

FLORIDA ATLANTIC UNIVERSITY



FERPA For New Faculty

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Scope of Presentation

- This is an overview for faculty of FERPA (also known as the “Buckley Amendment”), Florida’s similar state laws and Florida’s Sunshine Laws.
- The University Registrar should be the primary contact regarding FERPA issues.



FERPA is Unique For Us Given FAU's Sunshine Law Status

- Based on Florida's Government-in-the-Sunshine laws, nearly every record is a "public record" open to inspection.
- For example, all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, **regardless of physical form or means of transmission**, made or received in connection with the transaction of official FAU business is a public record unless a specific exemption applies.



FERPA – The Opposite of the Sunshine

- Under the public records law, *all university records* are “**public**” unless there is an express exemption making the record confidential. FERPA is an exemption.
- Under FERPA, *all student records* are “**confidential**” unless there is an express exemption making the information public.
- Under state law, all applicant records are also “**confidential.**”



You are bound by FERPA. What are Your Responsibilities?

- To maintain confidential student educational records in an appropriate manner.
- To limit access to student educational records to those with a “legitimate educational interest.”
- Generally, you may only share the contents of student educational records with non-FAU officials where the student has provided written consent for such disclosure.



What “Educational Records” Must Be Kept Confidential?

Any “personally identifiable” information that would make a student’s identity easily traceable including:

- Social Security Number or Z number
- Grades and GPA
- Class schedules
- Transcripts
- Student Conduct records



What Educational Records May Be Released to the Public?

Directory Information

- FERPA defines “Directory information” as information that if disclosed to third parties will not violate a student’s privacy. This is set by the school.
- **NOTE: Requests for Public Records including Directory Information should be referred to the Media Relations office.**



Directory Information is:

- DEFINED BY FAU REGULATION 4.008
 - a. Student name;
 - b. Student address;
 - c. Student telephone number (if it is a listed number);
 - d. Student date and place of birth;
 - e. Student class and college of enrollment;
 - f. Student major field of study;
 - g. Student dates of attendance;
 - h. Student degrees and awards received;
 - i. Student participation in officially recognized activities and sports;
 - j. Student weight and height of members of athletic teams; and
 - k. Most recent previous educational agency or institution attended by the student.



Students May “Opt Out” of Disclosure of Their Directory Information

- Students may opt out of having all or part of their Directory Information disclosed without their express permission by completing a Non-Disclosure Request.
- The Non-Disclosure Request form is available online and in the Registrar’s Office.

NOTE: Another reason to refer directory requests to Media Relations who will check with the University Registrar.



What Educational Information Is Not Protected By FERPA?

- Personal knowledge derived from direct, personal experience with a student is not protected.
- For example, a faculty or staff member who personally observes a student engaging in erratic and threatening behavior is not prohibited by FERPA from disclosing that observation.
- But you would not be permitted to disclose the record of the observation unless one of the exceptions to FERPA applied.



FERPA Doesn't Apply to All Student Records

- The following types of records are not educational records: medical records, employment records, counseling records, police reports, etc.
- However, these records may be covered by other Sunshine Law exemptions.



Students May Review all Their Educational Records EXCEPT:

- The portions of their educational records mentioning other students.
- The financial records of their parents.
- Letters of recommendation (where they waive access).



Parties to Whom Educational Records May Be Disclosed Without Prior Consent

- A FAU official with an “educational interest.”
- Another institution where the student is seeking to be enrolled.
- To a necessary party for health or safety emergency.
- The DOE or state/local educational authorities (to meet legal requirements).



“Legitimate Educational Interest” in Student Educational Records

Who **has** a legitimate interest?

- A school official that has a need to review the educational record to fulfill his/her job duties.

Who **does not** have a legitimate interest?

- Parents, spouses, siblings, girlfriends, boyfriends, roommates, etc.



Additional Examples of When Prior Consent is Not Required

- Parents of dependent students (as defined by IRS). FAU, through the Registrar, will generally notify students of any records we have made available to parents.
- Accrediting bodies.
- Other educational institutions the student seeks or intends to enroll.
- An attorney or court to comply with a judicial order or lawfully issued subpoena (may require notice).

