

Policy on the Education and Privacy Rights of Employees, Students and their Families (EPRESF)

Purpose of this Policy

The purpose of this Policy on the Education and Privacy Rights of Employees, Students, and their Families, is to give effect to Chapter 3 of the Constitution of the Republic of Namibia within the workplace and place of study, and has specific relevance to Article 13 (Privacy), Article 14 (Family), Article 20 (Education), and Article 21 (Fundamental Rights and Freedoms). Articles 22 and 25 of this Constitution should be read into this Policy, while the WU Policy on The promotion of access to information is subject to this Policy. In light thereof that the WU staff and student community also includes international staff and students, e.g. from the US, this Policy aims to provide equal protection as under the *Family Educational Rights and Privacy Act of 1974* (also referred to as the Buckley Amendment or FERPA), *United States Code § 1232g*, as amended, for purposes of international financial assistance to international students, and for purposes of protecting Constitutionally protected rights.

Definitions

Access - The right of students to review and inspect the education records of the student and to control the review and inspection of the education records by third parties. Access includes the right of employees to review and inspect their education and personal (staff) records maintained by WU and to control the review, inspection and disclosure of this information by and to third parties.

Attendance - A student is considered to be in attendance upon registering for a course offered in person, by paper correspondence, videoconference, satellite, internet or other electronic information and telecommunications technologies for students who are not physically present in the classroom.

Dependency - A student's dependency on his or her parent for tax, education and child maintenance purposes;

Directory Information - Directory information may be released to anyone without consent of the student or employee, unless the student or employee indicates otherwise; this EPRESF Policy prohibits disclosure of directory information if so requested by an employee or student; directory information include:

1. student name
2. WU staff or WU student number
3. Directory number
4. addresses (e.g., local, home, mailing, and e-mail, including directory number)
5. telephone numbers
6. date of birth

Directory Number - A unique number that is internally generated and used to manage WU e-mail and general business related to the institution, e.g. the WU staff number or student number; it may be displayed with a WU e-mail address in Web directory searches without the consent of the employee or student, unless otherwise prohibited by the employee or student.

Disclosure - Permitting access to or the release, transfer, or other communication of personally identifiable information contained in education and personal 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; note that even when the employee or student has not prohibited disclosure of directory information, the national Identification Document number (ID number) and Passport number, or other non-directory information, either alone or in conjunction with other data elements, may not be used to identify student or employee records when disclosing or confirming directory information without the student's or employee's written consent;

Education Records - An education record is any record that is directly related to a student or employee, and is maintained by WU or by a party acting for the university. Education records include any information or data (educational or personal in nature) recorded in any medium, including but not limited to: handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

Employee - Any person who is in an employment relationship with the WU in terms of a written contract of employment, whether part-time or full-time, or per fixed term contract or permanent employment;

Financial Aid - A payment of funds provided to an individual that is conditioned on attendance of the individual at the university.

Legitimate educational interest - An interest in an education record that is justified under one or more of the following conditions:

1. the information or records requested are relevant and necessary to accomplish some task or determination related to the legitimate educational interest of the employee or student;
2. the WU official needs to review an education record in order to fulfill his or her professional responsibilities for the university; and/or
3. the task or determination is consistent with the purpose for which the records, information, or data are maintained by WU.

Parent - A parent, guardian, or an individual acting as a parent of the student in the absence of a parent or guardian;

Personally identifiable information - The term includes but is not limited to the following:

1. employee or student name
2. name of employee's or student's parent or other family members
3. address of the employee or student or their family
4. a personal identifier, such as a WU identification number, or biometric record
5. degrees, honors, and awards received
6. most recently attended educational institution
7. academic major or field of employment
8. dates of attendance or of employment
9. enrollment status (e.g., undergraduate or graduate, full-time or part-time)
10. academic level
11. school of attendance or employment
12. other indirect identifiers, such as the employee's or student's date of birth;
13. other information that, alone or in combination, is linked or linkable to a specific employee or student that would allow a reasonable person at WU campus or in the public community, who does not have personal knowledge of the relevant circumstances, to identify the employee or student with reasonable certainty

WU School Officials (or University Officials) - Administrators, faculty, professional staff, academic advisors, clerical or support employees, including WU law enforcement unit personnel and WU health staff having a legitimate educational interest;

Student - A student is any individual formally admitted and is or has been in attendance at WU. The term does not apply to applicants for admission, nor does it apply to persons who have been admitted but who have not registered.

Third Party Restriction - A restriction preventing a third party to whom an education record has been released from releasing or re-disclosing the information to anyone except the affected student or employee in person.

Rationale of this Policy

Section A

This **Policy on the Education and Privacy Rights of Employees, Students and their Families (EPRESF)** affords employees and students certain rights with respect to their education and personal records maintained by WU. These rights are:

1. the employee / student's right to prohibit disclosure of information, inclusive of directory information, to third parties;
2. the employee / student's right to inspect and review his or her education and personal records within 30 days of the day WU receives a request for access;
3. the employee / student's right to request the amendment of his or her education and personal records that the employee or student believes are inaccurate or misleading;
4. the employee / student's right to consent to disclosures of personally identifiable information contained in the employee's or student's education and personal records, except to the extent that this Policy authorizes disclosure without consent under specified circumstances; and
5. the employee / student's right to file a complaint with the WU Office of the Registrar and the Office of the Ombudsman concerning alleged failures by WU or WU officials to comply with the requirements of this Policy.

