the parents of a student if the parents claim the student as a dependent under the Internal Revenue Code. The College will exercise this option only on the condition that the parents furnish evidence of such dependence;
- G. To comply with a judicial order or lawfully issued subpoena;
- H. To an alleged victim of a crime of violence. Under this subparagraph, the disclosure will be limited to the results of any disciplinary proceeding conducted by the College against the alleged perpetrator of that crime with respect to that crime. The term "crime of violence" means (1) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (2) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense;
- I. To comply with the Solomon Amendment [32 C.F.R. Part 216];
- J. All requests for disclosure under the circumstances listed above (where the College may disclose information without prior consent to third parties other than its own officials), will be referred to the Registrar. The Registrar will approve or disapprove the request and College officials may not make the disclosure unless and until the Registrar approves the request.
- K. The College authorizes its officials to make disclosures from student education records in a health or safety emergency, without the consent of the student, if the official deems:
 - 1) The disclosure to be warranted by the seriousness of the threat to the health or safety of the student or other persons;
 - 2) The disclosure to be necessary in view of the emergency; and
 - 3) The persons to whom the information is to be disclosed to be appropriate and in a position to deal with the emergency.
- L. The student may obtain a copy of any record the College has disclosed by the student's prior written consent.

- M. The College will not release information contained in student's education records to any third parties other than College officials unless those parties agree they will not redisclose the information without the student's prior written consent. (This requirement will not apply to disclosures made pursuant to court orders or lawfully issued subpoenas, disclosures of directory information, and disclosure to the student.)

11. Form of Student Consent

- A. Where the student's consent to the disclosure of personally identifiable information from the student's education records is required under these procedures, the consent must be in writing and must:
- 1) Specify the records to be disclosed;
 - 2) State the purpose of the disclosure;
 - 3) Identify the person or organization or the class of persons or organizations to whom the disclosure may be made; and
 - 4) State the date of the consent and, if appropriate, the date when the consent is to be terminated.

12. Records of Requests for Access and Disclosures Made From Education Records

- A. The College will maintain a record of each request for access to and each disclosure of personally identifiable information from the records of each student, not including:
- 1) Those made by or to College officials who have a legitimate education interest in the record;
 - 2) Those made by or to the student;
 - 3) Those made with the student's prior written consent.
 - 4) Those seeking or disclosing only directory information; or
 - 5) Those in which a party seeks or receives records pursuant to a grand jury or other law enforcement subpoena and the issuing court orders that the existence or contents of the subpoena or the information furnished in response not be disclosed.
 - 6) This record will be the College's record of requests and disclosures from education records as required by 34 C.F.R. §99.32.

- 7) The record of requests for and disclosures made from education records will be available to College officials with a legitimate education interest, the record custodians, the student, and Federal, state or local officials for record-keeping or auditing purposes. The record will include at least:
 - a) The name of the person or agency making the request;
 - b) The specific information or education record requested;
 - c) The legitimate interest the person or agency had in the information;
 - d) The date the person or agency made the request;
 - e) Whether the request was granted and, if it was, the date access was permitted or the disclosure was made.
- 8) The College will maintain this record of disclosures as long as it maintains the student's education record.

13. Procedures to Seek to Correct Education Records

A. Request for Correction

The College encourages students to periodically inspect and review their education records to make certain that they correctly reflect their academic progress and other achievements. The College permits students to request changes to the content of their education records if the student believes the records are inaccurate, misleading, or otherwise in violation of the privacy or other rights of students.

- 1) For the purpose of outlining the procedure to seek to correct education records, the term "incorrect" will be used to describe a record that is inaccurate, misleading, or in violation of the privacy or other rights of students. Also, in this section, the term "requester" will be used to describe a student or former student who is asking the College to correct a record.
- 2) If a student or former student discovers an incorrect item in his or her education record, he or she should informally discuss the problem with the record custodian. If the custodian finds the record is incorrect because of an obvious error, and it is a simple matter to correct it to the satisfaction of the requester, the custodian may make the change.
- 3) If the custodian denies the request to amend the record to the requester's satisfaction after an informal discussion, or the record does not appear to be obviously incorrect, the custodian will advise the requester of his or her right to make a formal written request to amend the record.

