


February 25, 2009

MEMORANDUM

To: College Presidents
From: Frederick P. Schaffer 
Re: Family Educational Rights and Privacy Act ("FERPA")

This memorandum provides guidance regarding compliance with the Federal Educational Rights and Privacy Act ("FERPA") and its amended regulations that became effective on January 8, 2009. It supersedes my memorandum dated November 21, 2005 and all prior memoranda on this subject.

As you know, FERPA requires that a student's personally identifiable education records may not be disclosed without the student's written consent, except for directory information and specific exceptions permitted by FERPA. The Board's Student Records Access Policy (Board Minutes, January 25, 1998, Cal. No. 7A) requires the University and its colleges to be in full compliance with FERPA, and authorizes the Office of the General Counsel to issue Guidelines for implementing its policy and the statute. The University's revised "Guidelines for Implementation of the CUNY Student Records Access Policy and FERPA" ("Guidelines") dated February 2009, are attached to this memorandum and replace the guidelines dated October 2000. The Guidelines have been updated to reflect the recent changes to the law.

The following is a discussion of the law and recommended practice regarding FERPA issues that arise most frequently at CUNY. A full description of the requirements, including a full listing of education records that may be released without a student's consent, is set forth in the Guidelines.

Student Consent

Unless an exception applies, a written consent from the student is required before a college can release personally identifiable information from education records. The FERPA regulations provide that such a consent must be signed and dated and must specify the records to be disclosed, the purpose of the disclosure and the person or persons to whom the records may be disclosed. The regulations also provide that a consent can include a signature in electronic format, so long as it identifies and authenticates a particular person as the source of the consent.

In obtaining a student's consent under FERPA, colleges should use the FERPA Release Form, which is attached as Attachment A to the Guidelines, or any form provided by the student that contains the same information. Colleges should not release student records based on a "HIPAA" (Health Insurance Portability and Accountability Act) release which authorize the release of medical records to third parties. These HIPAA releases (even if the words "education records" or "entire student file" are added) do not contain the necessary specificity under FERPA to constitute a consent to the release of education records.

Disclosure to City University and College Officials

FERPA provides that a college may disclose personally identifiable information from an education record of a student without prior consent if the disclosure is to "school officials" who have a "legitimate educational interest" in the student's record. The Guidelines define a college official as a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including enforcement unit personnel and health staff), a person serving on the Board of Trustees, or a student serving on an official committee, such as a disciplinary committee, or assisting another college official in performing his/her tasks. The Guidelines also provides that a college official can be a person or company with whom a college has contracted.

The amended regulations make clear that colleges are required to have appropriate controls in place to limit the accessibility of student records to those college officials who legitimately need them. 34 C.F.R. § 99.31(a)(1)(ii) provides:

An educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement.

In addition, the amended regulations set forth criteria for determining whether a contractor will be considered a school official for purposes of receiving personally identifiable student information under FERPA. The regulations provide that the contractor must (1) perform an institutional service or function for which the institution would otherwise use employees, and (2) be under the direct control of the institution with respect to the use and maintenance of education records. It is strongly recommended that there be a contract setting forth how a contractor receiving student information will be securing and maintaining the education records.

Health and Safety Emergencies

One of the purposes of the new regulations was to clarify the rights of an educational institution to release student records in the case of health and safety emergencies, after the Virginia Tech tragedy in April 2007 demonstrated that some educational institutions felt constrained from disclosing student records even in cases where a student was potentially

dangerous. Accordingly, while the old regulations provided that this exception would be strictly construed, the regulations now make clear that the U.S. Department of Education will not second guess an educational institution's determination that the disclosure of personally identifiable information was necessary to protect the health and safety of the student or others. The new regulations provide:

If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the education agency or institution . . . 34 CFR § 99.36(c).

The regulations further make clear that "any person" under this section includes the student's parent(s). It is thus not a violation of FERPA for a college to share a student's education records with parents if it reasonably appears necessary to protect the health and safety of a student who is acting in self-destructive way.

If a college receives a request for information on the basis of a health and safety emergency, and time permits, such a request should be reviewed with this office. If such a request comes from a law enforcement agency, the college should obtain a written statement from the agency that the information is needed because of a health or safety emergency, and that time is of the essence. A record must then be maintained of the disclosure, but notice need not be given to the student.

Subpoenas and Court Orders

FERPA provides that an educational institution can disclose records without a student's consent if the disclosure "is to comply with a judicial order or lawfully issued subpoena." In most cases, a "lawfully issued subpoena" to CUNY means that the subpoena must be "so ordered" by a judge (NY Civil Practice Law and Rules, Section 2307). There are certain exceptions to this requirement, including federal court subpoenas and grand jury subpoenas. If you have questions regarding whether a particular subpoena has been lawfully issued, as required by FERPA, please contact this office.