Student Control of Access

In addition to fundamentally protected privacy rights, an employee or student may control access to his or her records by completing forms at the WU Registrar's Office.

Note: Inspection of student records by School officials for educational purposes is permitted, provided that access is limited to only those education records in which the School officials have a legitimate educational interest.

A parent of a dependent student may challenge denial of access by presenting the most current evidence per affidavit confirming that the student is defined as a dependent child and has not reached the age of 21 years. Upon receipt of the affidavit, the university may make the dependent student records available to the parent.

Identification Required

An employee or student accessing education and personal records or receiving university services must provide proof of identity (generally photo identification such as a WU student ID card, driver's license, passport, etc.).

Education Records

An education record is any record that is directly related to an employee or student and is maintained by WU or by a party acting for the university. This Policy provides the following guidelines for the release of such information:

Releasable Information

The following directory information is releasable information, unless otherwise prohibited by the employee or student:

Employee or student name

Addresses: All addresses on record at WU (e.g., local, home, mailing) and WU e-mail, including the directory number

WU staff or WU student registration number

Telephone numbers

Date of birth

Non-releasable Information

All other information, including degrees, honors, and awards received, academic level, academic major, School enrolled to, dates of attendance, enrollment status (e.g., undergraduate or graduate, full-time or part-time), and most recently attended educational institution.

Any information that the employee or student has indicated as non-releasable, including directory information At commencement of the educational (study) or employment relationship, the employee or student shall exercise his or her right to restrict access to information, including directory information, at three levels of disclosure, namely:

Level A – all directory information may be disclosed as permitted via this Policy;

Level X – Specified rights reserved – at this level only specified directory information shall be disclosed;

Level Z – All rights reserved – at this level no information, including directory information, shall be disclosed. This is the highest level of privacy protection, and information shall be released ONLY to the employee or student in person, upon receipt of the requester's (employee's / student's) written request, together with positive identification and a notarized application form, signed by the requester in person. If this highest level of privacy protection is exercised, the employee or student has to ensure the safe-keeping of all his or her original education records, since WU shall release or disclose no duplicate documents pertaining to the employee or student. The disadvantage of Level Z restriction on disclosure of information is that potential future employers or accrediting agencies will not be able to conduct primary verification, other than the original documents presented by the employee or student to such potential employer or accrediting agency.

Conditions of Release of Educational Records

Directory Information

Directory information may be released to anyone without the consent of the employee or student, unless the employee or student indicates otherwise to the University Registrar's Office. Note that the ID number, passport number, or other non-directory information, either alone or in conjunction with other data elements, may not be used to identify employee or student records when disclosing or confirming directory information without the employee's or student's written consent.

Controlled Directory Information Release

Unless otherwise requested, an employee's and student's name, WU staff number or WU student number, telephone number, addresses, School of employment or School of study, and the student's program of study (with modules thereto) may appear both in the controlled directory of faculty, staff, and students on WU's Web pages within the staff and student controlled area, accessible only via a WU password, and in the printed *WU Directory of Faculty, Staff and Students*, which is published each fall semester. All information defined as belonging to the controlled directory is needed for the effective functioning of the institution. To avoid the release of controlled directory information in the printed directory, which is public domain once published, the appropriate form must be submitted to the WU Registrar's Office before the end of the third week of either the spring or fall semester, whichever applies.

Employees and students may limit the release of controlled directory information on the Web or in response to general inquiries at any time by submitting the appropriate form to the WU Registrar's Office.

Unless otherwise directed by the employee or student, directory information may not be sold to outside purchasers.

Personally Identifiable Information

Personally identifiable information about an employee or student includes not only the name of the employee or student and other personal identifiers, but also a list or description of personal characteristics or any other information that, alone or in combination, is linked or linkable to a specific employee or student that would allow a reasonable person in the WU community or in the public community, who does not have personal knowledge of the employee or student and/or relevant circumstances, to identify the employee or student with reasonable certainty. Further, personally identifiable information includes all information about an employee or student that is not defined as directory information, as well as any information that the employee or student has indicated may not be released, including directory information.

Personally identifiable information may not be released without the employee's or student's consent, except under the following circumstances or to the individuals/organizations listed below or otherwise as permitted by law. These releases are permissible, not required.

1. WU officials or WU School officials with a legitimate educational interest.
2. WU officials, including lecturers, who have a legitimate educational interest in the information to the extent necessary for day-to-day operations of the WU as Institution of Higher Learning;
3. Authorized representatives of the Namibian government and State authorities:
 - a. for the purpose of audit and evaluation of government supported education programs or the enforcement of and compliance with legal requirements related to these programs, or
 - b. in connection with financial aid for which a student has applied or which a student has received.

In these instances, personally identifiable information from the education records of the student may be disclosed only as necessary for purposes such as:

- i. determining the eligibility of the student for financial aid
- ii. determining the amount of financial aid
- iii. determining the conditions that will be imposed regarding the financial aid, or
- iv. enforcing the terms or conditions of financial aid.

