

Regulations/Guidance Related to Student Records

Privacy Rights Principles

The state of California explicitly guarantees individuals the right to privacy in the California Constitution.

The University of California also provides strong assurances of individual privacy rights in the University's collection, use, and disclosure of personal information, and places priority on those privacy rights when the law is silent.

Regulation/Guidance	Provision
California Constitution Article 1 Section 1	All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.
Policies Applying to Campus Activities, Organizations, and Students (PACOS) 130	130.11 . . . It is the purpose of these policies to provide reasonable interpretations of the Federal Family Educational Rights and Privacy Act and to protect the student's right of privacy as guaranteed by the Constitution of the State of California and the Information Practices Act. When the law is silent, the campuses shall be guided by two principles: (1) the privacy of an individual is of great weight, and (2) the information in a student's file should be disclosed to a student on request.
FERPA 101 Guidance Document	FERPA lists a number of situations where the University is permitted to release personally identifiable information from education records, without the student's consent. <ul style="list-style-type: none">• Note that these exceptions are permissive, not mandatory. This means that even if one of the following circumstances applies, the University is not legally required by FERPA to make the disclosures . . .
Information Practice Act (IPA)	1798.1. The Legislature declares that the right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them. The Legislature further makes the following findings: (a) The right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies. (b) The increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information.

	<p>(c) In order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits.</p> <p><u>1798.63.</u></p> <p>The provisions of this chapter shall be liberally construed so as to protect the rights of privacy arising under this chapter or under the Federal or State Constitution.</p>
UC Statement of Privacy Values and Privacy Principles	<p>The University demonstrates its commitment to transparency by giving individuals reasonable advance notice of its information policies and practices for collecting, using, disclosing, retaining, and disposing of information about individuals.</p> <p>The University expects its members to collect, use, disclose, and retain only the minimum amount of information about individuals as necessary for the specified purpose and to appropriately dispose of such information in accordance with the University's records-retention schedules.</p> <p>The University expects its members who collect information about individuals to publish privacy notices that clearly inform individuals about the purposes (how information will be used or disclosed as permitted or required by law) and the scope of information collected.</p>

Campus Officials

Both systemwide and campus administrative policy define campus official as broadly including employees, students who participate in certain types of committees that would require their access to student records, and contractors or volunteers that are providing services to students that would normally be provided by the University.

Regulation/Guidance	Provision
PACAOS 130	<p>130.280 Campus Official or University Official</p> <p>A "campus official" or "University official" is any individual designated by the University of California to perform an assigned function on behalf of the University.</p> <p>A campus or University official may be:</p> <ol style="list-style-type: none"> a person employed by the University in an administrative, supervisory, academic, research, or support staff position; A person serving on a University governing body; A contractor, consultant, volunteer or other party to whom the University has outsourced institutional services or functions provided that: (1) the outside party performs an institutional service or function for which the University would otherwise use employees; (2) the outside party is under the direct control of the University with respect to the use and maintenance of student records; and (3) the outside party may not disclose the information to any other party without the student's consent, and

	<p>may not use the information for any purpose other than the purpose for which the declaration was made; or</p> <p>d. A student serving on an official committee, such as a disciplinary or grievance committee, or assisting another University official in performing his or her tasks.</p>
PPM Section 320-21	<p>Campus official—any person designated to perform an assigned function on behalf of the University, including an administrative, supervisory, academic, research, support staff, or student employee; a person serving on a University governing body; a student serving on an official committee (e.g., a discipline or grievance committee), or assisting another campus official in performing his/her tasks; or a contractor, consultant, volunteer, or other party to whom the University has outsourced institutional services or functions acting with a signed agreement that s/he will not use the information for any other purpose and will not disclose it without the student's consent.</p>

Legitimate Educational Interest

Both systemwide and campus policy define legitimate educational interest. The systemwide policy provides a broad definition, with the expectation that the campus will more specifically define the term, and provides an example of how the term might be defined.

The campus policy adopts the systemwide suggested definition, clarifying that a legitimate educational interest means that access to a record is necessary for the official to perform a task that is the official's employment responsibility, or is specific to directly assisting a student or a student's family in his/her education or other service provided by the University, such as financial aid.

Regulation/Guidance	Provision
PACAOS 130	<p>130.291 "Legitimate Educational Interest" means; (1) the information or record is relevant and necessary to the accomplishment of some task or determination; and (2) the task or determination is an employment responsibility for the inquirer or is a properly assigned subject matter for the inquirer.</p> <p>130.292 Chancellors shall specify in campus implementing regulations, criteria for determining what the campus considers to be a "legitimate educational interest."</p> <p>Such criteria may specify, by way of example, the following:</p> <p>A University official is determined to have legitimate educational interest in a particular record if the information requested is relevant and necessary for that official to:</p> <ol style="list-style-type: none"> Perform a task or determination that is an employment responsibility of is a properly assigned subject matter for the inquirer; Perform a task that is related specifically to the official's participation in the student's education;

	<ul style="list-style-type: none"> c. Perform a task that is related specifically to the discipline of the student; or d. Provide a service or benefit relating to the student or student's family, such as health care, counseling, job placement, or financial aid.
PPM Section 320-21	Legitimate educational interest—information relevant and necessary to a task or determination that is an employment responsibility or an assigned subject matter for the inquirer and/or related to the inquirer's participation in the student's education; the discipline of a student; or providing a service or benefit related to a student or student's family (such as health care, counseling, job placement, or financial aid).