In cases where a college receives a lawfully issued subpoena for student records, CUNY's Guidelines require that the student be notified by mail five days in advance of compliance, unless a shorter period is authorized by this office. Generally, the only time that a student need not be notified is when the subpoena is for law enforcement purposes, and a court has ordered that the existence or contents of the subpoena, or the information furnished in response to the subpoena, not be disclosed.

You should be aware that law enforcement officials may occasionally issue subpoenas requesting or stating that CUNY should not disclose the request to the student. Unless the

subpoena containing this language has been “so ordered” or the law enforcement official has some other statutory authority for requiring non-disclosure, CUNY must notify the student. In such cases, we recommend that the college contact the law enforcement official who issued the subpoena and discuss the matter. If the law enforcement official needs a court order for the non-disclosure provision, he or she can then obtain it, or take other action consistent with FERPA.

Since the passage of the USA Patriot Act in 2001, FERPA has contained a provision that empowers the United States Attorney General (or a designee in a position not lower than an Assistant Attorney General) to obtain an *ex parte* court order for the production of education records, by certifying to the court that there are “specific and articulable facts” giving reason to believe that the records are likely to obtain information relevant to the investigation and prosecution of terrorism. The amended regulations now explicitly provide that disclosure pursuant to one of these *ex parte* orders is one of the categories of disclosures that do not require student consent under FERPA. See 34 CFR § 99.31(a)(9). Further, if a college receives such an *ex parte* order, and the order provides that the existence or content of the order not be disclosed to the student, the college must comply with that direction. In addition, in such cases, the college does not need to comply with the recordkeeping requirements of FERPA.

Directory Information

Directory information is defined as information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Under FERPA and CUNY’s Guidelines, a college can provide directory information to persons with a legitimate interest in such information, without a student’s consent. However, students have the right to request that any and all of their directory information not be disclosed by filling out a “Directory Information Non-Disclosure Form” with the college Registrar. If a student fills out the Non-Disclosure form, the college must follow the student’s directive. The college must continue to follow any non-disclosure directive even after a student has left the college (with respect to records created during the student’s attendance.)

In its Guidelines, CUNY has identified the following categories of information as directory information: a student’s name, attendance dates (not daily records), address, telephone number, date and place of birth, photograph, e-mail address, full or part-time status, enrollment status (undergraduate, graduate etc.), level of education (credits) completed, major field of study, degree enrolled for, participation in recognized activities and sport (teams), previous schools attended, and degrees, honors and awards received.

College should always keep in mind that, although FERPA allows for the disclosure of directory information (absent a student’s opting out by filing the non-disclosure form), it does not require the disclosure of directory information, except to the extent that the information is requested, and required to be disclosed under, the New York State Freedom of Information Law (FOIL). However, CUNY need not disclose the names and addresses of students under FOIL if the information is requested for solicitation or fund-raising purposes, which is often the reason that such information is requested.

One situation where directory information must be released is in the case of military recruiters. Under the Solomon Amendment, 10 U.S.C. § 983, colleges are required to provide "student recruitment information" to military recruiters, including the names, addresses and telephone numbers of students age 17 or older. The sole exception to this mandate is in the case of students who have filed the "Directory Information Non-Disclosure Form." Because the student has requested that directory information not be disclosed to any third parties, the college does not have to disclose it to the military because it is treating the military similarly to every other third party. This issue is discussed further in my memorandum on Military Recruiting and ROTC, dated September 24, 2008.

Social Security Numbers

The amended regulations to FERPA make clear that an educational institution cannot designate a social security number as directory information, and CUNY has not done so. 34 CFR § 99.3. This is consistent with New York law, which already prohibits the use of a student's social security number for any public identification purposes, such as posting of grades. Education Law Section 2-b. The Family Policy Compliance Office of the U.S. Department of Education, which enforces FERPA, has also made clear that it is a violation of FERPA to disclose information containing the last four digits of the student's social security number. While it remains lawful for CUNY to use the social security number as an internal student identifier, in light of problems and concerns about identity theft, it is very important that access to social security numbers be limited to those college officials who have a legitimate need for the information.

