



POLICY/GUIDELINE TITLE: Family Educational Rights and Privacy Act (FERPA)	ADMINISTRATIVE POLICY AND PROCEDURE MANUAL
POLICY #: 800.66	CATEGORY: Compliance and Ethics
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Prepared by: Office of Corporate Compliance	Notations: N/A

GENERAL STATEMENT of PURPOSE

The purpose of this policy is to establish general requirements for authorizing the Disclosure of Education Records of eligible students in accordance with the Federal Family Educational Rights and Privacy Act of 1974 (FERPA). This Federal law protects the privacy of students' Education Records, as defined by FERPA and its implementing regulations (see Definitions below). FERPA applies to educational agencies and institutions that receive funds under any program administered by the U.S. Department of Education. FERPA may also apply by contractual agreement.

It is not the purpose of this policy to provide a comprehensive and detailed account of FERPA or its implementing regulations (34 CFR 99). Individuals are advised to seek full details of the law and regulations as needed.

POLICY

General Privacy Rule

It is the policy of Northwell Health (Northwell) to comply in all respects with the requirements of Federal and State laws and regulations governing the confidentiality of student information, and in particular with FERPA, a Federal law which creates rights of privacy for students with respect to their Education Records and implementing regulations (34 CFR 99).

FERPA establishes a general rule that Education Records may not be disclosed without the written consent of the Eligible Student, if 18 years of age or older, or Parent as defined below, if the Eligible Student is a minor (under 18 years of age).

Exception for Directory Information

The significant exception to this general rule under FERPA applies to Directory Information, which Northwell may release without written consent by the student or Parent. Directory Information includes the following data elements:

1. Name;
2. Whether or not the student is currently enrolled;
3. The school or division in which the student is or was enrolled and the class/year;
4. Dates of enrollment including full-time or part-time status;
5. Degree or degrees earned, date of degree, major area of concentration and academic honors received;
6. Awards of merit and participation in officially recognized activities and sports;
7. Address and telephone number;
8. Electronic mail (email) address.

Right to Withhold Directory Information

FERPA also gives students the right to withhold the release of Directory Information. To do this, the student must complete an information release form. There are important conditions to “no release” status, as follows:

1. “No release” status does not release Northwell from its obligation to comply with subpoenas and court orders, regardless of a student’s request to block information from release.
2. Other exceptions to “no release” status apply, as set forth below under “Other Exceptions to FERPA Rights.”

Other FERPA Rights

FERPA requires annual notification of students’ rights under FERPA and this policy, including:

1. The right to inspect and review their Education Records, subject to certain limitations;
2. The right to consent to Disclosures of Personally Identifiable Information contained in their Education Records, except to the extent that FERPA authorizes disclosure without consent (i.e., Directory Information);
3. The right to request the amendment of their Education Records;
4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by Northwell to comply with the requirements of FERPA.

FERPA also provides guidelines on the right of access to Education Records. Northwell shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request. Northwell shall respond to reasonable requests for explanations and interpretations of the records. If circumstances effectively prevent the Parent or Eligible Student from exercising the right to inspect and review the requested Education Records, Northwell shall provide the Parent or Eligible Student with a copy of the records

requested; or make other arrangements for the Parent or Eligible Student to inspect and review the requested records.

Northwell shall not destroy any Education Records if there is an outstanding request to inspect and review the records.

While Northwell is not required to give an Eligible Student or Parent access to Treatment Records, the Eligible Student or Parent may have those records reviewed by a physician or other appropriate professional of the Eligible Student or Parent's choice.

Unless the imposition of a fee effectively prevents a Parent or Eligible Student from exercising the right to inspect and review the Education Records, Northwell may charge a fee for a copy of an Education Record which is made for the Parent or Eligible Student. Northwell may not charge a fee to search for or to retrieve the Education Records of an Eligible Student.

Other Exceptions to FERPA Rights

Northwell may disclose Personally Identifiable Information from an Eligible Student's Education Records without a Parent's written consent under certain other conditions, which include but are not limited to the following:

1. Disclosure to another school official or employee, including teachers, within Northwell whom Northwell has determined to have a legitimate educational interest.
2. Disclosure to a contractor, consultant, volunteer, or other party to whom Northwell has outsourced institutional services or functions may be considered a school official provided that the outside party:
 - (a) Performs an institutional service or function for which Northwell would otherwise use employees;
 - (b) Is under the direct control of Northwell with respect to the use and maintenance of Education Records; and
 - (c) Is subject to the condition that the party to whom the information is disclosed will not re-disclose the information to any other party without the prior consent of the Parent or Eligible Student.
3. Disclosure to an education auditing or enforcing agency of a Federal or State supported program.
4. Disclosure associated with eligibility for financial aid, enrollment, or transfer of the Eligible Student.
5. Disclosure pursuant to a court order or subpoena.
6. Disclosure that is necessary to protect the health or safety of the student or other persons.
7. Disclosure to the Eligible Student.