Any data collected by these representatives under these conditions is required to be protected by the persons receiving it in a manner that will not permit the personal identification of employees, students and their parents by other than those authorized above, except when:

- v. written consent of the employee or student has been obtained, or
- vi. the collection of personally identifiable information is specifically authorized by Namibian law.

4. Research conducted by the WU or any WU official or faculty member for the purpose of:
 - a. developing, validating, or administering predictive tests
 - b. administering student aid programs, and
 - c. improving instruction.

Note: This exception requires that WU enters into a written agreement with the research participants, which agreement specifies the purpose, scope, duration of the study, the information to be disclosed, and the disposition requirements for all personally identifiable information when the study is completed.

5. Parents of a dependent student, as evidenced by a notarized affidavit stating that the student is a dependent, or other documentation as may be separately approved by the university registrar, on a case-by-case basis;
6. Appropriate parties in a health or safety emergency. The totality of the circumstances will be considered in determining whether personally identifiable information should be disclosed, including but not limited to the following:
 - a. the seriousness of the threat to the health or safety of the employee or student or other individuals;
 - b. the necessity of gaining the information to deal with the emergency;
 - c. the ability of the parties to whom the information is disclosed to deal with the emergency; and
 - d. the extent to which time is of the essence in dealing with the emergency; or
7. Persons holding a judicial order or lawfully issued subpoena. The WU official will make a reasonable effort to notify the employee or student of the order or the subpoena several days in advance of compliance except when

the order or subpoena was issued for a law enforcement purpose and states that the employee or student is not to be notified. Also, the WU official will notify the third party receiving the education records of its obligation to notify the employee or student before further re-disclosure in compliance with a court order or subpoena.

Exceptions Related to Student Conduct

Disclosure of Violent Acts

WU may:

1. disclose to an alleged victim of any crime of violence or a non-forcible sex offense the final results of any disciplinary proceeding conducted by WU against the alleged perpetrator of such crime or offense with respect to such crime or offense;
2. disclose the final results of any disciplinary proceeding conducted by WU against an employee or student who is an alleged perpetrator of any crime of violence or a non-forcible sex offense if WU determines as a result of that disciplinary proceeding that the employee or student committed a violation of the university's rules or policies with respect to such crime or offense; or
3. disclose information concerning sex offenders and other individuals required to register per the Register of Sex Offenders;

Disclosure of Disciplinary Records

WU may:

1. include appropriate information in the education record of any employee or student concerning disciplinary action taken against such employee or student for conduct that posed a significant risk to the safety or well-being of that employee or student, other students, or other members of the WU community, or
2. disclose such information to lecturers and WU officials, including faculty and School officials in other WU Schools, who have legitimate educational interests in the behavior of the student.

Disclosure of Drug and Alcohol Violations

WU may disclose to a parent or legal guardian of a student information regarding any violation of any state law or of any rule or policy of the institution governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student's education records, if:

1. the student is under the age of 21, and
2. the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

This shall not be construed to supersede any provision of state law that prohibits WU from making the disclosure described in this section.

Investigation and Prosecution of Terrorism

WU may, upon receipt of an *ex parte* court order, release educational records to any Namibian Court related to the investigation or prosecution of an offense described as an act of domestic or international terrorism.

WU, by acting in good faith to produce education records in accordance with an order issued under this subsection, shall not be liable to any person for that production.

Limitation on re-disclosure

WU may disclose personally identifiable information from the education records of an employee or student only on the condition that the employee or student has consented thereto, and on condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the employee or student. Personally identifiable information disclosed to an agency or organization may be used by its officers, employees, and agents only for the purposes for which the consented disclosure was made. These limitations on re-disclosure are referred to as third party restrictions.

Third Party Restrictions Statement

The following statement appears on records released to agencies or organizations:

"Information contained herein is for the intended purpose only and is not to be used for any other purpose or released to any other person or organization without the written consent of the employee or student whose name appears

herein. If you are unable to comply with the stipulations of the WU Policy on the Education and Privacy Rights of Employees, Students and their Families (EPRESF), you are required to return this record immediately to the Welwitchia University Registrar's Office."

Waiving Rights under this Policy

An employee or student may waive any of his or her rights under this Policy. All waivers must be in writing to be valid.

Required Record of Releases of Information

Except as otherwise required by law, WU shall maintain records of each request for and release of personally identifiable information. This information shall be kept with the employee's or student's education records and maintained by the custodian of the record.

The record indicates the parties who have requested or obtained personally identifiable information, the legitimate interest these parties had in requesting or obtaining the information, and the date of such a request or disclosure.

Records of release or disclosure shall be available for inspection only to the employee, the student, and the custodian of the record.

These records must be maintained for as long as the education records to which they pertain are maintained.

The Policy dictates the following exceptions to the requirement for the recording of release of information:

1. requests by or disclosures to the employee or student in person;
2. requests by or disclosures to university personnel having a legitimate educational interest in the record;
3. disclosures pursuant to an employee's or student's written consent when the consent is specific with respect to the party, or parties, to whom the disclosure is made;
4. requests for directory information; and
5. disclosures pursuant to a judicial order or lawfully issued subpoena.