Foreign Students

Federal law promulgated in 2002 provides that personally identifiable information about foreign students with F, M or J visas is not protected under FERPA to the extent that the education institution is required to provide specific information to service officers of the Department of Homeland Security Office of Immigration and Customs Enforcement ("ICE"). Information that must be provided includes the student's name, date and place of birth, country of citizenship, address, current academic status, date of commencement of studies, degree program and field of study, information about certification for practical training, termination date and reason, number of credits completed each semester and the student's I-20 ID copy. 8 CFR § 214.3(g).

Under the above law, representatives from ICE do not need a subpoena for the above records of foreign students. Rather, the regulations provide that, upon request (which the college may ask for in writing), the school will have three work days to respond to any request for information concerning an individual student, and ten work days to respond to information about a class of students. In such cases, we do not have to give notice of the request to the affected students. Many schools have received and responded to these types of requests.

Disclosure to Parents

When a student enters a postsecondary institution, no matter what his or her age, the student, rather than the student's parents, has rights under FERPA. However, colleges can share education records on a student with his or her parents, in the following circumstances:

- (1) the student is taken as a dependent for tax purposes by either or both parent pursuant to Section 152 of the Internal Revenue Code. In such cases, the college may obtain a copy of the parents' federal tax return to verify dependency, although the parent(s) may redact financial information other than that showing the student's dependent status;
- (2) it is necessary to contact the parents because of a health and safety emergency involving their child, under the exception described on page 3 above; or
- (3) the student is under the age of 21 and has violated any law or policy concerning the use or possession of alcohol or a controlled substance.

Colleges may also share records created and maintained by their Public Safety Departments with a student's parents (and others), as records are exempt from the privacy restrictions of FERPA.

In addition, nothing in FERPA prohibits a college official from sharing with parents information that is based on that official's personal knowledge or observation and that is not based on information contained in an education record. Therefore, FERPA would not prohibit faculty members or other college employees from letting parents know of their concern about their son or daughter that is based on their personal knowledge or observation.

Disclosure to the Party that Initially Created the Record

The amendments to FERPA now specifically provide that it is not a prohibited "disclosure" under FERPA, and a student's consent is therefore not required, to disclose personally identifiable information contained in education records to a party identified as the party that provided or created the record. This new language is intended to cover the situation where a student submits a transcript, letter of recommendation or similar document to an institution, which the institution believes may be fraudulent. It is now clearly permissible under FERPA for a college to show the document to the purported creator of the document to verify that it is authentic.

Disclosure to Organizations Conducting Education Research

FERPA provides that a student's consent is not required for a college to disclose education records if the disclosure is to organizations conducting studies "for, or on behalf of" educational agencies or institutions to (1) develop, validate, or administer predictive tests, (2) administer student aid programs, or (3) improve instruction, so long as the study does not permit personal identification of parents and students by those other than representatives of the organization with legitimate educational interests, and so long as the information is destroyed or returned to the educational institution after the study is over.

The amended regulations have now tightened up that section to require that any educational institution using this exemption must enter into a written agreement with the organization that (1) specifies the purpose, scope and duration of the studies and the information to be disclosed, and (2) requires the organization to use personally identifiable information from education records only to meet the purpose of the study.

In addition to these provisions governing research for or on behalf of an institution, the regulations now provide more detail on how an institution can provide de-identified data to third parties conducting education research. The regulations specifically allow an educational institution to attach a code to each record that would allow the recipient to match the information with other information received from the same source, so long as the educational institution does not disclose any information on how it generated the code; the code is used for no other purpose than de-identifying the record; and the code is not based on a student's social security number or other personal information.

If you have any questions about the guidance in this memorandum, the revised Guidelines, or any other issues relating to FERPA, please contact Kathy Raymond (katherine.raymond@mail.cuny.edu) or Joan Waters (joan.waters@mail.cuny.edu) of this office. If you need the Guidelines and attached forms sent by electronic format, please contact Claudia Fugon at claudia.fugon@mail.cuny.edu.

c: Chancellor's Cabinet
Chief Academic Officers
Chief Administrative Officers
Chief Student Affairs Officers
Legal Affairs Designees
Registrars
University Chief Information Officer
Information Security Officer
University Dean for Institutional Research
University Director of Public Safety

GUIDELINES FOR THE IMPLEMENTATION OF THE STUDENT RECORDS ACCESS
POLICY AND THE FEDERAL FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT
(FERPA)

The Student Records Access Policy of the Board of Trustees of The City University of New York (CUNY) provides that the University and its colleges shall be in full compliance with the Federal Family Educational Rights and Privacy Act (FERPA) and its implementing regulations. These Guidelines contain the following four sections: (I) requirements of FERPA, (II) components of directory information which may be released without prior consent, (III) annual notification of students' rights concerning educational records and directory information; (IV) rights of appeal to the Office of the General Counsel and Vice Chancellor for Legal Affairs.