Allowable Disclosure

There are two provisions that could allow for disclosure to faculty members. The first is if they have a legitimate educational interest. Based on the definition, this would need to be based on the faculty member's role in providing assistance to the student, and not for generalizable knowledge or other forms of research, or for the purposes of the merit process.

The second provision allows for release to organizations for the purpose of improving instruction. This would require a written agreement between the institution and the "organization" regarding the specific data to be released, the specific use for that data, the timespan for access to the data, and provisions for destruction of the data at the end of the agreed upon use. The laws and policies are clear that the data can be used only for the agreed upon purpose. OGC guidance is also clear that the research would need to be of interest to the University, not just the researcher, to be eligible for release under this provision.

The IPA makes clear that use of data for research purposes requires approval by the IRB, is limited strictly to only the amount of personal data required for the specific research use, and that the data should be deidentified to the greatest degree possible before release to the researcher. The section also clarifies that the data owner should do as much of the processing of the data as possible for the researcher in order to protect personal information, and can charge the researcher for the deidentification and processing of the data.

Finally, all of the laws and regulations indicate that data should not be released for use other than the communicated reason why it was collected.

Regulation/Guidance	Provision
FERPA	<p>1232g(b)</p> <p>(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than the following—</p> <p>(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such an agency or institution to have</p>

	<p>legitimate educational interests, including the educational interests of the child for whom the consent would otherwise be required;</p> <p>...</p> <p>(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;</p>
PACAOS 130	<p>130.721 Permissible Disclosures</p> <p>Except for the disclosure of directory information under conditions specified in Section 130.711, and the disclosure of information to other educational institutions specified in Section 130.723, personally identifiable information from student records may not be disclosed without the prior written consent of the student, other than to the following parties and under the following circumstances:</p> <p>a. To campus or University officials who have been determined to have legitimate educational interest in the records (see Sections 130.280 and 130.290). Determinations as to whether the legitimate educational interest requirement is satisfied shall be made by the head administrator of the unit retaining the information, consistent with campus implementing regulations defining legitimate education interest established by the Chancellor as specified in Section 130.292 of these Policies. Campus personnel receiving or utilizing the information shall be responsible for its subsequent disclosure pursuant to the provisions of these policies.</p> <p>...</p> <p>f. To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, or improving instruction. The University must enter into written agreement with the organization that: (1) Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed; (2) Requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement; (3) Requires the organization to conduct the study in a manner that does not permit personal identification of parents or students, as defined in this part, by anyone other than representatives of the organization with legitimate educational interests; and (4) Requires the organization to destroy or return to the educational agency or institution all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the</p>

	<p>information must be returned or destroyed. The term “organizations” includes, but is not limited to, Federal, State, and local agencies, and independent organizations. The University is not required to initiate the study or agree with or endorse the conclusions or results of the study.</p>
FERPA 101 Guidance Document	<p>What are the Statutory Exceptions that Allow Disclosure?</p> <p>Disclosure to third parties without student consent is permitted under the following circumstances:</p> <ol style="list-style-type: none"> 1. To campus and University officials who have been determined to have “legitimate educational interest” in the records. An employee or agent of the University has a “legitimate educational interest” if the record is relevant and necessary to the accomplishment of their official University responsibilities. <ul style="list-style-type: none"> • Determinations as to whether the legitimate educational interest requirement is satisfied shall be made by the head administrator of the unit retaining the information. The campus Registrar is the designated FERPA officer and should coordinate such determinations, in consultation with the Office of the General Counsel as needed. 5. To organizations conducting research studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and or improving instruction. <ul style="list-style-type: none"> • The studies must not permit the personal identification of the students and/or their parents by individuals other than representatives of the organization. • The information must be destroyed when no longer needed for the purposes for which the study was conducted. • The University must enter into a written agreement with the organization specifying the purpose, scope and duration of the disclosure, that the organization may not redisclose or misuse the information, and that the information will be destroyed when it is no longer needed for the study. • The University is not required to initiate the study or agree with or endorse the conclusions or results of the study. But the study must be of interest to the University, and not only of individual interest to the researcher.

[IPA](#)

1798.24.

An agency shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows:

(d) To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired. . .