NOTE – You will want to refer these types of requests to Media Relations or Office of the General Counsel.



Final FERPA Thoughts

- Always be very careful to protect the confidentiality of student information
- When in doubt about your responsibilities under FERPA, call the Registrar.



WHAT IS DUE PROCESS

- The process that is due depends on the right or property interest being burdened or withdrawn.
- The greater the right or interest, the more process that is due:
 - Criminal cases that could result in jail-time or even death
 - Termination of welfare or disability benefits
 - Involuntary admission for mental health or substance abuse treatment



DUE PROCESS AT THE UNIVERSITY

- Student Conduct – high level of process
- Admissions – no due process afforded
- Academics - University of Missouri v. Horowitz:
- The need for flexibility is well illustrated by the significant difference between the failure of a student to meet academic standards and the violation by a student of valid rules of conduct. This difference calls for far less stringent procedural requirements in the case of an academic dismissal.



DUE PROCESS AT THE UNIVERSITY

- When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.

Regents of the University of Michigan v. Ewing



WHAT IS DUE PROCESS

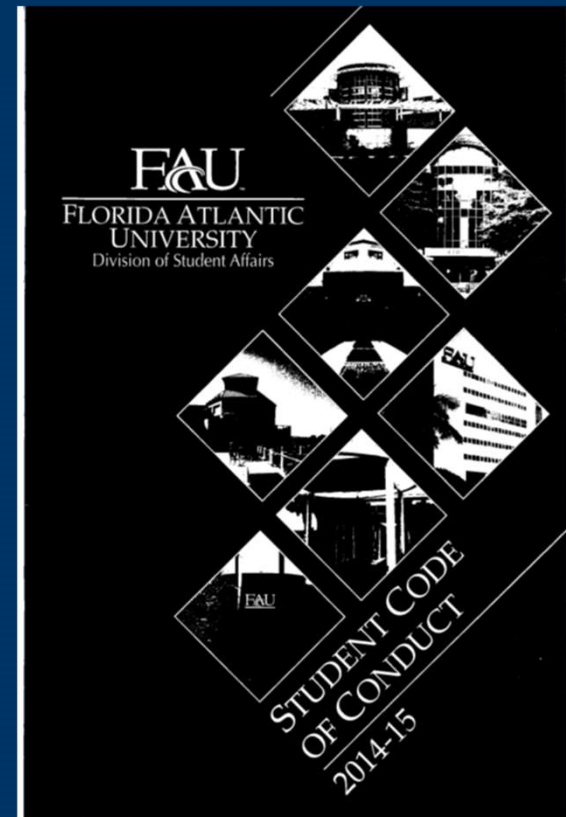
- Elements of due process:
- Notice
- Opportunity to be heard



WHAT PROCESS IS DUE

- Student Code of Conduct
- FAU Regulation 4.007

www.fau.edu/regulations





STUDENT CODE OF CONDUCT Regulation 4.007

- Processed by Student Affairs – Office of Student Conduct
- 6 step process:
 1. Identification of a potential violation and report
 2. Investigation Conference
 3. Notice of Charges
 4. Student Conduct Conference (more than 5 days after notice of charges)
 5. Hearing (no less than five days after SCC)
 6. Appeal to the Vice President for Student Affairs



WHAT PROCESS IS DUE

- Code of Academic
- Integrity
- FAU Regulation 4.001

Florida Atlantic University

Regulation 4.001 Code of Academic Integrity

(1) Purpose. Students at Florida Atlantic University are expected to maintain the highest ethical standards. Dishonesty is considered a serious breach of these ethical standards, because it interferes with the University mission to provide a high quality education in which no student enjoys an unfair advantage over any other. Dishonesty is also destructive of the University community, which is grounded in a system of mutual trust and places high value on personal integrity and individual responsibility.

