Prepared by the Office of the VP for Planning and Policy
This procedure replaces Administrative Procedure A7.022
Dated November 1988

A7.022 PROCEDURES RELATING TO PROTECTION OF THE EDUCATIONAL RIGHTS AND PRIVACY OF STUDENTS

1. PURPOSE

To implement Chapter 20-20, Hawaii Administrative Rules, entitled "Protection of Educational Rights and Privacy of Students, adopted pursuant to the federal Family Educational Rights and Privacy Act (codified in 20 U.S.C. § 1232g.), as amended; federal regulations adopted by the U.S. Department of Education to implement this act (codified in 34 C.F.R.§§99.1-99.67), as amended; and section 92E, Hawaii Revised Statutes.

2. OBJECTIVE

To establish uniform procedures governing a student's access to the student's own education records, and access to student education records by the public and other governmental agencies.

3. APPLICABILITY

This is procedure is applicable to all campuses of the University of Hawaii. Responsibility for administering this procedure is assigned to custodians of education records, who are the administrative heads of offices in which education records are kept.

4. DEFINITIONS

As used in this administrative procedure:

a. "Days" means calendar days.

b. "Dean of Student Services" means the chief student affairs officer on each campus or that officer's designee.

c. "Directory Information" means certain biographical information contained in the education record of a student which does not require the prior consent of the student for disclosure and may be disclosed at the University's discretion, upon public inquiry, in conformance with state law.

d. "Education record" means all records, files, documents, computer tapes and other materials maintained by the University, which contain information directly related to a student. Excluded are the following:

(1) A record of instructional, supervisory or administrative personnel and educational personnel ancillary thereto, which is in the sole possession of the maker and is not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(2) Confidential communication protected by law;

(3) Records maintained by law enforcement units on a campus, used only for law enforcement purposes, which are kept apart from the educational records, and are available only to law enforcement officials of the same jurisdiction;

(4) University of Hawai’i personnel employment records, but not student employment records;

(5) Records made and maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional solely in connection with the treatment of a student and which may be reviewed by a physician or other appropriate professional of the student’s choice; or

(6) Records created by an alumni association, University of Hawai’i Foundation, or similar organization which contain only information relating to a person after that person is no

longer in attendance at a campus of the University of Hawai'i.

e. ''Personally identifiable information'' means that data or information in an education record which would make a student's identity easily traceable. Such data or information includes, but is not limited to: the name of the student, the student's parent or other family members; the address of the student or the student's family; a personal identifier such as the student's social security number; or a list of personal characteristics that would make the student's identity easily traceable.

f. ''President'' means the president of the University of Hawai'i and shall include the president's designees.

g. ''Right to inspect'' means the right of a student or a designated representative to inspect, under the supervision of personnel of the University, that student's education records.

h. ''Student'' means any individual who is or has been registered and is or has been in attendance at any campus of the University of Hawai'i, exclusive of the University of Hawai'i Laboratory School and University sponsored child care centers. An applicant for admission shall not be considered a student with respect to the unit to which the application has been made, even though that individual may be considered a student with respect to another unit of the University which that student has attended. The records of an applicant for admission shall be subject to the provisions of state law.

i. ''Student employee'' means any student who is employed by the University of Hawai'i and paid in accordance with the University's student employment classification and pay system.

j. ''University'' means the several institutions and each of them that fall under the jurisdiction of the Board of Regents, including any administrative sub-unit with custodial responsibility for student education records.

5. RIGHTS OF STUDENTS

a. A student shall have the right to inspect the

student's own education
records except as otherwise prohibited herein, to receive an explanation and interpretation of the content of such records, and to receive a copy of the records if failure to provide a copy would prevent the student from exercising the right of inspection.

b. A student shall have the right to request that information contained in the student's own education records be amended 80 as to insure that the information contained therein is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

c. A student shall be assured that, except for the disclosure of directory information and in other instances specified herein, the University will not disclose personally identifiable information without the student's consent.

d. A student shall have the right to request a hearing in order to resolve disputes regarding a student's right to inspect or amend the student's education records.

e. A student shall have the right to file a written complaint with the Family Policy and Regulations Office (FERPA), U.S. Department of Education, Washington D.C. 20202, should the student determine that rights accorded herein have been violated.

f. A student shall have the right to waive any of the rights provided herein. The University may request a student to waive certain of these rights but it may not require a student to waive any rights.