Right to Inspect and Review Education Records

WU shall permit an employee or student to inspect and review his or her education records. Inspection of education records takes place at reasonable times during business hours.

Limitations on Employee and Student Inspection and Review of Education Records

WU is not required to release to third parties the following information from the education records of an employee or student:

1. financial records and statements or any related information of the employee or the student's parents;
2. confidential letters and statements of recommendation if the employee or student:
 - a. has waived his or her right to inspect and review those letters and statements; and
 - b. when those letters and statements are related to the student's admission to WU, application for employment, or receipt of an honor or honorary recognition. Such a waiver is valid only if it is not a condition of admission to or receipt of a benefit or service from the institution and it is in writing and signed by the employee or student. If the employee or student provides such a waiver, the employee or student must be given, upon request, the names of persons providing the recommendations, and the institution may not use the letters for any purpose other than that for which they were originally intended. The employee or student may revoke the waiver in writing; however, revocation affects only those documents received after the date of the revocation.
- c. education records of a student that contain information on more than one student; in such a case, a student may inspect and review or be informed of only the specific information that pertains to that student;
- d. the following records are not included in the definition of education records and are, therefore, exempt from inspection and review under this Policy:
- e. records made or maintained by a WU employee that are in the sole possession of the maker and are not accessible or revealed to any other individual except a temporary substitute for the maker of the record;
- f. employment contracts and education records as made and maintained in the normal course of business;
- g. treatment records created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the capacity of one of the above professionals made, maintained, or used only in connection with treatment of the employee or student and disclosed only to individuals providing the treatment; the employee or student may request that the record be made available to a physician or other comparable, appropriate professional for review;

- h. records created or received that contain only information relating to a person after that individual is no longer an employee or student in attendance and the records are not directly related to the individual's attendance as an employee or student (e.g., information pertaining to the accomplishments of alumni) and,
- i. qualifications and grades of employees or students, other than for purposes of day-to-day operations of the WU as an Institution of Higher Learning.

Amendment of Education Records

Having reviewed their records, employees and students who wish to challenge the content of the record on file must follow the procedures set forth below. Grades may not be challenged under this Policy; only the improper recording of a grade may be challenged under this Policy.

Informal Request

The employee or student who believes that information contained in his or her education records is misleading, inaccurate, or violates the privacy rights of the employee or student, may request that WU amend such records. A request to amend an employee or student's education record(s) should be made at the level closest to the source of the information if the information is WU generated information. Informal meetings and discussions with the instructor or the university official responsible for the record should be utilized to satisfy a particular inquiry. The disposition of this request should be made within a reasonable period of time, but not exceeding one (1) month.

Formal Request and Right to a Hearing

The employee or student must be advised by the WU of his or her right to a formal appeals hearing if the university instructor or other official decides not to amend the education records of the employee or student in response to the informal request. An appeal must be made in writing through the university official who has custody of the record. The hearing will be conducted in accordance with the following:

1. The hearing will be held within a 30-day time period after the receipt of the request. An employee or student must be given reasonable advance notice of the date, place, and time of the hearing;
2. The hearing will be conducted by the university registrar or his or her designee, who will serve as chair, two members of the faculty or staff, and two students. The vice-chancellor (Rector) will appoint committee members who do not have a direct interest in the outcome of the hearing.
3. The committee is an administrative aid and not a judicial body and, therefore, does not follow formal rules of court procedure.
4. The employee or student may retain counsel (not necessarily legal counsel) at his or her own expense and the respondent may also be advised by counsel. Counsel may be present, if requested, during all testimony, but may only advise the complainant or respondent.
5. The employee or student must be afforded an opportunity to present evidence relevant to any alleged misleading or inaccurate information contained in the record.
6. The committee will present its findings, in the form of a recommendation, to the vice-chancellor (Rector) of the university.
7. The committee must present its recommendation in writing to the vice-chancellor (Rector) within 30 calendar days after the conclusion of the hearing. The recommendation will be based solely on the evidence presented at the hearing and will include a summary of the evidence and the reasons for the recommendation.
8. The vice-chancellor's (Rector's) decision is not subject to appeal within the university system.

If, as a result of the hearing, the university decides that the record is misleading, inaccurate, or otherwise in violation of the education and privacy rights of the employee or student, it will correct the education records of the employee or student accordingly and inform the employee or student in writing. This will be done usually within 45 days of the original request by the employee or student. However, if the university decides that the information is not inaccurate, misleading, or otherwise in violation of the education and privacy rights of the employee or student, it will inform the employee or student of the right to place in the education records a statement commenting upon the contested information in the education records, setting forth any reasons for disagreeing with the decision of the institution.

Any explanation placed in the education record of the employee or student will be maintained by the university as part of the education record of the employee or student as long as the record is maintained. If the contested portion of the education record of the employee or student is disclosed by the university to any third party, the explanation will also be disclosed to that party.

Complaints that cannot be resolved within the university may be filed in writing with the Office of the Ombudsman (Windhoek, Namibia).

