

AR 5040.1 Compliance with the Family Educational Rights and Privacy Act (FERPA) (new#)
(Section in black ink from current AR 4135)

Collection and Retention of Student Information

The District shall treat all students equitably in the receipt of all school services, including, but not limited to, the gathering of student and family information for the institution's benefit programs.

Any sensitive information, such as a student's, parent's, or guardian's SSN, any AB 540 determinations, or citizenship status information collected by the District or disclosed by the student, should be maintained only for as long as necessary.

Students may elect not to provide immigration or citizenship status information to the institution, and this election shall not impede admissions or enrollment in educational programs.

The District shall not create a list of student names linked with immigration status.

Campus police shall not aid any effort to create a registry containing individuals' country of birth or based on any other protected characteristics of victims, witnesses, or suspects of crimes unless required by law for specified purposes.

Compliance with FERPA

This regulation implements the federal Family Educational Rights and Privacy Act of 1974 (FERPA) and State law.

A. Student Privacy Rights

Current and former students have the following rights regarding their student education records:

1. The right to be informed about their education records.
2. The right to inspect their education records.
3. The right to request amendment to their education records.
4. The right to have a formal hearing if the request for amendment is denied.
5. The right to prevent unauthorized disclosure of any or all of the information in their education records, subject to specific exceptions identified in FERPA and State law.
6. The right to lodge a complaint to the U.S. Department of Education about a violation of FERPA regarding their education record.
7. The right to waive these rights in writing, including the right to give written authorization to a third party to obtain a copy of their education records.

B. Definitions

For the purposes of this ~~policy~~ administrative regulation, Santa Monica Community College District (hereinafter "Santa Monica College", "District" or "College") has used the following definitions of terms:

1. "*Student*" means any person who attends or has attended Santa Monica College. The

word “attend” includes, but is not limited to, attendance in person ~~or online-remote by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom.~~

2. “*Record*” means any information recorded in any way, including, but not limited to, hand writing, print, computer media, video or audio tape, film, microfilm, and microfiche.
3. “*Education records*” means any record maintained by Santa Monica College or an agent of the College which contains personally identifiable information related to a student. The following are not education records:
 - i. 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.
 - ii. Records relating to an individual who is employed by the College ~~an educational agency or institution,~~ that are made and maintained in the normal course of business, ~~relate exclusively to the individual in that~~ **their** individual's capacity as an employee; and are not available for use for any other purpose ~~Records relating to an individual in attendance at Santa Monica College who is employed as a result of his or her status as a student are education records and not excepted under paragraph of this definition.~~
 - iii. Records made or maintained by a physician, psychiatrist, psychologist, or other recognized medical or other professional or paraprofessional acting in ~~his or her~~ **their** professional capacity or assisting in a paraprofessional capacity which are made, maintained, or used only in connection with treatment of the student and 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~~ **College;**
 - iv. Records maintained by Santa Monica College if (a) the records are maintained solely for law enforcement purposes, (b) are revealed only to law enforcement agencies of the same jurisdiction, and (c) the office holding these records does not have access to education records maintained by the College.
 - v. Alumni records which contain information about a student after ~~they are he or she is~~ **they are he or she is** no longer in attendance at the College. ~~and which do not relate to the person as a student.~~
 - vi. Grades on peer-graded papers before they are collected and recorded by an ~~teacher~~ **instructor.**
4. “*School Official*” means:
 - i. A person employed by the District in an administrative, supervisory, academic, research or support staff position.

- ii. A person elected to the Board of Trustees, excluding the student trustee.
 - iii. A person such as an attorney or auditor employed by or under contract to the District to perform a special task.
5. “*Legitimate education interest*” means an official need to review or access a student education record by an official or employee of the College in order to fulfill a professional responsibility; to perform appropriate tasks that are specified in ~~his or her~~ **their** position description or by a contractual agreement; to perform a task related to the student's education; to perform a task related to the discipline of a student; or to provide a service or benefit relating to the student or student's family, such as health care, counseling, job placement, or financial aid.

School officials who use student education record information to serve their own personal needs or for purposes which are not related to their job responsibilities do not have a legitimate education interest in the information being used.