6. WAIVER OF RIGHTS

a. A student may waive any of the rights accorded herein, provided that the waiver is in writing and is signed by the student.

b. A student may revoke any waiver of rights with respect to any actions occurring after the revocation, provided that the revocation is in writing and is signed by the student.

c. A student may choose to waive the student's right to inspect confidential letters and statements which were placed in the education records of the student after January 1, 1975, and which are in reference to the following activities:

(1) Admission to an educational institution:

(2) Application for employment; and

(3) Receipt of an honor or honorary recognition.

This waiver of rights shall be valid only if the following conditions are met:



(1) The student voluntarily executes a ‘‘Waiver of Access to Confidential Letters/Statements’’ or similar form (see sample attached as Appendix E);

(2) The student is, upon request, notified of the names of all individuals providing the letters or statements;

(3) The letters or statements are to be used only for the purpose for which they were originally intended;

(4) The waiver is not required by the University as a condition of admission or to receive any service or benefit provided by the University; and

(5) The ‘‘Waiver of Access to Confidential Letters/Statements’’ is filed in the education records of the student. A separate waiver must be executed for each office which maintains an education record and for each activity specified.

7. NOTIFICATION

a. The registrar at each campus of the University shall give currently enrolled students annual notice of their privacy rights by such means as are reasonably likely to inform them of the following:

(1) A listing of federal laws, regulations and university rules and policies governing the privacy rights of students;

(2) The campus officer responsible for providing additional information regarding university practices and procedures in this area including copies of relevant policies;

(3) Categories of data designated as directory information;

(4) Their right to file complaints concerning alleged failures by the University to comply with the requirements of these laws and rules; and, as necessary; and

(5) Other rights and requirements.

b. The notice provided shall advise parents or spouses of students that information contained in education records, except as may be determined to be directory information, will not be disclosed to them without the prior written consent of the student.

8. DESCRIPTION AND DISCLOSURE OF DIRECTORY INFORMATION

a. The following biographical items contained in the education records of a student or a former student are designated as directory information which may, upon public inquiry, be disclosed in conformance with state law at the University's discretion, without the prior consent of the student, except as provided elsewhere in this section.

(1) Name of student;

(2) Local address and zip code;

(3) Local telephone number;

(4) Major field of study;

(5) Education level (i.e., freshman, sophomore, etc.)

(6) Fact of participation in officially recognized activities and sports;

(7) Weight and height of members of athletic teams;

(8) Dates of attendance;

(9) Most recent educational institution attended;

(10) Degrees and awards received;

(11) E-mail address; and

(12) Enrollment status (full-time and part-time).

b. A student presently registered and in attendance at any campus may request that one or more of the items designated as directory information not be disclosed to the public. A student wishing to exercise this right must in person and in writing, not later than fourteen days from the first day of instruction for a regular semester or term, or the fourth day of a summer session, inform the campus registrar as to which items are not to be disclosed without the prior consent of that student.

9. EDUCATION RECORDS NOT SUBJECT TO INSPECTION BY STUDENTS

a. The following types of education records are not subject to inspection by a student.

(1) Financial records and statements of the student's parents or guardians submitted pursuant to an application for financial assistance, unless the student's parents or guardians have waived this right of privacy.

(2) Confidential letters and statements of recommendation which were placed in the education records of a student prior to January 1, 1975, provided that:

(a) The letters and statements were solicited with a written assurance of

confidentiality, or sent and retained with a documented understanding of confidentiality; and

(b) The letters and statements are used only for the purpose for which they were specifically intended.

(3) Confidential letters and statements of recommendation which were placed in the education records of a student after January 1, 1975, when the student has waived his or her rights to inspect and review such letters and statements:

(a) Respecting admission to an educational institution;

(b) Respecting an application for employment; or

(c) Respecting the receipt of an honor or honorary recognition.

b. If the education records of a student contain information on more than one student, the eligible student may inspect only the information pertaining to that student.

10. STUDENT ACCESS TO EDUCATION RECORDS

A student may inspect his or her education records in accordance with the following procedure.

(1) The student shall request to inspect his or her education records by properly completing FERPA Form 2, section A, and submitting it to each office maintaining such records (see copy attached as Appendix C).

(2) The custodian of the education records shall make a reasonable effort to verify the identity of the student requesting such access and may require the student to provide appropriate documentation for this purpose.