(2) Definitions. The FAU Code of Academic Integrity prohibits dishonesty and requires a faculty member, student, or staff member to notify an instructor when there is reason to believe dishonesty has occurred in a course/program requirement. The instructor must pursue any reasonable allegation, taking action where appropriate. Examples of academic dishonesty include, but are not limited to, the following:

(A) Cheating

1. The unauthorized use of notes, books, electronic devices, or other study aids while taking an examination or working on an assignment.
2. Providing unauthorized assistance to or receiving assistance from another student during an examination or while working on an assignment.
3. Having someone take an exam or complete an assignment in one's place.
4. Securing an exam, receiving an unauthorized copy of an exam, or sharing a copy of an exam.

(B) Plagiarism

1. The presentation of words from any other source or another person as one's own without proper quotation and citation.
2. Putting someone else's ideas or facts into your own words (paraphrasing) without proper citation.
3. Turning in someone else's work as one's own, including the buying and selling of term papers or assignments.

(C) Other Forms of Dishonesty

1. Falsifying or inventing information, data, or citations.
2. Failing to comply with examination regulations or failing to obey the instructions of an examination proctor.
3. Submitting the same paper or assignment, or part thereof, in more than one class without the written consent of both instructors.
4. Any other form of academic cheating, plagiarism, or dishonesty.

(3) Procedures.

- (A) If the instructor determines that there is sufficient evidence to believe that a student engaged in dishonesty, the instructor will meet with the student at the earliest possible opportunity and provide notice to the student of the instructor's perception of the



Academic Integrity Regulation 4.001

- Processed by the College, with the assistance of Student Affairs
- 6 step process:
 1. Perceived act of dishonesty, including cheating, plagiarism or other form of dishonesty
 2. Professor meets w/ Student to discuss and provide notice
 3. Written notice of the charges and the penalty
 4. Opportunity to be heard by chair and instructor
 5. Appeal to the Dean – convening of a Council
 6. Appeal to the Provost



Recording class lectures

- Under a law enacted by the Florida Legislature in 2021, a state university student may, without prior notice, audio or video record a class lecture for a course in which the student is enrolled if the recording is for one of the following purposes:
 - personal educational use of the student;
 - in connection with a complaint to the university where the recording is made; or
 - as evidence in, or in preparation for, a criminal or civil proceeding.



Recording class lectures

A recording of a class lecture may not be published without the consent of the lecturer, except it may be shared with university officials in connection with a complaint to the university or as evidence in a criminal or civil proceeding.

- What is a “class lecture”?
- What is “publication”?



Recording class lectures

A class lecture is defined as a formal or methodical oral presentation as part of a university course intended to present information or teach students about a particular subject.

Class lecture does not include student presentations (whether individually or as part of a group), class discussion (except when incidental to and incorporated within a class lecture), labs, clinical presentations such as patient history, academic exercises involving student participation, test or examination administrations, field trips, and private conversations between students in the class or between a student and the lecturer.

To publish means to share, transmit, circulate, distribute or otherwise provide access to the recording, regardless of format or medium, to another person (or other persons), including but not limited to another student in the class. Additionally, a recording, or transcript of the recording, is published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, picket signs, or any mode of print.



Duty to Report child abuse

- Florida law (§39.201) requires all persons to report knowledge or reasonable suspicion that a child is abused, abandoned, or neglected to the Florida Department of Children and Family Services (DCF).
- The law further prohibits any person from preventing another person from meeting their reporting obligation to DCF.
- A person who knowingly and willfully violates the law is subject to *criminal prosecution*.



TITLE IX

- The Basics:
 - Protects people from discrimination based on sex in education programs and activities that receive federal financial assistance (Education Amendments 1972).
 - DOE Regulations, effective August 14, 2020.
 - New Regulations currently enjoined.



TITLE IX

- Reporting Requirements
 - If you become aware of any incident of sexual assault, violence, and/or harassment, you must report to the Title IX Coordinator.

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Students in Distress

Kognito Interactive

<https://www.fau.edu/training/kognito/>

Students In Distress Guide

<http://www.fau.edu/studentsindistress/>

Report a Concern

<https://www.fau.edu/report/>



Q. & A.