Student Consent Required. A student's written consent is required to disclose personally identifiable information contained in education records, with the exception of directory information (Section II) and the other exceptions noted in these Guidelines (Section I(E)). The student's written consent must: (1) specify the records that may be disclosed; (2) state the purpose of the disclosure; and (3) identify the party or class of parties to whom the disclosure may be made. The FERPA Release Form attached as Attachment A hereto complies with these requirements.

At the end of these Guidelines, five forms are attached which are necessary for the College's compliance with FERPA, as follows:

- A. FERPA Release Form (form to be signed by students giving permission for third parties to access their education records).
- B. College Denial of Appeal for Access to Records (with notice of right to appeal to the Office of the General Counsel and Vice Chancellor for Legal Affairs).
- C. FERPA Appeal to the General Counsel and Vice Chancellor for Legal Affairs.
- D. Directory Information Non-Disclosure Form (informing students of the categories of directory information and giving them the right to object to the disclosure of all or any of the categories).
- E. Notification Under FERPA of Student Rights Concerning Education Records and Directory Information (students are required to be notified of their rights annually).

I. REQUIREMENTS OF FERPA.

A. DEFINITIONS:

1. Student. With respect to education records, a student is a current or former student at a college, including a student in on-line course or program. An applicant is not a student until he/she attends a college.

2. Education records. Any data or information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche, which directly relates to a student and is maintained by a college or the Central Office, constitutes an education record. Information about a student that is maintained by an educational institution on a computer data base is part of a student's education record and thus protected by FERPA. Access to such information should be limited to those individuals who are college officials with a legitimate educational interest in the information.

3. Personally identifiable information. Information that makes an education record "personally identifiable" to a particular student includes:

- a. the student's name;
- b. the name of the student's parent or other family member;
- c. the address of the student or other family member;
- d. a personal identifier, such as the student's social security number or student number or biometric record¹;
- e. a list of personal characteristics that would make the student's identity easily traceable;
- f. other information that, alone or in combination, is linked or linkable to a specific student, and which would allow a reasonable person to identify the student; or
- g. information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

4. College Official. A college official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff), a person or company with whom the University has contracted as its agent to provide a service instead of using University employees or officials, a person serving on the Board of Trustees, or a student serving on an official committee, such as a disciplinary committee, or assisting another college official in performing his or her tasks. In addition, a college official includes a contractor, consultant, volunteer or other party (collectively "contractor") to whom a college or the University has outsourced institutional services, so long

¹ A biometric record means a record of one or more measurable biological or behavioral characteristics (such as fingerprints) that can be used for automated recognition of an individual.

the contractor has a legitimate educational interest in the records, is under the direct control of the college, and is performing services that would otherwise be performed by employees.

5. Legitimate Educational Interest. A college official has a legitimate educational interest in obtaining access to a particular record if access is reasonably necessary in order to fulfill his or her professional responsibilities for the University.

6. FERPA Appeals Officer. Official or employee designated by the College President to hear student appeals from denials of access to records, requests to correct records, or other rights under FERPA, generally the Legal Affairs Designee.

B. PROCEDURES TO REVIEW AND INSPECT RECORDS.

FERPA requires that a student's education records be provided within 45 days of the college's receipt of a request for access. (Note that a student is not entitled to the records listed in Section C.) A student should submit to the appropriate official a written request that identifies the records the student wishes to inspect. Although a request may be oral, the college should require requests to be in writing, especially if the request cannot be immediately fulfilled to the satisfaction of the student. A college official may be present when the student inspects and reviews his/her education records.

A request should be granted or denied in writing within 15 days or, if longer is required, a reasonable time from receipt of the request. If the request for access is denied or not responded to within 45 days of receipt, the student may appeal to the College FERPA Appeals Officer. The appeal must be in writing and should identify the particular records to which access was requested, the date of the original request for access, the person to whom the request was made, and the reasons why the student believes he/she has a right of access to the record. A decision on the appeal shall be rendered by the FERPA Appeals Officer no later than 30 days after the receipt of the appeal.

A denial of an appeal for access must be in writing and contain the reasons for the denial and a statement that the student has a further right of appeal to the General Counsel and Vice Chancellor for Legal Affairs within 30 days of the date of the denial. (A suggested form for a college's denial of an appeal is annexed hereto as Attachment B.) The student may thereafter send an appeal to the Office of the General Counsel and Vice Chancellor for Legal Affairs of The City University of New York at 535 East 80th Street, New York, New York, 10075, a form for which is annexed hereto as Attachment C.