(3) The custodian for education records must comply with a student's request for access to his or her education record within a reasonable period of time but in no case more than 45 days after such request has been

received.

(4) A record of the disclosure of education records to the student shall be maintained by the custodian of the records through completion of FERPA Form 2, section B.

(5) The custodian of the education record may deny a student's request for access only if the custodian is unable to verify the student's identity or otherwise determines that the request is in violation of this administrative procedure.



(6) Should the student request an explanation or interpretation of his or her education records, the custodian for such records shall assist the student in obtaining such explanation or interpretation.

(7) Upon termination of the requested inspection of the education records, the student shall certify the granting of access by completing FERPA Form 2, section C.

11. DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION TO UNIVERSITY PERSONNEL

a. University officials shall be permitted access to a student's educational records without the consent of the student in accordance with the following provisions (which shall be strictly construed).

(1) The university official shall have a legitimate educational interest, which is defined to mean that the purpose for seeking access is related to the responsibilities, duties, or functions of that official as an employee of the University and may include student employees supervised by and acting in an official capacity on behalf of a university official. The Department of the Attorney General, State of Hawaii, when formally requested by the University to represent or advise the University in a lawyer-client relationship, shall be considered a school official with a legitimate educational interest.

(2) In the case of a dispute over whether a legitimate educational interest exists, the

following procedures shall apply:

(a) If the dispute is within a campus of the University, the chief executive officer of that campus or a designee shall make the determination. The decision of the chief executive officer shall be final within the University.

(b) If the dispute is among two or more campuses of the University, the President or a designee shall make the determination. The decision of the President shall be final within the University.

(3) The custodian for education records shall make a reasonable effort to verify the identity of the university official who is requesting access and determine the existence of a legitimate educational interest.

(4) The custodian for education records shall inform the official that personally identifiable information from the education record shall not be disclosed to any other party without the prior written consent of the student except as otherwise provided in this procedure.

(5) The custodian for education records is not required to maintain a record of disclosure to university officials.

b. A university committee shall be permitted access to student education records without the consent of the student in accordance with the following provisions:

(1) The committee shall be appointed by university executive or managerial personnel or by campus faculty senates and membership shall be limited to university employees, or other officials formally associated with the University. Students appointed to committees may be afforded access to student education records as provided in this part.

(2) The disclosure of a student's education record shall be in conformance with the requirements of section a. preceding, provided the

university committee shall have a legitimate educational interest as expressed in a written charge of the function or responsibility assigned to the committee.

(3) In requesting the disclosure of student education record the chairperson of the committee shall provide the record custodian with a copy of the letter of appointment to the committee including the committee's charge and a written statement including the following:

(a) The specific information the committee wishes to have disclosed;

(b) A statement of the means by which the committee will protect the confidentiality of any personally identifiable information;

(c) A statement of how the information will be used and by whom; and

(d) A statement of the means that will be employed to provide for the secure return or destruction of the information when it is no longer needed.

(4) Approval by the custodian of the education records if granted, shall be in writing and shall carry the following notation: " The personally identifiable information which is being released to you may not be disclosed to any other person without the consent of the individual student to whom it pertains nor used for any other purpose than that for which it is now approved. Any unauthorized disclosure could subject you to legal action and university disciplinary action.‘‘

(5) If approval is not given by the custodian of the education records, the custodian shall state the reason in writing and advise the committee chairperson of the right to appeal as provided in section a. of this part.

(6) In dealing with personally identifiable

information obtained from student education records, a university committee shall:

(a) Wherever possible assign only university employees to examine student education records;

(b) Wherever possible avoid presenting personally identifiable information to the entire committee; and

(c) Avoid the mention of any personally identifiable information in all written reports, proceedings and minutes.

(7) The custodian for education records is not required to maintain a record of disclosure to university committees which have been granted access to student education records in conformance with the requirements contained in this section.

c. Personally identifiable information from student education records may be released to university students conducting statistical surveys or research in fulfillment of academic requirements, only in accordance with the following provisions:

(1) The student researcher shall be a classified student who has acquired basic research and statistical skills as an upper-division baccalaureate or graduate student.