- 4) A written request to amend a record must be filed with the custodian who denied the informal request to amend the record. The written request must specifically identify the item the requester believes is incorrect, state why the requester believes it is incorrect, and be dated and signed by the requester.
- 5) The record custodian will create and maintain a file, which will include the request, the material(s) supporting the custodian's refusal to change the record, and an explanation of their rationale for not amending the record. The file will be sent to the Associate Vice President for Compliance and General Counsel and will be reviewed and discussed by the appropriate College officials, (including the person who initiated the record and legal counsel) and other persons who might have an interest in, or knowledge concerning, the questioned item. At the conclusion of this review, a summary of findings and a recommendation as to the action to be taken by the College will be made and placed in the file, and the file will be delivered to the President or his or her designee.
- 6) The President (or his or her designee) will decide whether the record should or should not be amended in accord with the request. If the decision is to amend the record, the custodian will be directed to make the change. The custodian will advise the requester in writing when he or she has amended the record and shall invite the requester to inspect the corrected record.
- 7) If the decision of the President (or his or her designee) is that the record is correct and should not be amended, the requester will be sent a letter stating the decision. The letter will also inform the requester that:
 - a) The College will provide an opportunity for a hearing for the requester to present evidence that the record is incorrect.
 - b) The requester may be represented or assisted in the hearing by other parties, including an attorney, at the requester's expense.
 - c) If the requester would like a hearing he or she should contact the office of the Associate Vice President for Compliance and General Counsel to discuss such details as appointment of a hearing officer, time and place for the hearing, and the time needed to present evidence. (The College will not be bound by the requester's wishes in these matters but, may take them into consideration when scheduling the hearing.)

B. The Hearing

The President will be advised that the requester has asked for a hearing and will appoint a hearing officer, set a time and place for the hearing, and notify the requester of the arrangements.

- 1) At the hearing, the requester will be allowed a full and fair opportunity to present evidence and testimony to support his or her belief that the challenged material in his or her education record is incorrect. The Requester and the College shall each have the right to present and to challenge evidence and cross-examine witnesses. The hearing shall be conducted informally. Formal rules of evidence shall not apply, but the hearing officer shall, have discretion to exclude evidence deemed repetitious or cumulative or irrelevant.
- 2) Within ten (10) College business days after the hearing, the hearing officer will prepare a summary of the evidence presented at the hearing and make a recommendation, based solely on the evidence presented at the hearing, concerning the request to amend the record. The hearing officer will present the summary of the evidence and the recommendation to the President.

C. Post Hearing Decision

- 1) If the President's final decision is that the College should amend the student's record, the record custodian will be directed to make the change. The requester will be advised in writing, outlining the exact amendments which the custodian will make.
- 2) If the President decides that the College will not amend the record, a written notice will be sent to the requester including the following items:
 - a) The President's decision not to amend the record;
 - b) A copy of the summary of the evidence presented at the hearing and a written statement of the reasons for the President's decision; and,
 - c) Advice to the requester that he or she may place a statement in the record commenting on the contested information in the record or stating why he/she disagrees with the President's decision, or both.

D. Final Administrative Step

When the College receives an explanatory statement from a requester after a hearing, it will maintain the statement as part of the student's education record as long as it maintains the questioned part of the record. Whenever the questioned part of the record is disclosed, the explanatory statement will also be disclosed.

Adopted 10/28/87; Revised 1/1/00; 6/8/04; 11/16/04; 7/20/06 (title changes only); 9/1/06 (reformatted); Reviewed but no changes 5/19/08; Revised 9/19/14; 2/3/21 (title change only), 8/5/22