(t) (1) To the University of California, a nonprofit educational institution, or, in the case of education-related data, another nonprofit entity, conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency (CHHSA) or an institutional review board, as authorized in paragraphs (4) and (5). The approval required under this subdivision shall include a review and determination that all the following criteria have been satisfied:

(A) The researcher has provided a plan sufficient to protect personal information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect personal information from reasonable anticipated threats to the security or confidentiality of the information.

(B) The researcher has provided a sufficient plan to destroy or return all personal information as soon as it is no longer needed for the research project, unless the researcher has demonstrated an ongoing need for the personal information for the research project and has provided a long-term plan sufficient to protect the confidentiality of that information.

(C) The researcher has provided sufficient written assurances that the personal information will not be reused or disclosed to any other person or entity, or used in any manner, not approved in the research protocol, except as required by law or for authorized oversight of the research project.

(2) The CPHS or institutional review board shall, at a minimum, accomplish all of the following as part of its review and approval of the research project for the purpose of protecting personal information held in agency databases:

(A) Determine whether the requested personal information is needed to conduct the research.

(B) Permit access to personal information only if it is needed for the research project.

(C) Permit access only to the minimum necessary personal information needed for the research project.

(D) Require the assignment of unique subject codes that are not derived from personal information in lieu of social security numbers if the research can still be conducted without social security numbers.

	<p>(E) If feasible, and if cost, time, and technical expertise permit, require the agency to conduct a portion of the data processing for the researcher to minimize the release of personal information.</p> <p>(3) Reasonable costs to the agency associated with the agency's process of protecting personal information under the conditions of CPHS approval may be billed to the researcher, including, but not limited to, the agency's costs for conducting a portion of the data processing for the researcher, removing personal information, encrypting or otherwise securing personal information, or assigning subject codes.</p> <p>(4) The CPHS may enter into written agreements to enable other institutional review boards to provide the data security approvals required by this subdivision, provided the data security requirements set forth in this subdivision are satisfied.</p> <p>(5) Pursuant to paragraph (4), the CPHS shall enter into a written agreement with the institutional review board established pursuant to Section 49079.5 of the Education Code. The agreement shall authorize, commencing July 1, 2010, or the date upon which the written agreement is executed, whichever is later, that board to provide the data security approvals required by this subdivision, provided the data security requirements set forth in this subdivision and the act specified in paragraph (1) of subdivision (a) of Section 49079.5 are satisfied.</p>
The ABCs of Privacy and Public Records Guidance Document	<p>Disclosure to Third Parties without Consent of Individual</p> <ul style="list-style-type: none"> • No disclosure of personal information <i>unless</i> specific statutory basis for disclosure (22 listed exemptions) • Key disclosure categories <ul style="list-style-type: none"> • • • ○ To those officers, employees, attorneys, agents, or volunteers of the agency, <i>if disclosure is:</i> <ul style="list-style-type: none"> ▪ Necessary and relevant in the ordinary course of the performance of official duties and is related to the purpose for which the information was acquired.

Redisclosure

Laws and regulations restrict any further disclosure of the data that was disclosed. If the data is redisclosed, the University is prohibited from providing any information from educational records to the offender for at least the next five years.

Regulation/Guidance	Provision
FERPA	<p>(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation</p>

	of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from educational records to that third party for a period of not less than five years.
PACAOS 130	<p>130.722 Redislosure of Personally Identifiable Information</p> <p>Any disclosure of personally identifiable information which is permitted under these policies must meet the following requirements:</p> <ol style="list-style-type: none"> The recipient of the information must be informed that the information may not be further redisclosed without written consent of the student. Any consent form obtained from the student must be maintained in the student's file. The recipient (including officers, employees, and agents of the party of the recipient) may use the information only for the express purposes for which the disclosure was made.
FERPA 101 Guidance Document	When Education Records are disclosed, the recipient of the information must be informed that the information may not be further disclosed without written consent of the student, and that the recipient may use the information only for the express purposes for which the disclosure was made.

Record Keeping

Other than disclosure to a University official for a legitimate educational interest, a record of disclosure must be maintained for all other disclosures. This becomes a part of the student record and the student has the right to access this information.

Regulation/Guidance	Provision
FERPA	(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate educational interest that each such person, agency, or organization has in obtaining this information. . .

Deidentified Information

Deidentified data is defined as data where all personally identifiable information has been removed. It is important to note that even when it appears that all personal information is removed, aggregated data coupled with small cell sizes can lead to the data being identifiable. Therefore, information that is not specific to a single person, such as zip code, birth date, or race, can become identifiable information in these circumstances.

Regulation/Guidance	Provision
PACAOS 130	<p>130.241 . . . Information is considered “de-identified” and is no longer considered to be “personally identifiable information” once all personally identifiable information has been removed and the University has made a reasonable determination that a student’s identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information. Information containing “small cell sizes” must be carefully reviewed before disclosure in order to determine if it has been sufficiently de-identified.</p>