(2) In requesting the disclosure of personally identifiable information, the student shall provide the record custodian with a written request containing the following information:

(a) A description of the statistical survey or research project including certification by the supervising faculty member that the research topic is of legitimate educational interest or value to the University and that the research design meets academic requirements;

(b) Specific information needed;

(c) A statement of the method to be used in protecting the confidentiality of personally identifiable information;

(d) A statement of how the results will be used and by whom;

(e) A statement of the means that will be employed to provide for the secure return or destruction of the information when it is no longer needed; and

(f) A signed statement by the supervising faculty member accepting responsibility for the supervision of the student researcher, for the use and protection of any personally identifiable data, and for the appropriate dissemination of the results.

(3) Approval by the custodian of the education records, if granted, shall be in writing and shall carry the following notation:

" The personally identifiable information which is being released to you may not be disclosed to any other person without the consent of the individual student to whom it pertains nor used for any other purpose than that for which it is now approved. Any unauthorized disclosure could subject you to legal action and university disciplinary action."

(4) If approval is not given by the custodian of the education records, the custodian shall state the reason in writing and advise the student researcher of the right to appeal as provided in section a. of this part.

(5) Surveys or research activities in which student subjects voluntarily provide personally identifiable information are

not regulated by federal and state laws or university policies. Ethics and common sense dictate that student researchers engaged in voluntary surveys should provide subjects with a written statement clearly and accurately outlining the purpose of the project, haw the information will be handled, and haw the results will be disseminated.

(6) The custodian of education records is not required to maintain a record of disclosure to students conducting statistical surveys or research who have been granted access to student educational records in conformance with the requirements contained the this section.

12. DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION TO AUTHORIZED OFFICIALS AND ORGANIZATIONS

a. Certain officials and organizations authorized by law may be permitted to inspect, review, or have disclosed to them information from a student's education records without the consent of the student, in accordance with the provisions contained in this section. These authorized officials and organizations are as follows:

(1) Officials of other schools in which a student seeks or intends to enroll, if a request for disclosure is not initiated by the student. The student shall have the right to request a record of the disclosure and to challenge the content of any record forwarded.

(2) Authorized representatives of the Comptroller General of the United States of America, the United States Secretary of Education, and other state or federal education authorities for the purposes of audit or enforcement of federal programs.

(3) Authorized representatives of the Comptroller General of the United States of America, the United States Secretary of Education, and other state or federal education authorities in connection with the application for, or receipt of, financial aid.

(4) State and local officials to whom information is specifically required to be reported or disclosed pursuant to state statutes adopted prior to November 19, 1974.

(5) Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, or validating, or administering predictive tests; administering student aid programs; and improving instruction; provided that the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization, and the information will be destroyed when no longer needed to fulfill the purposes for which the study was conducted. The term "organizations," as used in this part, includes but is not limited to, federal, state and local agencies, and independent organizations.

(6) Accrediting organizations in order to carry out accrediting functions.

(7) Appropriate persons in connection with an emergency, in order to protect the health or safety of a student or other persons. The factors which shall be taken into account in determining whether records may be released under this paragraph include:

(a) Seriousness of the threat to the health or safety of the student or other persons;

(b) Need for the records to meet the emergency;

(c) Whether the persons to whom the records are released are in a position to deal with the emergency; and

(d) The extent to which time is of the essence in dealing with the situation.

(8) To designated authorities and individuals in compliance with a lawfully issued judicial order or subpoena.

(a) The student shall be notified by mail, to his or her last known address, prior to compliance with any subpoena. (See guidelines for compliance with subpoenas contained in Appendix I.)



(9) Officials connected with financial aid which a student has applied for or received; provided that personally identifiable information from the education records of the student may be disclosed only as necessary for such purposes as:

(a) To determine the eligibility of the student for financial aid;

(b) To determine the amount of financial aid;

(c) To determine the conditions which will be imposed regarding the financial aid; or

(d) To enforce the terms and conditions of the financial aid.

b. A record of disclosure shall be maintained for each student's education records that are disclosed to authorized officials and organizations specified in this section.

c. Education records disclosed to authorized officials and organizations shall carry the following notation:

"The personally identifiable information which is being released to you may not be disclosed to any other person without the consent of the individual student to whom it pertains nor used for any other purpose than that for which it is now approved. Any unauthorized disclosure could subject you to legal action and university disciplinary action."

13. <u>DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION TO OTHER PARTIES</u>

a. Other parties, including parents of students, may have disclosed to them personally identifiable information from a student's education records only with the written consent of the student and in accordance the following stipulations:

(1) Prior to disclosure, the record custodian shall have received the written consent of the student to release specified education records. This written consent shall be granted by the proper completion of FERPA Form 3, "Consent to Disclose Educational Records to Third Party." (See copy attached as Appendix D.)