Enforcement

The WU will investigate complaints and/or initiate his/her own investigation and report the findings in writing to the complainant, i.e. the employee or the student.

If the WU finds a lack of compliance with this Policy and determines that the education and privacy rights of the employee or student have been violated, the WU may take any legally available enforcement action in accordance with the Labour Act (2007).

Limitation on Destruction of Education Records

No education record may be destroyed if there is an outstanding request to inspect and review it.

Location of Records

The custodian of academic transcript records at WU is the pass-word protected domain of the WU virtual campus, the WU registrar being the custodian of this information.

Copying Fee

A reasonable fee will be charged for copies of education records.

Interpretation

Requests for additional information or clarification regarding this policy may be directed to the WU Registrar's Office via [contact us](#) on the main webpage.

Waiver

Nothing in this Policy may be construed as to mean that the WU is prohibited from conducting primary verification of information submitted to WU in the course of application and admission as a student at WU.

Section B

Formulation of this Policy

- (1) For the purposes of this Policy and within context, the term "institution" means any School of the Welwitchia University or any office bearer of Welwitchia University;
- (2) (A) For the purposes of this Policy, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—
 - (i) contain information directly related to an employee or a student of this institution; and
 - (ii) are maintained by the Welwitchia University or School or by a person acting for such School or Office.

(B) The term "education records" does not include—

 - (i) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;
 - (ii) Records maintained by a law enforcement unit or office of Welwitchia University that were created by that law enforcement unit or office for the purpose of law enforcement;
 - (iii) In the case of employees of Welwitchia University, records made and maintained in the normal course of business which relate exclusively to such employee in that employee's capacity as an employee and are not available for use for any other purpose; or
 - (iv) Records on an employee or student attending Welwitchia University, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to an employee or student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's or employee's choice.
- (3) (A) For the purposes of this section the term "directory information" relating to an employee or student includes the following: the student or employee's name, address, telephone listing, date and place of birth, while controlled directory information also include the student's major field (program) of study, the School enrolled to, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Welwitschia University hereby gives public notice of the categories of information which it has designated as such information with respect to each student attending the institution, or each individual employed by this institution, and shall allow a reasonable period of time not exceeding 30 days after such notice has been given for an employee or student or parent of such student to inform the institution that any or all of the information designated should not be released without the employee's, student's, or parent of such student's prior written consent, whichever is applicable.

- (4) For the purposes of this section, the term "student" includes any person with respect to whom Welwitschia University maintains education records or personally identifiable information, but does not include a person who has not been in attendance of this institution. For the purposes of this section, the term "employee" includes any person in an employment relationship with Welwitschia University with respect to whom Welwitschia University maintains education records or personally identifiable information, but does not include a person who has not been in the employment of this institution in terms of a written contract of employment.

Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of government-supported education programs; recordkeeping

- (5) Safe for directory information, no records, including controlled directory information, shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraphs (2) and (3) herein of students and employees without the written consent of their students, their parents, or their employees (whichever is applicable) to any individual, agency, or organization. Subject to the employee or student's written consent thereto, the Welwitschia University shall only make available education records of an employee, or student, or student's parents to –
- (i) authorized representatives of the Government of the Republic of Namibia; or
 - (ii) parents of a dependent student of such parents; or
 - (iii) subject to regulations in connection with an emergency;
 - (iv) appropriate individuals if the knowledge of such information is necessary to protect the health or safety of the employee, the student, or other persons;
 - (v) any subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the Welwitschia University (and any officer, director, employee, agent, or attorney for Welwitschia University) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena;
- (6) Any data collected under subparagraphs (i) to (v) shall be protected in a manner that will not permit the personal identification of an employee, a student, and the parents of such student;
- (7) No practice of releasing, or providing access to, any personally identifiable information in education and personal records other than directory information, or as is permitted under paragraph (5) is permitted, unless—
- (i) there is written consent from the employee, or the student, or the parents of such student (whichever is applicable), specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the employee, or the student and the parents of such student if desired by the parents, or
 - (ii) except as provided in paragraph (5)(iii – v), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the student or employee (whichever is applicable) are notified of all such orders or subpoenas in advance of the compliance therewith by this educational institution or its agency.
- (8) Nothing contained in this section shall preclude authorized representatives of the Government of the Republic of Namibia from having access to employee, student, or other records which may be necessary in connection with the audit and evaluation of government-supported education programs, or in connection with the enforcement of the legal requirements which relate to such programs, provided that –
- (i) except when collection of personally identifiable information is specifically authorized by Namibian legislation, any data collected by such officials shall be protected in a manner which will not permit the personal identification of employees, students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of legal requirements.
- (9) (A) Welwitschia University shall maintain a record, kept with the education records of each employee and student, which will indicate all individuals, agencies, or organizations which have requested or obtained access to an employee's or a student's education records maintained by Welwitschia University, and which will

indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to the affected employee, student, or parents of such student if such student has not yet reached 18 years of age, and to Welwitchia University office bearers who are responsible for the custody of such records;

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that the employee or student has consented to disclosure, and on the condition that such third party (the requester) will not permit any other party to have access to such information without the written consent of the affected employee, or student, or parents of the student if such student has not yet reached 18 years of age. If a third party outside the requester agency or institution permits access to information in violation of this Policy, or fails to destroy information in violation of paragraph (8)(i), Welwitchia University is prohibited from permitting any further and future access to information from education records to that requester party for a period of not less than five years.