6. “*Personally identifiable information*” includes, but is not limited to--
- i. the student's name;
 - ii. the name of the student's parent or other family members;
 - iii. the address of the student or student's family;
 - iv. a personal identifier, such as the **student's social security number, ITIN number, student number, or biometric record;**
 - v. other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
 - vi. 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;
 - vii. information requested by a person who the **District** ~~educational agency or institution~~ reasonably believes knows the identity of the student to whom the education record relates; or
 - viii. email address.

C. Directory Information

The Superintendent/President shall assure that student records are maintained in compliance with applicable federal and state laws relating to the privacy of student records.

The Superintendent/President may direct the implementation of appropriate safeguards to assure that student records cannot be accessed or modified by any person not authorized to do so.

Any currently enrolled or former student of the District has a right of access to any and all student records relating to the student and maintained by the District.

No District representative shall release the contents of a student record to any member of the public without the prior written consent of the student.

See sections H-K of this administrative regulation for exceptions when student consent is not required.

The district may, at its discretion, limit or deny the release of specific categories of directory information based upon a determination of the best interests of students.

Santa Monica College designated the following items as Directory Information:

- Student name
- City of Residence
- Age
- Major field of study
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Dates of attendance
- Degrees, *certificates* and *academic* awards received (e.g., Dean's List). This does not include scholarships. and most recent previous school attended
- Student's photograph

Students may opt out of releasing directory information by going to their "Student Profile" in their Corsair Connect portal at any time.

Disclosure of Directory Information shall be limited to College officers and employees for official College communications, programs, and publicity and determined by the Dean of Enrollment Services or designee.

~~Students have the following options in connection with the release of directory information.~~

- ~~1. Do NOT permit SMC to release Directory Information to anyone.~~
- ~~2. Do NOT permit SMC to release to the Military.~~

D. Annual Notification

Students will be notified of their rights to inspect student information under FERPA and State law annually by publication in the Santa Monica College Catalog. The catalog is available on the College's website.

E. Procedure to Inspect Educational Records

1. Students must file a request to ~~may~~ inspect and review their education records with the appropriate record custodian, see AR 5040.4. Students should submit a **written request** to the record custodian or an appropriate College staff person ~~a written request delineating the record or records~~ which identifies as precisely as possible the record or records they ~~he or she~~ wishes to inspect. (Forms for this request are available in the

~~Admissions and Records Office.)~~

2. The record custodian or an appropriate College staff person will make the needed arrangements for access as promptly as possible and notify the student of the time and place where the record(s) may be inspected. Access must be given in 15 work days or less from the receipt of the request. [Note: FERPA requires that access be provided within 45 days; however, state law requires that access be provided within 15 days.]
3. When a record contains information about more than one student, the student may inspect and review only the records which relate to ~~him or her~~ **themselves**.

F. Right to Refuse Access

Santa Monica College reserves the right to refuse to permit a student to inspect the following records:

1. The financial state of the student's parents.
2. ~~Letters and statements of recommendation for which the student has waived his or her right of access or which were placed in file before January 1, 1975. Letters and statements of recommendation for which the student has waived his or her their right of access or which were placed in file before January 1, 1975.~~
2. Records connected with an application to attend Santa Monica College (including any programs that have a selection process) if the application was denied.
3. Those records which are excluded from the FERPA definition of education records. The records will be made available if required by **Federal or State law**.

F. Refusal to Provide Copies

~~Santa Monica College reserves the right to deny copies of records not required to be made available by the FERPA or State law in any of the following situations:~~

1. ~~The student has an unpaid financial obligation to the College.~~
2. ~~There is an unresolved disciplinary action against the student.~~

G. Fee for Copies of Records

The fee for copies will be \$0.20 per page.

~~The fees charged to students for transcripts are:~~

1. ~~\$5 for an official transcript, with the first two free for currently enrolled students~~
2. ~~\$10 service charge in addition to the transcript fee for a "Rush" transcript.~~
3. ~~A student may obtain an unofficial copy of his/her transcript at no charge from the SMC Website.~~

H. Disclosure and Release of Education Records

Release of Student Records:

Students may request that records be released to a third-party by filing a "Release of Information to Thirds Party" form with the Admissions and Records Office or with the assigned custodian of records.

No instructor, official, employee, or Governing Board member shall authorize access to student records to any person or entity without Santa Monica College will disclose information from a student's education records only with the written consent of the student, except as listed below. set forth below.