(2) Any information disclosed shall bear this notation:

"The personally identifiable information which is being released to you may not be disclosed to any other person without the consent of the individual student to whom it pertains nor used for any other purpose than that for which it is now approved. Any unauthorized disclosure could subject you to legal action and university disciplinary action.‘‘

(3) Prior to disclosure, fees for copies, if any, shall be received by the University.

(4) No record of disclosure shall be maintained for a student's education records that are disclosed to other parties upon written authorization of the student.

14. AMENDMENT OF EDUCATION RECORDS

A student who believes that the student's own education record contains information which is inaccurate, misleading, or violates the privacy or other rights of the student may request that the University amend those records in accordance with the following procedure:

(1) The student shall notify the custodian of the education records that the student wishes to amend such records by filing FERPA Form 6, "Request to Amend Education Records.‘‘ (See copy attached as Appendix F.)

(2) Should the document being questioned be mandatory and required by the University as part of its internal records, the maker of the document in question shall, when possible, be contacted by the records custodian. The custodian of the education record shall review the request with the maker of the education record. The maker of the record shall

respond to the student's request by completing FERPA Form 7, "Response to Student Request to Amend Education Records.'' (See copy attached as Appendix G.) This form shall be completed by the maker of the record and returned to the record custodian within fourteen days after the maker of the record has received the student's request.

(3) The custodian of the educational record shall make a determination regarding the requested amendment or correction and shall inform the student of the University's decision within a reasonable time after receiving the student's request. If the decision is to approve the request, the custodian shall amend the record and so inform the student in writing. If the decision is to deny the request, the custodian shall so inform the student in writing and advise the student of the right to a hearing.

15. HEARING

a. When the University denies a student's request to inspect or amend the student's education record, and upon the request of the student, the University shall provide a hearing in accordance with the following procedure:

(1) The student shall file a request for a hearing with the Dean of Student Services on each campus by completing FERPA Form 7, "Request for Hearing." (See copy attached as Appendix H.)

(2) The Dean of Student Services may attempt to secure an informal resolution of the student's outstanding request, if appropriate.

(3) Failing to secure an informal resolution, the Dean of Student Services shall designate an official of the University, who does not have a direct interest in the outcome of the hearing, to conduct the hearing.

(4) Hearings shall be held within a reasonable period of time after the University has received a request for a hearing. The hearing officer shall provide the student with reasonable advance notice of the date, place and time of the hearing.

(5) The hearing shall be closed to the public.

(6) The student shall be afforded a full and fair opportunity to present argument on all relevant issues and may be assisted or represented by individuals of the student's choice, including an attorney, at the student's expense.

(7) The hearing officer may consider additional information relevant to the student's request, provided this information is also made available to the student.

(8) The hearing officer shall render a decision in writing within fourteen days after the hearing is completed. The decision shall be based solely on argument and evidence presented at the hearing and shall include a summary of the findings and the reasons for the decision. The decision of the hearing officer shall be final within the University.

b. If the decision of the hearing officer affirms All or part of the student's request, the custodian of the education records shall comply or make the necessary amendments and so inform the student in writing.

c. If the decision of the hearing officer is to Deny the student's request, the Dean of Student Services shall inform the student in writing of his or her right to place in the education record a statement commenting on the content of the record and specifying any reason for disagreeing with the decision of the University. This statement shall be incorporated as part of the education record and shall be included in any disclosure of the record.
d. Should the student be dissatisfied with the decision of the University, the student should be advised of the right to file a complaint with the United States Department of Education.

16. DESTRUCTION OF EDUCATION RECORDS

The University may destroy or expunge any education record when it is no longer appropriate, relevant or required. However, the University may not destroy any education record if there is an outstanding request to inspect it. A student's written explanation of any or all of the content of the student's education record,

which has been placed in that record, shall be destroyed only when the information to which it pertains is also destroyed. The record of disclosure is to be maintained for only as long as the record to which it pertains is kept.

17. FEES FOR COPIES

The University may charge a fee for copies of education records that may be required in order for a student to exercise the right to inspect the student's own education record or as part of an authorized disclosure to other parties. Unless otherwise established by the University, the charge for such copies shall not exceed the cost of their reproduction.