(10) Nothing in this section shall be construed to prohibit State officials from having access to employee or student education and/or other records which may be necessary in connection with the audit and evaluation of any State supported education program or in connection with the enforcement of the legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (5).

(11) (A) Nothing in this section shall be construed to prohibit Welwitchia University from disclosing, to an alleged victim of any crime of violence (as that term is defined in section A), or a non-forcible sex offense, the final results of any disciplinary proceeding conducted by this institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit Welwitchia University from disclosing the final results of any disciplinary proceeding conducted by this institution against an employee or student who is an alleged perpetrator of any crime of violence (as that term is defined in section A), or a non-forcible sex offense, if the institution determines as a result of that disciplinary proceeding that the employee or student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) Having consideration thereof that institutional disciplinary proceedings are subject to privacy rights, disclosure of final results of disciplinary proceedings referred to 11 (A) and (B) for the purpose of this paragraph, the final results of any disciplinary proceeding—

- (i) shall include only the name of the employee or student, the violation committed, and any sanction imposed by the institution on that employee or student; and
- (ii) may include the name of any other employee or student, such as a victim or witness, only with the written consent of that other employee or student prior to disclosure of the final results.

(12) (A) Nothing in this section may be construed to prohibit Welwitchia University from disclosing information provided to the institution concerning registered sex offenders who are required to register under such section.

(B) On request of the Welwitchia University to disclose information referred to in 12 (A), the Office of the Ombudsman shall take appropriate steps to notify Welwitchia University that disclosure of information described in subparagraph 12 (A) is permitted.

Surveys or data-gathering activities; regulations

(13) This Policy shall come into full force and effect on 1 July 2013, to protect the education, privacy and related fundamental rights of employees, students and their families.

(14) Nothing in this Policy may be construed to prohibit Welwitchia University or employees or students of this institution from conducting research, surveys or data-gathering activities, provided that disclosing and dissemination of such data shall be subject to this institution's Policy regulating research ethics at this institution;

Students' rather than parents' permission or consent

(15) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education (herein Welwitchia University), the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

Informing parents or students of rights under this section

- (16) Welwitchia University shall give official notice of this Policy to all employees upon commencement of the employment relationship, and to all students and their parents upon commencement of the education (study) relationship with Welwitchia University by public display of this Policy on its virtual campus forum, and this Policy shall be referenced in the WU student application form.

Enforcement of the Policy

- (17) The Welwitchia University shall take appropriate actions to enforce this Policy and to deal with violations of this Policy, in accordance with this chapter section -

Office and review board; creation; functions

- (i) The Welwitchia University shall establish or designate an office and review board within the institution for the purpose of investigating, processing, reviewing, and adjudicating violations of this Policy and complaints which may be filed concerning alleged violations of this Policy. Except for the conduct of hearings, none of the functions of this office or review board under this section shall be carried out in any of the Schools of the institution.

Disciplinary records; disclosure

- (ii) Nothing in this section shall prohibit Welwitchia University from—
- (a) including appropriate information in the education record of any employee or student concerning disciplinary action taken against such employee or student for conduct that posed a significant risk to the safety or well-being of that employee or student, other students, or other members of the university community; or
 - (b) disclosing such information to university officials, including lecturers and officials in that school or other schools, who have legitimate educational interests in the behavior of the employee or student, provided that such disclosure is confidential and aimed at safeguarding the safety and well-being of that employee or student, other students, or other members of the university community. Subsequent disclosure to third parties other than parties mentioned in (b) herein shall constitute a violation of this Policy.
 - (c) “Duty to warn”, other than mentioned in (b) herein, becomes applicable when an employee or student conducts him or herself in such a manner that poses a risk to the safety and well-being of members of the public, e.g. threats of acts of interpersonal violence, terrorist acts, or conduct that may place the safety and well-being of members of the public at risk. Instant disclosure in terms of the “duty to warn” shall not constitute a violation of the Policy.

Drug and alcohol violation disclosures

- (iii) Nothing in this Policy shall be construed to prohibit Welwitchia University from disclosing, to a parent or legal guardian of a student, information regarding any violation of any law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student’s education records, if—
- (A) the student is under the age of 21; and
 - (B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

State law regarding disclosure

- (iv) Nothing in paragraph 17 (iii) herein shall be construed to supersede any provision of State law that prohibits Welwitchia University from making the disclosure described in subsection 17 (iii) of this Policy.

Protection of educational agency or institution

- (18) When Welwitchia University, in good faith, produces education records in accordance with the provisions contained in this Policy shall not be liable to any person for that production.
- (19) Nothing in the Policy should be construed to mean that Welwitchia University is prohibited from obtaining or conducting primary verification of information submitted to Welwitchia University in the course of application and / or admission as a student to this institution.
- (20) Welwitchia University reserves all rights to primary verification of education records submitted in the course of application / or admission as a student to this institution. However, Welwitchia University and WU officials are prohibited from disclosing to third parties information gathered via primary verification.

