

HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

CHAPTER 20

PROTECTION OF EDUCATIONAL RIGHTS
AND PRIVACY OF STUDENTS

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§20-20-1 Definitions. As used in this chapter:

The definitions of "directory information," "education records," "student," and "personally identifiable" as contained in 34 CFR §99.3 are incorporated by reference.

"Days" means calendar days.

"Federal regulations" means the regulations adopted by the U.S. Department of Education to implement FERPA, which are codified in 34 C.F.R. §§99.1-99.67, as amended.

"FERPA" means the Family Educational Rights and Privacy Act codified in 20 U.S.C. §1232g., as amended.

"President" means the president of the University of Hawaii and the president's authorized subordinates.

"Right to inspect" means the right of a student or a designated representative to inspect, under the supervision of personnel of the university, information concerning the student in question.

"University" means the University of Hawaii. [Eff. ~~APR 04 1988~~] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §99.1-99.67)

§20-20-2 Philosophy and purpose. The university collects and maintains extensive information about students for legitimate educational use in activities related to instruction, guidance and counseling, research, co-curricular activities, application for services and awards, and the administration of student conduct and deportment. If such information is released or used improperly, an unwarranted intrusion upon a student's privacy may result. Accordingly, the university recognizes that the university's need for relevant information about its students must be balanced by a need to protect the student's right to privacy.

To ensure the protection of the educational rights and privacy of students enrolled in the university's postsecondary programs, the university shall comply with the requirements of FERPA and the federal regulations adopted by the U.S. Department of Education to implement FERPA. [Eff. ~~APR 04 1988~~] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §§99.1-99.67)

§20-20-3 Applicability. This chapter shall apply to the education records of all students who are or have been registered at any university campus, exclusive of the University of Hawaii laboratory school. In the event of a conflict between this chapter and FERPA or its implementing federal regulations, FERPA and the federal regulations shall control. [Eff. ~~APR 04 1988~~] (Auth: HRS §§91-2,304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §99.1-99.67)

§20-20-4 Notification. The university shall annually publish a notice to students in attendance at each university campus regarding the following:

- (1) Rights under FERPA, the federal regulations, and this chapter;

- (2) The university official responsible for providing copies of university policy on FERPA and additional information regarding university procedures and practices under this chapter;
- (3) Categories of data designated as directory information under this chapter; and
- (4) Other rights and requirements under this chapter. [Eff. APR 04 1988] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §99.6)

§20-20-5 Waiver of rights. (a) A student may waive any of the rights under FERPA. The waiver shall be voluntary, be in writing, and signed by the student.

(b) A student may revoke any waiver with respect to any action occurring after the revocation of the waiver. The revocation shall be in writing and signed by the student.

(c) An applicant for admission to the university or a student may waive the right to inspect and review confidential letters and confidential statements of recommendation described in 34 C.F.R. §99.12(a)(3), provided that the conditions of 34 C.F.R. §99.7(c) are met. [Eff. APR 04 1988] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §§99.7, 99.12)

§20-20-6 Student's right to inspect and review education records. (a) A student shall be permitted to inspect and review the student's education records, subject to the limitations described in §20-20-7 and in 34 C.F.R. §99.12.

(b) The university shall respond to a student's reasonable request for explanations and interpretations of the student's records.

(c) The university shall provide copies of an education record if the university's failure to provide the copies will effectively prevent the student from inspecting and reviewing the education record. The student shall be required to pay the fees for copies established by this chapter. [Eff. APR 04 1988] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §§99.11, 99.12)

§20-20-7 Education records not subject to inspection and review by a student. The records described in 34 C.F.R. §99.12 shall not be subject to inspection and review by a student. [Eff. **APR 04 1988**] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. 1232g, 34 C.F.R. §99.12)

§20-20-8 Description and disclosure of directory information. (a) Directory information, designated by the university to be directory information pursuant to the requirements of 34 C.F.R. §99.37(c), may be disclosed without the prior consent of the student.

(b) Directory information of students no longer enrolled at the university may be disclosed without the prior consent of the student and without following the procedures of 34 C.F.R. §99.37(c). [Eff. **APR 04 1988**] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §99.37)

§20-20-9 Procedure for inspection and review of education records. (a) A student may inspect and review the student's education records in accordance with the following procedure:

- (1) The student shall provide to each office which maintains the student's education records, a properly executed request on such form as the university may provide for this purpose.
- (2) The custodian of the education records shall make a reasonable effort to verify the identity of the student requesting such access and may require the student to complete such forms as the university may provide for this purpose.
- (3) Upon termination of the requested inspection and review of the education records, the student shall certify the granting of access on such forms as the university may provide for this purpose.
- (4) The custodian for education records must comply with a student's request for access to his or her education records within a reasonable period of time but in no case more than forty-five days after such request has been made.
- (5) Should the student request an explanation or interpretation of the student's education records,

the custodian for such records shall assist the student in obtaining such explanation or interpretation.

