

## **Family Educational Rights & Privacy Act of 1974 (Buckley Amendment)**

(revised 10-7-11)

The Family Educational Rights and Privacy Act of 1974, as amended (the “Act”), is a federal law which requires that Mount Marty College protect students’ “Education Records” and “Personally Identifiable Information.”

### Who Is Protected By FERPA?

FERPA protects all students who attends or has attended Mount Marty College, beginning on the first day the student begins attending class on any campus or through any distance education offered by Mount Marty College. FERPA does not protect individuals who have never been admitted to Mount Marty College. This policy does not apply to applicant files or to files of accepted applicants who do not matriculate.

### What Information Is Protected?

1. Education Records. The term “education records” encompasses all recorded information, regardless of medium, which is directly related to a student and which is maintained by Mount Marty College. Education records include, but are not limited to, admissions, personal, academic, certain personnel, financial aid, cooperative education and placement records. Education records do not include the following:
  - a. Records of instructional, supervisory, administrative, and ancillary educational personnel which are in the sole possession of the maker and are not accessible or revealed to any other individual except a substitute who may temporarily perform the duties of the maker;
  - b. Records of a law enforcement unit of Mount Marty College which are maintained solely for law enforcement purposes, and are not disclosed to individuals other than law enforcement officers of the same jurisdiction. Education records of Mount Marty College may not be disclosed, however, to the law enforcement unit;
  - c. Records relating to individuals who are employed by Mount Marty College which are made and maintained in the normal course of business, relate exclusively to individuals in their capacity as employees and are not available for another purpose. But, employment records of persons who are employed solely as a consequence of college attendance – e.g., teaching/graduate assistants, work-study students, student interns – are education records;
  - d. Records created and maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional, acting or assisting in a professional capacity, such as student health records, to be used solely in connection with the provision of treatment to the student and not disclosed to anyone other than for treatment purposes. The records may be disclosed to a physician or professional of the student’s choice. Treatment in this context does not include remedial education activities or other activities which are part of the program of instruction at Mount Marty College; and
  - e. Records which contain only information relating to a person after that person is no longer a student at the institution (e.g., alumni accomplishments).
  - f. Grades on peer-graded papers before they are collected and recorded by an instructor.
2. Personally Identifiable Information. A student’s “personally identifiable information” includes, but is not limited to, the following:
  - a. The names of the student and his or her parents and family members;
  - b. The address of the student or the student’s family;
  - c. Personal identifiers, such as the student’s social security number or other student number;
  - d. A list of personal characteristics that would make the student “easily identifiable”; and
  - e. Other information that would make the student “easily identifiable.”

### What Information Can Be Disclosed Without Student Consent?

1. Written Consent Generally Required. Generally, Mount Marty College cannot disclose education records or personally identifiable information contained in those records without the student’s prior signed and dated consent. The written consent must:
  - a. specify the records to be disclosed;
  - b. state the purpose of the disclosure; and
  - c. identify the party or class of parties to whom the disclosure may be made.A copy of the education record disclosed or to be disclosed shall be provided to the student upon request.
2. Disclosure Without Consent. In certain circumstances, however, Mount Marty College may disclose information without consent. Consequently, Mount Marty College reserves its rights – as permitted by law – to disclose education records or components thereof without written consent to as follows:
  - a. To “school officials” who have a “legitimate educational interest” in reviewing the information. “School official” shall mean any person who is a trustee, officer, agent or employee of Mount Marty College. “School official” shall also include those parties designated in the following section defining “legitimate educational interest.” “Legitimate educational interest” shall mean any authorized interest, or activity undertaken in the name of Mount Marty College for which access to an education record is necessary or appropriate to the proper performance of the undertaking. It shall include, without limitation, access by a student’s instructor, department head, advisor, dean, the chief academic and campus life administrator, the