Section C

Explanation of the EPRESF Policy

What is the EPRESF Policy?

The EPRESF Policy is the Employee, Student, and Family Education and Privacy Rights Policy of the Welwitchia University (WU). The intent of the Policy is to protect the education and privacy rights of employees, students and their families, and to ensure the privacy and accuracy of education and personal records. The Policy applies to all students and employees of WU.

Who is protected by the EPRESF Policy?

All individuals who are in an employment relationship with WU, and also students who are or have been “in attendance” at the institution, in person, or by distance education, video conference, satellite, internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom regardless of their age or status in regard to parental dependency are protected by the EPRESF Policy. Students, who have applied to but not admitted to and have not “attended” WU, and deceased students and employees, are not protected by the EPRESF Policy.

How is “in attendance” defined?

For purposes of the EPRESF Policy, WU considers a student to be “in attendance” once he or she has enrolled in courses for his or her initial term of enrollment.

What are an employee and a student’s primary rights under the EPRESF Policy?

The right to inspect and review his or her education and personal records maintained at WU;
The right to request an amendment to his or her education and personal record when he or she believes it to be inaccurate or misleading;
The right to consent to disclosures of personally identifiable information contained in his or her education and personal records, except to the extent that the EPRESF Policy authorizes disclosure without consent under specified circumstances;
The right to file a complaint with the WU and the Office of the Ombudsman concerning alleged failures by WU to safeguard the fundamental rights outlined in the EPRESF Policy, as guaranteed under the Constitution of the Republic of Namibia;

What is a “record”?

A record is any information recorded in any way, including, but not limited to:

- Handwriting
- Print
- Computer media
- Video or audio tape
- Film
- Microfilm or microfiche
- Alumni records

What is an “education record”?

An “education record” is any record that is directly related to an employee or student, and maintained by Welwitchia University, or by a party acting for the institution;

What is not considered an education record?

Sole possession records or private notes held by a WU or School official that are not accessible or released to other personnel;
Law enforcement or WU security records that are solely for law enforcement purposes and maintained by the law enforcement unit of WU;
Records relating to individuals who are not employed by the institution (unless the records are contingent on their status as a student);
Records relating to treatment provided by a physician, psychiatrist, psychologist, or other recognized professional and disclosed only to individuals providing treatment – these records are personal in nature;

What if an employee or student wants to inspect his or her record?

The institution must comply within 30 days;

The institution is required to provide copies of a record only if failure to do so would effectively deny access, such as if the alumni student or former employee does not live within commuting distance of WU;

The institution shall not destroy records if a request for access is pending.

What if an employee or student wants to amend his or her record?

An employee or student who believes that information contained in his or her education and personal records is inaccurate or misleading, or that it violates his or her education, privacy or other rights, may seek correction of the records through a request to amend the records or through a fundamental rights protection hearing. Challenges can only be made to the accuracy of the records and not to the judgments the records contain.

What is personally identifiable information?

Personally identifiable information includes, but is not limited to:

The employee or student's name;

The name of a student's parent or other family member;

The address of the employee or student or student's family member;

A personal identifier such as the employee's WU staff number or the student's WU identification (student registration) number;

A list of personal characteristics or other information that would allow a reasonable person in the WU community or in the public to identify the employee or student with reasonable certainty;

All information defined as controlled directory information;

How may personally identifiable information be released from an education record when the employee's or student's consent is required?

To release information to someone other than the employee or student, the employee or student must have given written consent; the consent must:

Specify the records to be disclosed;

State the purpose of the disclosure;

Identify the party or class of parties to whom the disclosure may be made; and

Include a signature and date.

When may personally identifiable information from WU be disclosed without the employee's or student's consent?

When the disclosure is:

- ▶ Releasing directory information – unless the employee or student has reserved this right to disclosure – release of controlled directory information without the employee or student's written consent is prohibited;
- ▶ To WU officials who have legitimate educational interest;
- ▶ To government agencies providing financial aid;
- ▶ To WU staff and WU students conducting research, subject to stipulations provided for in the WU Research Policy on ethical research;
- ▶ Certain officials pursuant to their statutory purpose, including government;
- ▶ State officials and authorities to which such information is specifically required to be reported or disclosed pursuant to state legislation;
- ▶ To parents of dependent students;
- ▶ To comply with a judicial order or subpoena;
- ▶ In a health or safety emergency;
- ▶ Releasing the results of a disciplinary hearing to an alleged victim of a crime of violence;
- ▶ Releasing the final results of a disciplinary hearing against an alleged perpetrator of a crime of violence or non-forcible sex offense if the employee or student is found to have committed a violation of the WU's rules or policies.
- ▶ To a parent of a student under the age of 21 who has violated a law or WU regulations pertaining to the use or possession of alcohol or a controlled substance.

What is directory information?