C. RECORDS NOT MANDATORILY ACCESSIBLE.

A student has no right to, and a college need not permit, inspection and review of the following types of records:

1. confidential letters and confidential statements of recommendations placed in the education records before 1975, or after January 1, 1975, if the student has waived his or her right to inspect and review those letters and statements, and those letters and statements are related to the student's: (a) admission to an educational institution, (b) application for employment, or (c) receipt of an honor or honorary recognition; and the waiver is not required as a condition of admission to or receipt of another service or benefit from the college;
2. financial records of his or her parents, and any information those records contain;
3. records pertaining to the student of instructional or administrative staff which are in the sole possession of the maker, are used as a personal memory aid and are not accessible or revealed to another person except a temporary substitute;
4. records pertaining to the student, which are maintained on behalf of a college by its law enforcement unit (i.e. Public Safety Department or equivalent), or by a contract guard service, provided that such records are: (a) created and maintained by the law enforcement unit; and (b) created for a law enforcement purpose. Law enforcement records are not education records and their disclosure is governed by the State Freedom of Information Law (FOIL) and federal law on campus security. However, law enforcement records that have been sent to other offices within the college or University are education records subject to FERPA;
5. employment records of a college employee who may be a student provided that: (a) such records are normally maintained by the college; (b) such records relate exclusively to the individual's employment; (c) such records are used only for employment purposes; and (d) such employment is not the result of student status;
6. records pertaining to the student which are made by a physician, psychiatrist, psychologist, or other recognized professional/paraprofessional acting or assisting in his or her professional or paraprofessional capacity, which: (a) are created, maintained, or used only in connection with the provision of treatment of the student, and (b) are not disclosed to anyone other than the individuals providing the treatment;
7. records which pertain to a student generated after he/she is no longer in attendance and that are not directly related to his/her attendance as a student;
8. grades on peer-graded papers before they are recorded by a teacher.; and
9. any other record, which, pursuant to any other law or regulation, is privileged, or which is otherwise inaccessible to the student.

D. PROCEDURES FOR AMENDING OR CORRECTING RECORDS.

Under FERPA, if a student believes that his/her education records contain information

that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the college to amend the record. The college shall decide whether to amend within a reasonable time after receiving the request. If the college denies the student's request, it shall inform the student of its decision and of the student's right to appeal to the college's FERPA Appeals Officer to challenge the content of the student's education records on the grounds that the information contained in the education record is inaccurate, misleading, or in violation of the privacy rights of the student. A student may not contest the assignment of a grade through this procedure, but may contest whether the assigned grade was recorded accurately.

The college's FERPA Appeals Officer shall hold a hearing within a reasonable time after receipt of the appeal; reasonable notice of the date, time and place of the hearing shall be given to the student. The student shall be given a full and fair opportunity to present relevant evidence. He/she may be assisted or represented by one or more individuals of his/her choice. The decision must be based solely on the evidence presented at the hearing. The college's FERPA Appeals Officer shall within a reasonable time after the hearing issue a decision in writing and include a summary of the evidence and the reasons for the decision.

If as a result of the hearing, the FERPA Appeals Officer decides that the information is inaccurate, misleading or otherwise in violation of the student's privacy rights, the college shall: (a) amend the record accordingly; and (b) inform the student of the amendment in writing. If, on the other hand, the college decides that the information is correct and not in violation of the student's privacy rights, it shall inform the student of his/her right to place a statement in the record commenting on the contested information or stating why he or she disagrees with the decision of the college. If a statement is placed in the education records of the student, the college shall maintain the statement with the contested part of the record for as long as the record is maintained and disclose the statement whenever it discloses the portion of the record to which the statement relates.

E. DISCLOSURE OF EDUCATION RECORDS WITHOUT PRIOR CONSENT.

A college may disclose personally identifiable information from an education record of a student without prior consent under the following circumstances:

1. A college may disclose personally identifiable information from an education record to appropriate parties (including the student's parents) in an emergency if the information is necessary to protect the health or safety of the student or other individuals. This exception applies where a college, taking into account the totality of the circumstances, is able to articulate a significant threat to the health or safety of a student or other individual and discloses information to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. The Office of the General Counsel and Vice Chancellor for Legal Affairs should be consulted, if possible, prior to the release of information under this emergency provision.

2. The disclosure is to a college official, as defined in Section I(A)(4) above who has a legitimate educational interest in the record.

3. The disclosure is to an official or employee of another college, or other institution of postsecondary education, where the student seeks or intends to enroll or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer, provided that the college also gives the student written notice of such disclosure, and upon request, a copy of the record that was disclosed.