- president, a trustee, the custodian of Mount Marty College records, the alumni administrator, legal counsel, the financial aid administrator, administrators charged with maintaining education records, the staff and subordinates of the foregoing and others authorized by the president, to the extent the foregoing persons are acting within the course and scope of their employment or authority;
- b. To officials of other educational agencies or institutions in which a student seeks to enroll or in which the student is currently enrolled so long as the disclosure is for the purpose of and related to the student's enrollment or transfer;
  - c. To authorized representatives of the Comptroller General of the United States, the Secretary of the United States Department of Education and state or local educational authorities, but only if the information is necessary for audit and evaluation of federal, state or locally supported programs and only if such agencies or authorities have a policy for protecting information received from re-disclosure and for destroying the information when it is no longer needed for such purposes (unless access is authorized by federal law or student consent);
  - d. To persons or organizations providing student financial aid to determine the amount, eligibility, conditions of award and to enforce the terms of the award;
  - e. To state and local officials pursuant to statutes adopted before November 19, 1974 or statutes adopted later if the later-adopted statutes concern juvenile justice system and the state and local officials agree not to re-disclose the records;
  - f. To organizations conducting studies for or on behalf of educational agencies or institutions to develop, validate, and administer predictive tests, to administer student aid programs or to improve instruction, so long as there is no further external disclosure of personally identifiable information and the information is destroyed when no longer necessary for the projects;
  - g. To accrediting organizations to carry out their accrediting functions;
  - h. To parents of a "dependent student" as set out in section 152 of the Internal Revenue Code of 1986, as it may be amended;
  - i. In response to a lawfully issued subpoena or judicial order, provided that Mount Marty College first makes a reasonable attempt to notify the student of the subpoena. Mount Marty College may make a disclosure without prior notification if specifically so instructed pursuant to the terms of the subpoena or order. In the event that Mount Marty College initiates legal action against a student – or the student initiates legal action against Mount Marty College – Mount Marty College may disclose education records without a subpoena if those records are relevant to the legal action;
  - j. To appropriate persons in a health or safety emergency if the information is necessary to protect the health or safety of the student or other individuals;
  - k. To an alleged victim of any crime of violence or non-forcible sex offense (as those terms are defined in section 16 of title 18, United States Code). Mount Marty College may only disclose to the victim the final results of any disciplinary proceeding conducted by Mount Marty College. The results can be disclosed whether or not Mount Marty College finds that a violation of Mount Marty College rules and regulations occurred;
  - l. In response to the request for an outcome of a disciplinary proceeding conducted by Mount Marty College but only if (a) the student is the alleged perpetrator of a crime of violence or non-forcible sex offense; and (b) Mount Marty College determines that the student has violated Mount Marty College rules or policies. Notwithstanding these provisions, however, Mount Marty College may not disclose the name of any other student – including the alleged victim or any witnesses – without the written consent of the other students;
  - m. To the student's parent in connection with a drug or alcohol violation if (a) Mount Marty College determines that the student committed a disciplinary violation with respect to the use or possession; and (b) the student is under the age of 21;
  - n. To the United States Attorney General (or any federal officer or employee in a position not lower than an Assistant Attorney General, designated by the Attorney General) in response to a valid ex parte court order relevant to the investigation of domestic or international terrorism or the prosecution of any offense listed in 18 U.S.C. 2332b(g)(5); and
  - o. All information designated as "directory information" as set forth below.

#### What is Directory Information and How May it Be Disclosed?

In its discretion, Mount Marty College may disclose, publish, or provide directory information concerning a student without the student's prior consent. Directory information shall include: the student's name, address, telephone number, date and place of birth, e-mail address, major field of study, dates of attendance, degrees and awards received, enrollment status, the most recent previous educational agency or institution attended by the student, participation in officially recognized activities and sports, weight and height of members of athletic teams and other similar information.

Students may prevent Mount Marty College from disclosing, publishing or providing directory information without their consent by notifying the registrar in writing within seven calendar days after the first scheduled day of class of the fall term. All written requests for non-disclosure will be honored by the college for only one academic year. Consequently, a student must

notify the registrar of the student's desire to withhold directory information annually. Alumni may request non-disclosure of directory information concerning them at any time. Such request will be honored continuously.

#### What Rights Does A Student Have Under FERPA?

Generally, FERPA gives students several rights, including:

- The right to inspect and review information contained in their education records;
- The right to challenge the contents of those records which a student considers to be inaccurate, misleading, or otherwise in violation of their privacy or other rights. But FERPA does not provide a student with the right to challenge an accurately recorded grade;
- The right to a hearing if the student's challenge is unsatisfactory; and
- The right to submit explanatory statements for inclusion in the student's records if the decision on the student's challenge is unacceptable. The registrar has been assigned the responsibility to coordinate the inspection and review procedures for education records.

Request for Review: Students who desire to review their education records shall present a written request to the registrar listing the item or items to be reviewed. Only those education records subject to inspection under this policy will be available for review. The registrar will make the records available for review no later than forty-five (45) calendar days following receipt of a written request. The registrar will also respond to reasonable requests for explanation or interpretation of the records.

Copies: If circumstances effectively prevent the student from reviewing the education records, Mount Marty College will provide a copy of the records to the student or make other arrangements to enable the student to review the records at Mount Marty College's discretion. The fee for making copies of an education record is \$1.00 per page and must be paid by the student at the time copies are requested.

Holds: A copy of an education record otherwise subject to review may be refused if a "hold" for non-payment of financial obligations exists.

Challenge of Contents of Education Records: A student may challenge any education record that the student believes contains information that is inaccurate, misleading or is otherwise in violation of the student's privacy or other rights. The student should initially discuss the student's concerns informally with the registrar. If the registrar agrees with the student's request, the appropriate education records will be amended and the student shall be notified in writing of the amendment. If the registrar disagrees with the student's challenge, the student shall be notified (within 15 calendar days of the student's request) that the education records will not be amended. The student will be notified of the student's right to a hearing. Note: Rights of challenge cannot be used to question substantive educational judgments which are correctly recorded (e.g., course grades with which the student disagrees).