SCOPE

This policy applies to all Northwell Health employees, as well as medical staff, volunteers, students, trainees, physician office staff, contractors, trustees and other persons performing work for or at Northwell Health; faculty and students of the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell conducting research on behalf of the Zucker School of Medicine on or at any Northwell Health facility; and the faculty and students of the Hofstra Northwell School of Graduate Nursing and Physician Assistant Studies.

DEFINITIONS

Directory Information: means information contained in an Education Record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

Directory Information includes, but is not limited to, the student's name; address; telephone listing; email address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended.

Directory Information does not include a student's:

1. Social Security number; or
2. Student identification (ID) number, except as provided in (3) of this definition.

In accordance with paragraphs (1) and (2) of this definition, Directory Information includes:

3. A student ID number, user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to Education Records, except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password or other factor known or possessed only by the authorized user; and
4. A student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to Education Records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.

Disclosure: means to permit access to, or the release, transfer, or other communication of, personally identifiable information contained in Education Records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

Education Program: means any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary

education, postsecondary education, specialty education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution.

Education Records: means those records that are:

1. Directly related to a student; and
2. Maintained by Northwell or by a party acting for it.

The term does not include:

3. Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
4. Records of the law enforcement unit of Northwell, subject to certain limitations.
5. Records relating to an individual who is employed by an educational agency or institution, that:
 - (a) Are made and maintained in the normal course of business;
 - (b) Relate exclusively to the individual in that individual's capacity as an employee; and
 - (c) Are not available for use for any other purpose.
6. Records relating to an individual in attendance at Educational Programs of Northwell who is employed as a result of his or her status as a student are Education Records and not excepted under paragraph (b)(3)(i) of this definition.
7. Records on a student who is 18 years of age or older or is attending Northwell Health post-secondary education, that are:
 - (a) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
 - (b) Made, maintained, or used only in connection with treatment of the student; and
 - (c) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at Northwell; and
5. Records created or received by Northwell after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
8. Grades on peer-graded papers before they are collected and recorded by a teacher.

Eligible Student: means a student who has reached 18 years of age or is attending an institution of post-secondary education.

Institution of postsecondary education: means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

Parent: means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

Personally Identifiable Information: for the purposes of this policy only, includes but is not limited to:

1. The student's name;
2. The name of the student's parent or other family members;
3. The address of the student or student's family;
4. A personal identifier, such as the student's Social Security Number, student number, or biometric record;
5. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
6. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
7. 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.

Treatment Records: means records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

1. Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
2. Made, maintained, or used only in connection with treatment of the student; and
3. Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.

If Northwell releases Treatment Records, those records become Education Records and are subject to disclosure under the exceptions to the requirement for written consent set forth by this policy.

PROCEDURE/GUIDELINES

Procedure for Written Consent for Disclosure

The Parent or Eligible Student shall provide a signed and dated written consent before Northwell discloses personally identifiable information from the student's Education Records, except as provided in 34 CFR 99.31.

The 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.

When a Disclosure is made under the first paragraph of this section:

1. If a Parent or Eligible Student so requests, Northwell shall provide him or her with a copy of the records disclosed; and
2. If the Parent of a student who is not an Eligible Student so requests, Northwell shall provide the student with a copy of the records disclosed.

“Signed and dated written consent” under this part may include a record and signature in electronic form that:

1. Identifies and authenticates a particular person as the source of the electronic consent; and
2. Indicates such person’s approval of the information contained in the electronic consent.

Access Controls

Northwell must use reasonable methods to ensure that school officials obtain access only to those Education Records in which they have legitimate educational interests. If physical or technological access controls are not used, Northwell 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 regulatory requirements.

Requesting an Amendment

If an Eligible Student or Parent believes the Education Records relating to the student contain information that is inaccurate, misleading, or in violation of the student’s rights of privacy, he or she may ask Northwell to amend the Education Records.