- (6) A record of disclosure of education records to the student shall be maintained by the custodian of the records on such forms as the university may provide for this purpose.
- (b) University officials shall be permitted to inspect and review a student's education records, without the consent of the student, in accordance with the following procedure:
- (1) The university official shall have a legitimate educational interest. The purpose for the inspection and review must be related to the responsibilities, duties, or functions of the university official as an university employee or university official.
 - (2) Students appointed by and acting in an official capacity on behalf of an university official shall be considered an university official for purposes of this subsection. The Department of the Attorney General, State of Hawaii, shall be considered an university official with a legitimate educational interest, for purposes of this subsection, when formally requested by the university to represent or advise the university in an attorney-client relationship.
 - (3) The custodian for education records shall make a reasonable effort to verify the identity of the university official who is requesting access and to determine the existence of a legitimate education interest.
 - (4) In the case of a dispute over whether a legitimate educational interest exists for the purpose of this subsection, the following procedure shall apply:
 - (A) If the dispute is within a campus of the university, the chief executive officer of that campus or a designee shall make the determination. The decision of the chief executive officer shall be final within the university;
 - (B) If the dispute is among two or more campuses of the university, the President shall make the determination. The decision of the President shall be final within the university.
 - (5) The custodian for education records shall inform the university official requesting inspection that personally identifiable information from the

education records shall not be disclosed to any other party without the prior written consent of the student, except as otherwise provided herein.

(6) The custodian for education records is not required to maintain a record of disclosure to university officials.

(c) Other parties, including parents of students, may have access to personally identifiable information contained in education records only with the prior written consent of the student on such forms as the university may provide for this purpose. Such disclosure shall be subject to the limitations contained in 34 C.F.R. §99.33.

(d) The officials and organizations described in 34 C.F.R. §99.31, including the university officials described in subsection (b), may be permitted to inspect, review, and have disclosed to them information from the education records of a student without the written consent of the student. The disclosure shall comply with the conditions, if any, set forth in 34 C.F.R. §§99.31, 99.34, 99.35 and 99.36.

(e) Disclosure of personally identifiable information from the education record shall be subject to the limitation on redisclosure set forth in 34 C.F.R. §99.33. [Eff. APR 04 1988] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §§99.30, 99.31, 99.33, 99.34, 99.35, 99.36, 99.37)

§20-20-10 Record of disclosure. The university shall maintain with each student's education records a log of all disclosures of personally identifiable information from that education record in the manner set forth in 34 C.F.R. §99.32. [Eff. APR 04 1988] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §99.32)

§20-20-11 Amendment of education records. A student who believes that the student's education records contain information which is inaccurate, misleading, or violates the privacy or other rights of the student may request that the university amend those records in accordance with the following procedures:

(1) The student shall notify the custodian of the education records that the student is challenging the accuracy or content of such records by filing such forms as the university may provide for this purpose.

- (2) The custodian of the education records shall review the challenge with the originator of the challenged education record. The originator of the record shall respond to the challenge within fourteen days on such forms as the university may provide for this purpose.
- (3) The custodian of the student's education records shall make a determination regarding the requested amendment or correction and shall inform the student of the university's decision within twenty-one days after receiving a written challenge.
- (4) If the university's decision is to approve the request, the custodian shall amend the record and so inform the student in writing. If the decision is to deny the request, the custodian shall so inform the student in writing and advise the student of the right to a hearing pursuant to §20-20-12. [Eff. APR 04 1988] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §§99.20, 99.21)

§20-20-12 Hearing. (a) When the university denies a student's request to amend the student's education records, upon the request of the student, the university shall provide a hearing in accordance with the following procedure:

- (1) The student shall file a request for a hearing with the custodian of the student's education records on such forms as the university may provide for this purpose.
 - (2) The custodian for education records shall designate an official of the university, who does not have a direct interest in the outcome of the hearing, to conduct the hearing.
 - (3) The hearing shall be conducted in accordance with 34 C.F.R. §99.22.
 - (4) The hearing shall be closed to the public.
 - (5) The hearing officer shall render a decision in writing within fourteen days from the date of the completion of the hearing. The decision of the hearing officer shall be final within the university.
- (b) If the decision of the hearing officer affirms all or part of the student's challenge or complaint, the custodian of the student's education records shall make the necessary amendments and so inform the student in writing.

(c) If the decision of the hearing officer denies the student's challenge or complaint, the custodian of the education records shall inform the student in writing of the student's right to place in the education record a statement commenting on the content of the records and specifying any reason for disagreeing with the university's denial. This statement shall be included as part of the student's education record and shall be included in any disclosure of the education record.

(d) Should the student be dissatisfied with the decision of the University, the student shall be advised of the student's right to file a complaint with the U.S. Department of Education. [Eff. APR 04 1988] (Auth: HRS §§91-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §§99.21, 99.22)

§20-20-13 Destruction of education records. The university may destroy or expunge any education record subject to the limitations of 34 C.F.R. §99.13. [Eff. APR 04 1988] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §99.13)

§20-20-14 Fees for copies. The university may charge a fee for copies of student education records that may be required in order for a student to exercise the right to inspect and review the student's education records. Unless otherwise established by the university, the charge for such copies shall not exceed the cost of reproduction. [Eff. APR 04 1988] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §99.8)

§20-20-15 Implementation. The president may issue such guidelines and procedures as may be appropriate to implement these rules. [Eff. APR 04 1988] (Auth: HRS §§91-2, 304-2,3,4) (Imp: HRS §304-4, 20 U.S.C. §1232g, 34 C.F.R. §§99.5, 99.6)