~~The College may disclose information without student consent as follows:~~

- ~~1. To~~ Officials and employees of Santa Monica College, if **only when** that person has a legitimate educational interest to inspect a record.
- ~~2. To~~ Authorized representatives of the Comptroller General of the United States, the Secretary of Health, Education and Welfare, an administrative head of an education agency, state education officials, or their respective designees or the United States Office of Civil Rights, where that information is necessary to audit or evaluate a state or federally supported education program or pursuant to a federal or state law.

~~Except~~ **Exceptions** that **are** when the collection of personally identifiable information is specifically authorized by federal law. Any data collected by these **authorized federal** officials shall be protected in a manner that will not permit the personal identification of students or their parents by **anyone** other than those officials, and any personally identifiable data shall be destroyed when no longer needed for that audit, evaluation, and enforcement of federal legal requirements (see AR 5040).

- ~~3. To other state and local officials or authorities to the extent that information is specifically required to be reported pursuant to state law adopted prior to November 19, 1974.~~
- ~~3. To~~ Officials of other public or private schools or school systems, including local, county, or state correctional facilities where educational programs are provided, where the student seeks or intends to enroll, or is directed to enroll. **The release is subject to the conditions in Ed Code Section 76225.**
- ~~4. To~~ Agencies or organizations in connection with a student's application for, or receipt of, financial aid, provided that information permitting the personal identification of those students may be disclosed only as may be necessary for those purposes as to determine the eligibility of the student for financial aid, to determine the amount of the financial aid, to determine the conditions that will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.
- ~~5. To accrediting organizations in order to carry out their accrediting functions.~~
- ~~5. To~~ Organizations conducting studies for, or on behalf of, **accrediting organizations**, educational agencies or institutions for the purpose of developing, validating, or

administering predictive tests, administering financial aid programs, and improving instruction, if those studies are conducted in such a manner as will not permit the personal identification of students or their parents by persons other than representatives of those organizations and the information will be destroyed when no longer needed for the purpose for which it is conducted.

6. ~~To~~ Appropriate persons in connection with an emergency if the knowledge of that information is necessary to protect the health or safety of a student or other persons, ~~or subject to any regulations issued by the Secretary of Health, Education, and Welfare.~~ **applicable federal or state law.**
7. **In compliance with a federal court order that has been issued regarding an investigation or prosecution of an offense concerning an investigation or prosecution of terrorism.**
8. In compliance with a court order or a lawfully issued subpoena, ~~t~~The College shall make a reasonable effort to notify the student in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order. This notification shall take place using a standard form approved by the FERPA Compliance Officer **or designee.**

Unless the District is served with a judicial subpoena or court order that by its terms prohibits disclosure to the student, the student must be notified of any judicial order or subpoena before the institution complies with the order in accordance with FERPA.

9. Alleged victim of any sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat or assault, or any conduct that threatens the health and safety of the alleged victim, **shall be permitted access to the results of any disciplinary action relative to their allegations within three days of that disciplinary action or appeal. ~~which is the basis of any disciplinary action taken by a community college, shall be permitted access to that information. Access to student record information shall be in the form of notice of the results of any disciplinary action by the community college and the results of any appeal, which shall be provided to the alleged victim within three days following that disciplinary action or appeal.~~** The alleged victim shall keep the results of that disciplinary action and/or appeal confidential.

I. Access to Student Records for Immigration Enforcement Purposes

1. **The District must obtain a student's written consent before disclosing educational records, unless the information is relevant for a legitimate educational interest or includes directory information only. Neither exception permits disclosing information for immigration enforcement purposes; no student information shall be disclosed for immigration enforcement purposes without a court order or judicial warrant. Without a court order or a judicial warrant, written consent must be signed and dated by the student, or (if the student is a minor) by the student's parent(s) or guardian(s), before disclosure of the information, and must specify the records that may be disclosed, the**

purpose of the disclosure, and the party or class of parties to whom the disclosure may be made per Ed Code 66093.3.