4. The disclosure is to authorized representatives of the Comptroller General of the United States; the Secretary of Education of the United States; the Attorney General of the United States; or State and local educational authorities, where access to the education records is in connection with an audit or evaluation of Federal or State supported education programs or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

5. The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for purposes such as the determination of eligibility, and the amount thereof, and enforcement of the terms and conditions of the aid.

6. The disclosure is to comply with a judicial order or court-ordered subpoena. In such instances, the college must notify the student by mail of the subpoena five days in advance of compliance, except a shorter period may be authorized by the General Counsel and Vice Chancellor for Legal Affairs, unless the disclosure is in compliance with a subpoena issued for law enforcement purpose where the court has ordered that the existence or the contents of the subpoena or the information furnished in response not be disclosed. The Office of the General Counsel and Vice Chancellor for Legal Affairs should be contacted if a law enforcement agency such as a District Attorney, United States Attorney, or Grand Jury issues a subpoena for a student's records and directs or requests that the student not be informed.

7. The disclosure is to an organization conducting a study for or on behalf of the college, pursuant to a written agreement, to (A) develop, validate, or administer predictive tests, (B) administer student aid programs, or (C) improve instruction, so long as the study does not permit personal identification of parents and students by those other than representatives of the organization with legitimate educational interests, and so long as the information is destroyed or returned to the educational institution after the study is over.

8. The disclosure is to accrediting organizations to carry out their accrediting functions.

9. The disclosure is of the final results of a disciplinary proceeding against a student

whom the college has determined violated an institutional rule or policy in connection with alleged acts that would, if proven, also constitute a crime of violence or non-forcible sex offense. The final results which may be released are the disciplined student's name, the violation committed, and the sanction imposed. The violation committed includes the rules violated and the essential findings of fact supporting the determination. This only applies to disciplinary proceedings in which the final results were reached after October 6, 1998. The information released may not include the name of any other student, such as a victim or witness, absent the consent of that student.

10. The college may disclose the final results of a disciplinary proceeding to the victim of an alleged perpetrator of a crime of violence or non-forcible sex offense, even if the institution concluded that no violation was committed.

11. A college may disclose records to a parent if the student is a dependent of the parent as defined in the Internal Revenue Code (Section 152). A copy of the parent's latest tax return may be requested as documentation.

12. If a college determines that a student under the age of 21 has committed a disciplinary violation with respect to the use or possession of alcohol or a controlled substance, the parent or legal guardian may be informed. The determination may be made other than through a disciplinary proceeding. The student must be under 21 at the time of the disclosure.

13. A student's records may be used in litigation brought by the student against CUNY, or litigation commenced by CUNY against the student. Information may also be provided to a third party when the student has made a complaint to a government or similar agency having the power to take official action against the institution.

13. The disclosure concerns sex offenders and other individuals required to register under Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (Wetterling Act), 42 U.S.C. 14071, and the information was provided to the college under that statute and applicable federal guidelines.

F. RECORD KEEPING REQUIREMENTS.

The Registrar's office of each college shall maintain a record of each request for and disclosure of a student education record, other than directory information. For each disclosure, the record must include the parties who have requested and received personally identifiable information from the education records and the basis for obtaining the information, including, in the case of a health or safety emergency, the "articulable and significant threat" to health and safety of a student or other individuals.

G. REDISCLASURE OF INFORMATION.

A college may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the student or the college's authorization. Personally identifiable information which is disclosed to an institution, agency or organization, however, may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made. The party to whom the disclosure is made shall be informed in writing of this requirement.

II. DIRECTORY INFORMATION.

A college may disclose directory information to persons with a legitimate interest in such information. Directory information consists of a student's name, attendance dates (not daily records), address, telephone number, date and place of birth, photograph, e-mail address, full or part-time status, enrollment status (undergraduate, graduate, etc.), level of education (credits) completed, major field of study, degree enrolled for, participation in officially recognized activities and sports (teams), the height and weight of members of athletic teams, previous school attended, and degrees, honors and awards received. Dates of attendance are the years or dates (semesters, sessions) the student has been enrolled, not daily records of attendance. Directory information does not include a student's social security number, identification number, race, ethnicity or gender.

Each college must inform its students about directory information and allow them to request that the college not disclose such information. A student may request that any part of, or all, directory information not be released without prior written consent by completing a form to be made available on the college's web site as well as in the registrar's office of each college during regular business hours. A copy of a Directory Information Non-Disclosure Form is annexed (Attachment D).