Right to Hearing: Student requests for a formal hearing must be made in writing within 10 calendar days after receipt of the notice from the registrar. Within 10 calendar days after receipt of the written request the registrar shall notify the student of the date, time and place of the hearing. The student shall be given notice reasonably in advance of the hearing date. The student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised. The student may be assisted or represented at the hearing by one or more persons of the student's choice, including an attorney, at the student's expense. The hearing shall be conducted by a person (or panel) designated by the president who does not have a direct interest in the outcome of the hearing. The decision of the hearing officer or panel shall be final, shall be based solely on the evidence presented at the hearing and shall be in writing, summarizing the evidence and stating the reasons for the decision. The written report shall be mailed to the student no later than 30 calendar days after the date of the hearing.

Amendment to Records: If the hearing officer or panel determines that the education records at issue are inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the education records shall be amended in accordance with the decision and the student shall be so informed in writing. If the hearing officer or panel determines that the education records at issue are not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the student may place in the education records a statement commenting on the information in the education records, or a statement setting forth any reasons for disagreeing with the decision of the hearing officer or panel. The statement shall be placed in the education records and shall be maintained as part of the education records so long as the education records are maintained. The statement shall be disclosed whenever the education records in question are disclosed.

Complaint With Family Policy Office: A student who believes that the determination made concerning the student's challenge was unfair or not in keeping with the provisions of this policy or the act may request, in writing, assistance from the president of Mount Marty College to aid the student in filing a complaint with the Family Policy and Regulations Office, U.S. Department of Education, Washington, D.C. 20202.

#### Is a Student's Right to Review Education Records Unlimited?

No. Students do not have the right to inspect or review:

- Financial information submitted by a student's parents;
- Confidential letters and/or recommendations placed in the student's file prior to January 1, 1975, if the documents were intended to be confidential and are used only for the purpose(s) for which they were specifically intended;
- Confidential letters and/or recommendations placed in the student's file after January 1, 1975, associated with admissions, employment, or job placement or the receipt of an honor or honorary recognition if the student has voluntarily waived his/her right to inspect the confidential letters and/or recommendations in writing; and

- Education records containing information about more than one student. In such a case, Mount Marty College will permit access only to that part of the education record pertaining to the inquiring student.

#### Can a Student Waive Rights Under FERPA?

Yes, a student may waive any or all rights under this Policy. Mount Marty College does not require waivers and no institutional service or benefit will be denied a student who fails to supply a waiver. All waivers must be in writing and signed by the student. A student may waive his/her rights to inspect and review either individual documents (e.g., a letter of recommendation) or classes of documents (e.g. an admissions file). The items or documents to which a student has waived his/her right of access shall be used only for the purpose for which they were collected. If used for other purposes, the waiver shall be void and the documents may be inspected by the student. A student may revoke a waiver in writing, but by revoking it, the student does not regain the right to inspect and review documents collected while the waiver was validly in force.

Students also waive their right to object to Mount Marty College's disclosure of directory information if they do not timely notify the registrar of their objections in accordance with the directory information provisions of this policy.

#### Is Mount Marty College Required to Keep a Record of Disclosures?

Yes. Mount Marty College is required to keep a written record of all education record disclosures and requests. The student shall have the right to inspect such record. The record shall include the names of parties or agencies to which disclosure is made, the legitimate reason for the disclosure and the date of the disclosure. No record of disclosure is required for those disclosures made to a student for the student's own use, disclosures made with the student's written consent, disclosures made to a "school official" with a "legitimate educational interest," disclosures of "directory information" or for other disclosures permitted by law. Records of disclosure shall be subject to review only by the student, the custodian and his/her/its staff, "school officials" as defined herein and federal, state or local government officials conducting audits of compliance by Mount Marty College with the Act.

Any disclosure of education records authorized under this policy (whether with or without student consent) shall be made on the condition that the recipient shall not re-disclose the education records without consent or authorization as required herein, and shall not permit or condone any unauthorized use. Authorization for re-disclosure, without consent, for purposes and to persons and parties permitted by law, may be given to a person or party designated in the section titled "Disclosure Without Consent" above. Any such authorization must include a record of (a) the name of the person or party to whom re-disclosures can be made; and (b) the legitimate interests which the additional person or party has for receiving the information and the purposes for which it may be used. Such re-disclosures must be on the conditions set forth in the first paragraph of this section.

#### Can Student Records Be Destroyed?

Yes. But once a student has requested access to his/her education records, those records may not be destroyed until inspection and review have been provided or, if denied, until all complaint proceedings have been completed. Subject to the foregoing condition, the obligation to maintain student statements of clarification exists only so long as the underlying education records are maintained. Subject to other applicable laws, policies or regulations, Mount Marty College reserves the right to dispose of education records when it deems appropriate.