2. If desired by the student, the District must provide a copy of the records to be released. The party to whom the information is disclosed may not re-disclose the information to any other party without the prior consent of the student or subsequent court order.
3. District personnel shall develop a written guideline for interactions with immigration authorities seeking to review student records. At minimum, such guidelines shall include the following information:
 - All students, faculty, and staff must notify campus police, immediately, if they are advised that an immigration officer is expected to enter, will enter or is expected to enter campus to execute a federal immigration order. It is the role of campus police, not the faculty, staff or student, to interact with immigration officer. See AR 5017 for additional information.
 - Contact the Dean of Enrollment Services or designee to respond to a request for student records.
 - Access to sample warrant and subpoena documents that could be used for access onto campus property, or to seize or arrest student(s) or other individual(s) on campus.
 - District personnel shall provide a set of responses to use in response to officers seeking access to records for immigration enforcement purposes.
4. In addition to notifying the Dean of Enrollment Services or designee, district personnel shall take the following action steps in response to an officer other than campus police requesting access to student records:
 - a. Ask for the officer's name, identification number, and agency affiliation;
 - b. Record or copy this information;
 - c. Ask for a copy of any warrants;
 - d. Inform the officer that you are not obstructing their efforts but that you need to contact campus police or campus counsel or a campus administrator for assistance.
5. Campus Police shall not provide personal information about an individual for immigration enforcement purposes, unless that information is publicly available, or required by a court order or judicial warrant. "Personal information" is defined as any information that identifies or describes an individual, and includes but is not limited to, a student's physical description, home or work address, telephone number, education, financial matters, medical or employment history, and statements made by, or attributed to, the individual.

J. Record of Requests for Disclosure

Santa Monica College will maintain a record of all requests for and/or disclosure of information from a student's education records for the appropriate record retention period. The record will indicate the name of the party making the request, any additional party to whom it may be redisclosed, and the legitimate interest the party had in requesting or obtaining the information. The record may be reviewed by the eligible impacted student.

Personal information may be transferred to a third party only on the condition that such party will not permit access by any other party without the written consent of the student. ~~(As an example, information released to agencies for auditing purposes or for improving instruction.) In such cases, Santa Monica College will issue the following statement to accompany records released: "All student education records will be destroyed when they are no longer needed for implementation of the study."~~

Student education records may not be released without the written consent of the student.

Santa Monica College complies with Solomon Amendment Act (10 USC § 983) requests from the U.S. Armed Forces.

K. Subpoenas/Court Orders

~~Each office~~Any office receiving subpoenas or court orders for student records should forward them to Admissions and Records for review and processing that routinely receives subpoenas for student records shall have a written policy on compliance with subpoenas. Subpoenas or court orders for mental health records must be directed to the Center for Wellness and Wellbeing. The written policy shall be approved by the FERPA Compliance Officer. Any out of the ordinary subpoenas or court order for student records shall be referred to Campus Counsel for review prior to release of the records **per Title 5, Sections 76243-76245.**

L. Deceased Students

The privacy rights of an individual **end expire** with that individual's death. Records held by an institution for a deceased person do not raise a FERPA issue but are a matter of institutional policy. The College will exercise its own discretion in deciding whether, and under what conditions, information should be disclosed to survivors or third parties.

M. Training for Employees

All faculty and staff, as well as any other agents of the college who request access to student academic records, must complete the FERPA tutorial and submit a signed acknowledgment form. Access to student records, including the academic records database, will be denied until the tutorial has been completed and the form submitted. The tutorial is intended to insure that anyone accessing student records understands the obligations under FERPA for proper use and protection of student records. All questions

in the tutorial are supported by information found on the College's FERPA website. The training shall include answers to common questions concerning FERPA compliance issues, including, but not limited to, issues related to (a) use of student email addresses, (b) distance education classes; (c) online discussion groups; (d) rights of parents, if any, when student is a minor; and (e) procedures and forms for responding to requests for records.

N. Compliance Officer

The ~~Associate~~ Dean of Enrollment Services or **designee** is designated as the FERPA Compliance Officer.

References:

Education Code Sections 66093.3, 66271.4, 71091, 76210, 76230, 76240-76246 and 76200 et seq.;

Title 5 Sections 51012, 59020-59026, 59118, 59410 and 54600 et seq.

Federal Law @ 34 C.F.R. Section 99.3

Title 10 of the U.S. Code Section 503

Title 20 of the U.S. Code Section 1232 (j) (U.S. Patriot Act);

Civil Code Sections 1798.85 and 1788.9 et seq

Also see AR 5040 Student Records, AR 5040.2 Transcripts, AR 5040.3 Use of Social Security Numbers, AR 5040.4 Types, Locations and Custodian of Education Records and AR 5045 Student Records-Challenging Content and Access Log

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