Northwell shall decide whether to amend the record as requested within a reasonable time after receiving the request.

If Northwell decides not to amend the record as requested, it shall inform the Parent or Eligible Student of its decision and of his or her right to a hearing.

Submitting a Complaint

A Parent or Eligible Student may file a written complaint with the Family Policy Compliance Office regarding an alleged violation under the Act and this part. The address is: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

Requesting a Hearing

Requests for a hearing should be submitted to the appropriate designee.

If an Eligible Student or Parent requests a hearing by Northwell, the hearing must meet, at a minimum, the following requirements:

1. Northwell shall hold the hearing within a reasonable time after it has received the request for the hearing from the Parent or Eligible Student.
2. Northwell shall give the Parent or Eligible Student notice of the date, time, and place, reasonably in advance of the hearing.
3. The hearing may be conducted by any individual, including an official of Northwell, who does not have a direct interest in the outcome of the hearing.
4. Northwell shall give the Parent or Eligible Student a full and fair opportunity to present evidence relevant to the issues raised. The Parent or Eligible Student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
5. Northwell shall make its decision in writing within a reasonable period of time after the hearing.
6. The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

Interaction of FERPA and HIPAA

There may be overlap in some instances between FERPA and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and Security Rule. The HIPAA Privacy and Security Rules do not apply to individually identifiable health information in Education Records covered by FERPA (pursuant to the exception at paragraph (2)(i) and (2)(ii) to what is considered “protected health information” (PHI) at 45 CFR 160.103). In addition, the exception for records covered by FERPA applies both to the HIPAA Privacy Rule and the HIPAA Security Rule, because the Security Rule applies to a subset of information covered by the Privacy Rule (i.e., electronic PHI).

If it is unclear whether records are governed by FERPA or HIPAA or both, individuals should contact the Office of Corporate Compliance for assistance.

Required Content of Northwell Health’s Annual Notification

Northwell shall annually notify Eligible Students currently in attendance (or Parents thereof) of their rights under FERPA and this policy.

The notice must inform Parents or Eligible Students that they have the right to:

1. Inspect and review the student’s Education Records;
2. Seek amendment of the student’s Education Records that the Parent or Eligible Student believes to be inaccurate, misleading, or otherwise in violation of the student’s privacy rights;

3. Consent to disclosures of personally identifiable information contained in the student's Education Records, except to the extent that FERPA and its implementing regulations authorize disclosure without consent; and
4. File with the Department of Education a complaint concerning alleged failures by Northwell to comply with the requirements of FERPA, its implementing regulations, and this policy.

The notice must include all of the following:

1. The procedure for exercising the right to inspect and review education records.
2. The procedure for requesting amendments of records.
3. The criteria for determining who constitutes a school official and what constitutes a legitimate educational interest, with respect to the disclosure of Education Records.

Northwell may provide this notice by any means that are reasonably likely to inform the Parents or Eligible Students of their rights.

Northwell shall effectively notify Parents or Eligible Students who are disabled and/or Parents who have a primary or home language other than English.

Recordkeeping Requirements

Northwell must maintain a record of each request for access to, and each Disclosure of, personally identifiable information from the Education Records of each student, as well as the names of state and local educational authorities and federal officials and agencies that may make further Disclosures of personally identifiable information from the student's Education Records without consent under the implementing regulations.

Northwell shall maintain the record of requests for access and Disclosures with the Education Records of the student as long as the Education Records are maintained.

For each request or Disclosure, the record must include elements as set forth in the implementing regulations at 34 CFR 99. Northwell shall comply with all other applicable recordkeeping requirements with respect to the Education Records of Eligible Students.

Enforcement

The Secretary of the Department of Education may take any legally available enforcement action in accordance with FERPA. In addition, noncompliance by any individuals to whom this policy applies may be subject to disciplinary action by Northwell, up to and including termination of employment.

REFERENCES to REGULATIONS and/or OTHER RELATED POLICIES

The FERPA regulations and other helpful information can be found at:

<http://www.ed.gov/policy/gen/guid/fpco/index.html>.

Guidance on the intersection of HIPAA and FERPA: *The Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records*, can be found at:

<https://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>

CLINICAL REFERENCES/PROFESSIONAL SOCIETY GUIDELINES

N/A

ATTACHMENTS

N/A

FORMS

N/A

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System Administrative P&P Committee	10/26/17
System PICG/Clinical Operations Committee	11/17/17

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