Directory information is information contained in an education record of an employee or student that generally would not be considered harmful or an invasion of privacy if disclosed; it may be released to third parties without the consent of the employee or student, unless the employee or student has provided a written request to WU to restrict the release of his or her directory information. Controlled directory information may be shared among those WU officials in the course of the institution's normal operations, provided that such WU officials have a demonstrated educational

interest in such controlled directory information. An employee or student may limit disclosure of controlled directory information on the WU webpage if such web area is not password protected and open for public viewing. Any request to limit disclosure in the latter instance must be done in writing to the WU official having custody of controlled directory information.

How would I know if an employee or student has restricted the release of his or her directory information?

The education record of an employee or student is flagged, using a unique identifying number created for the purpose of restricted release at three different levels (explained herein), which number is maintained on the password-protected virtual campus, for employees and students who do not want their directory information released to third parties. This is identified by a shade icon appearing on pages displaying information for that particular employee or student. This window shade icon is not displayed to third parties, and is for official use only.

If an employee or student has requested a restriction of the release of directory information, WU officials are required to answer third party inquiries about the employee or student with: "I have no information to release on this individual."

What does the WU include as elements of controlled directory information?

Name

Home and WU residential address

Home and mobile telephone number

E-mail address

WU identification (student registration) number

Date of birth – Due to identity theft, it is the practice of WU not to release an employee's or student's date of birth, except as required by law or as a validation of positive identification of an employee or student when furnished by a person making an inquiry in terms of the provisions contained in this Policy.

Place of birth

Country of citizenship

Major field of study or employment

WU School of enrollment

Location of attendance

Full-time/part-time status

Level and year of study

Dates of attendance

Candidacy for degree

Degrees, honors, scholarships and awards received

Most recent previous educational agency or institution attended

Names of a student's parents or guardians

Any unique identifying number created for the purpose of compiling, releasing, or transmitting directory information

Photographic images of the student – due to identity theft, it is the practice of WU not to release an employee's or student's photo created through the ID card process.

Who is a WU official or WU School official and what is "legitimate educational interest"?

WU officials and WU School officials are those individuals who engage in the instructional, supervisory, advisory, administrative, governance, public safety, and support functions of the University. Legitimate educational interest refers to the need of the WU or any WU School official to access a student's education records in the course of performing his or her duties for the University.

How does the EPRESF Policy apply to subpoenas?

The WU Office of the Registrar has a procedure for handling subpoenas of employee or student records. When a subpoena requests information about an employee or student, the institution must make a reasonable effort to notify the employee or student of the subpoena prior to complying with it.

What is the penalty for violating the EPRESF Policy and how would anyone know?

Employees and students may file complaints with the WU Office of the Registrar, which office is mandated to investigate all allegations of fundamental rights violations, which may result in a disciplinary hearing of the individual who committed the violation. Disciplinary hearings are dealt with according to the Namibian Labour Act (2007). Employees and students may also file complaints with the Office of the Ombudsman, which office is mandated to investigate all allegations of fundamental rights violations.

What is the penalty for fundamental rights violations?

If the Office of the Ombudsman finds a complaint to be valid, an institution would typically be notified of the need to correct policy and/or practice, and it would be given a reasonable period of time to achieve compliance; if an institution fails to comply within the specified period of time, penalties are prescribed in the Constitution of Namibia;

An aggrieved party may approach a competent Namibian Court to enforce fundamental rights, and may be compensated for damage incurred as a result of fundamental rights violations.

How does WU apply this Policy?

The HR officer has access to employees' education records, while WU faculty and staff have access to students' education records only for legitimate educational purposes in performing his or her duties for the University. Access to education records should not be used for any other purpose.

If a WU employee is ever in doubt, he/she should not release any information from employee or student records without first contacting the WU Office of the Registrar for guidance.

Qualifications and grades may not be released in any form to third parties, without written consent, and should not be posted in any form that would make the employee's or student's identity easily traceable. Students' grades should only be posted on notice boards of the WU campus (including the virtual campus) using the WU identification (student registration) number as the assigned identifier.

University employees may not discuss the grades or academic progress of a student with that student's parents, or any other third party, without the written consent of the student. In addition, WU officials may not provide confidential information to a student's spouse without the written consent of the student.

Employees and students should only be granted access to their own records after they have presented appropriate picture identification, such as a University ID card or a valid driver's license.

University employees and students should not share their University user ID and password with any other individual. University employees should not leave printed or electronic confidential student records unattended where they may be easily accessed by another.

Electronic employee and student record data should be stored on a password-protected medium, and printed data should be stored in a secure location.

What are some strategies for dealing with individuals who cannot gain access to education records because of the WU's EPRESF Policy?

Explain the WU's EPRESF Policy to the requester;

While in conversation with the requester, never access the password-protected screen where the information is contained so that you are not tempted to share information you should not;

Advise that the requester obtain written informed consent directly from the employee or student for the release of specified information;

Where do I obtain requester forms if I want to submit a request for disclosure of information regarding an employee or student of WU?

Contact the WU Registrar's office for a request of the applicable forms at [contact us](#) on the WU main webpage.

Acknowledgement of Sources:

FERPA Policy - UREG web site: <http://www.virginia.edu/registrar/privacyact.html>

Family Educational Rights and Privacy Act of 1974 (also referred to as the Buckley Amendment or FERPA), *United States Code* § 1232g, as amended