III. NOTIFICATION OF RIGHTS.

Each college shall inform its current students of their rights under FERPA at least annually, by publishing a notice in the college's catalogs and posting it in the Registrar's office. If the college catalog is not published every year, the notice should also be in a publication distributed to all students at least once a year. This notice should also be placed on the college's web site. Colleges must include in the notification: (1) a statement of the procedures for inspection and review and amendment of education records, (2) the procedure for requesting amendment of records, the criteria for determining who is a college official, and what is a legitimate educational interest, (3) rights of appeal, and (4) directory information and how to request non-disclosure. A Notification Under FERPA of Student Rights Concerning Education Records and Directory Information is annexed to this memorandum (Attachment E).

IV. RIGHTS OF APPEAL FROM COLLEGE DECISION.

Student appeals of alleged failures by any college to comply with the requirements of FERPA may be made to the college FERPA Appeals Officer, and then the General Counsel and Vice Chancellor for Legal Affairs within 30 days of the decision of the college's FERPA Appeals Officer. Decisions of the General Counsel and Vice Chancellor for Legal Affairs shall be submitted to the Board Committee on Student Affairs and Special Programs for its approval, and the student may submit a response. Annexed hereto is a form for appeals to the Office of the General Counsel and Vice Chancellor for Legal Affairs (Attachment C), which must be in writing, and include a copy of the determination of the college's FERPA Appeals Officer and the reasons why the student disagrees with the determination. If the college FERPA Appeals Officer does not issue a decision within 30 days of an appeal or the holding of a hearing thereon, whichever is later, the student may then also file with the Office of the General Counsel and Vice Chancellor for Legal Affairs.

The Vice Chancellor for Legal Affairs shall render a decision no later than 30 days after the receipt of the appeal. This appeal shall be made prior to a student exercising his/her statutory right of appeal to the Family Policy Compliance Office of the U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C., 20202-5920.

THE CITY UNIVERSITY OF NEW YORK

FERPA RELEASE FORM

PERMISSION FOR ACCESS TO EDUCATIONAL RECORDS

This form allows students to grant third parties, including parents, access to their educational records maintained by the student's college. The Family Educational Rights and Privacy Act of 1974 (Buckley Amendment) prohibits access to, or release of, educational records or personally identifiable information contained in such records (other than directory information) without the written consent of the student, with certain regulatory exceptions. A description of a student's rights under FERPA is set forth in more detail in the college catalog.

Student Name (Please Print): _____

Social Security Number or University Identification Number _____

I, the undersigned, hereby authorize _____ College of The City University of New York, to release the following educational records and information (identify records or types of records below):

These records should be released to the following person/agency (identify name and address of person/agency to receive information):

These records are being released for the purpose stated below:

Student's signature

Date

Please note that "directory information" can be given out without the student's written consent. The City University of New York defines directory information to include such information as a student's name, attendance dates, home and e-mail address, telephone number, date and place of birth, photograph, status (e.g., full/part-time, undergraduate/graduate), degree program, credits completed, major, student activities and sports, previous school attended, and degrees, honors and awards received. This information may be released to anyone, unless restricted by written authorization of the student. Contact the Registrar's Office at your campus if you wish to restrict this information.

COLLEGE DENIAL OF APPEAL FOR ACCESS TO RECORDS

Date: _____

Dear Student:

Your appeal for access to student records has been denied. You requested access to (state specific or general category of records).

The reason for the denial of your appeal is that (provide reasons, such as the records do not exist, the records have been discarded, you are not entitled to access because, *e.g.*, cite exception such as confidential letters of reference, psychologist's records, etc.).

You may appeal within 30 days of the date of this letter to the:

Office of the General Counsel and
Vice Chancellor for Legal Affairs
The City University of New York
535 East 80th Street
New York, New York 10075

A form for appealing to the General Counsel and Vice Chancellor for Legal Affairs is attached (See Attachment C).

Yours truly,

FERPA Appeals Officer

FERPA APPEAL TO THE GENERAL COUNSEL AND
VICE CHANCELLOR FOR LEGAL AFFAIRS

Use this form to appeal the denial of your college appeal for access to student records or other alleged denial of FERPA rights. You must appeal within 30 days of the date of the college's denial. Send this form to the address indicated below.

To: General Counsel and Vice Chancellor for Legal Affairs
The City University of New York
535 East 80th Street
New York, NY 10075

Name: _____.

Address: _____.

Phone: _____.

College: _____.

Email: _____.

I write to appeal the College's denial of my appeal in a letter dated _____.

I enclose the following documents:

_____ College's denial of my appeal.

_____ My appeal to the college.

_____ College's initial denial of access.

_____ My initial request for access to records.

_____ Additional documents (please itemize): _____

Please provide the basis for your appeal (you may attach additional pages):

Dated: _____ Signed: _____

DIRECTORY INFORMATION NON-DISCLOSURE FORM

This form must be filed with the Registrar's Office if you do not wish any or all directory information disclosed without your prior consent. Directory information otherwise may be made available to any parties deemed to have a legitimate interest in the information. The instructions on this form may be changed at any time by filing a new form with the Registrar's Office. You should initial the appropriate spaces.

Name of student: _____.

Student ID number: _____.

A. _____ I DO NOT WANT ANY DIRECTORY INFORMATION DISCLOSED WITHOUT MY PRIOR CONSENT. (If you initial this space you do not have to fill out the rest of this form, but must date and sign below.)

B. _____ I do not want the following categories of directory information disclosed without my prior consent. (Initial those items which you do not want released.)

_____ Name.
_____ Attendance dates (periods of enrollment).
_____ Address.
_____ Telephone number.
_____ Date of birth.
_____ Place of birth.
_____ Photograph.
_____ E-mail address.
_____ Full or part-time status.
_____ Enrollment status (undergraduate, graduate, etc.).
_____ Level of education (credits) completed.
_____ Major field of study.
_____ Degree enrolled for.
_____ Participation in officially recognized activities other than sports.
_____ Participation in sports (teams).
_____ Height if member of athletic team.
_____ Weight if member of athletic team.
_____ Previous school attended.
_____ Degrees received.
_____ Honors and awards received.

C. _____ I want my prior instructions not to release directory information withdrawn. I now authorize the college to release all of my directory information to parties with a legitimate interest.

Dated: _____ Signed: _____

NOTIFICATION UNDER FERPA OF STUDENT RIGHTS
CONCERNING EDUCATION RECORDS AND DIRECTORY INFORMATION

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records. See Section "6" below on your right to prevent the disclosure of directory information. The FERPA rights of students are:

- (1) The right to inspect and review your education records.

Students should submit to the registrar, dean, head of the academic department, or other appropriate official, written requests that identify the record(s) they wish to inspect. If the records are not maintained by the college official to whom the request was submitted, that official shall advise the student of the correct official to whom the request should be addressed.

All requests shall be granted or denied in writing within 45 days of receipt. If the request is granted, you will be notified of the time and place where the records may be inspected. If the request is denied or not responded to within 45 days, you may appeal to the college's FERPA appeals officer. Additional information regarding the appeal procedures will be provided to you if a request is denied.

- (2) The right to request the amendment of the student's education records that the student believes are inaccurate, misleading or otherwise in violation of the student's privacy rights under FERPA.

You may ask the college to amend a record that you believe is inaccurate, misleading or otherwise in violation of your privacy rights under FERPA. You should write to the college official responsible for the record, clearly identify the part of the record you want changed, and specify why it is inaccurate or misleading.

If the college decides not to amend the record as requested by you, the college will notify you of the decision and advise you of your right to a hearing before the college's FERPA appeals officer regarding the request for amendment. Additional information regarding the hearing procedures will be provided to you when notified of your right to a hearing.

- (3) The right to consent to disclosure of personally identifiable information contained in your education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to college officials with legitimate educational interests. A college official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff), a person or company with whom the University has

contracted as its agent to provide a service instead of using University employees or officials, a person serving on the Board of Trustees, or a student serving on an official committee, such as a disciplinary committee, or assisting another college official in performing his or her tasks.

A college official has a legitimate educational interest if access is reasonably necessary in order to fulfill his or her professional responsibilities for the University.

Upon request, the college discloses education records without consent to officials of another college or school in which a student seeks or intends to enroll.

(4) You may appeal the alleged denial of FERPA rights to the:

General Counsel and Vice Chancellor for Legal Affairs
The City University of New York
535 East 80th Street
New York, NY 10075

(5) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the college to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C., 20202-5920

(6) The college will make the following "directory information" concerning current and former students available to those parties having a legitimate interest in the information: name, attendance dates (periods of enrollment), address, telephone number, date and place of birth, photograph, e-mail address, full or part-time status, enrollment status (undergraduate, graduate, etc.), level of education (credits) completed, major field of study, degree enrolled for, participation in officially recognized activities and sports, height and weight of athletic team members, previous school attended, and degrees, honors and awards received. By filing a form with the Registrar's Office, you may request that any or all of this directory information not be released without your prior written consent. This form is available in the Registrar's Office and may be filed, withdrawn, or modified at any time.