

# In Brief

Updates from the Office of Legal Affairs



Volume 1, Issue 2

February 2016



**"When considering whether to use, play, copy or distribute a work, image, song, or film, faculty and staff will want to be mindful of the copyright status of the material being considered."**

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## Fair Use of Copyrighted Works in a Class or Presentation

So, you are contemplating how to best convey the material for that next class you teach or presentation you're making. You think – how about showing that movie that's on point? Or maybe handing out a chapter of a recent cutting-edge book?

As we all know, lessons, lectures, trainings and presentations by faculty and staff can often be enhanced by the inclusion of outside resources such as video, music and supplemental readings. When considering whether to use, play, copy or distribute a work, image, song, or film, faculty and staff will want to be mindful of the copyright status of the material being considered. If the work is in the public domain (material written by the U.S. government or its employees; material created before 1923; or unpublished material more than 70 years after the death of the creator), it is not subject to copyright law. For those instructors wishing to use material that is copyright protected, the use is lawful through either the 'Fair Use' exception or through permission from the copyright holder.

**To determine whether the 'Fair Use' exception applies, start by weighing the following four factors:**

»**Factor I – Purpose:** Is the work being used for educational purposes (i.e. copies for classroom use by students, the educator's research or for the purposes of critique or commentary)? Is the work utilized for purely non-profit use? Because a faculty member or staff member in an educational setting is most likely using an item for these purposes and not for commercial or entertainment reasons, most uses of copyright-protected items in the classroom or for educational purposes would satisfy this first factor.

»**Factor II – Nature of Copyrighted Material:** Is the work published and factual (meaning non-fiction or news)? These non-fiction sources

are more likely than creative works (art, music, fiction) to satisfy this second fair use factor. It is also important to consider whether the material is directly related to what you are using it for in the classroom or educational setting.

»**Factor III – Amount:** This important stage considers how much of the copyrighted material you plan to use. Fair use is more likely found if the instructor is using only a small portion that is relevant to the educational purpose (i.e. a single chapter, journal article or an excerpt that is 10% or less of the work). Avoid copying or using large portions or the entirety of a copyrighted work.

»**Factor IV – Effect on the Market of the Original:** Will the effect of the instructor copying or distributing the material act to substitute for purchase of the copyrighted material itself? To determine this, consider the following questions: Is there a licensing mechanism available for the work? Are you making numerous copies over a long duration (many consecutive semesters)? Are you leaving the material posted online for long durations (for the same class each semester)? If the answer to these is no and this is instead a more spontaneous or time-limited instance where few copies are made and distributed, then this factor would indicate fair use.

»**Calculating Fair Use:** If most (ideally all) of the factors point to fair use, the instructor will not need to seek permission from the copyright holder to use or distribute the work. If the majority of the factors do not support a finding of fair use, the instructor should ask permission from the copyright holder before copying or distributing the work.

Contact your library faculty liaison for questions about whether and how to obtain permission from a copyright holder, or the Office of Legal Affairs for other questions on compliance with copyright law.

## Upcoming Training Sessions

**February 11, 2016**  
**9:00 a.m.-10:30 a.m.**

**"Responding to Sexual Harassment"**  
**Jardine Room**

*Presented by Title IX Coordinator and  
Office of Legal Affairs*

**April 12, 2016**  
**9:00 a.m.-10:30 a.m.**

**"Legal Update for Supervisors: Current  
Legal Issues that Impact Supervisors"**  
**Jardine Room**

*Presented by Human Resources and  
Office of Legal Affairs*

## Title IX and Sexual Harassment – Do I Really Have to Report That?

Imagine this - A student walks into your office and mentions that a University staff person is telling sexual jokes on a regular basis that are making her uncomfortable. You wonder – do I have to do something?

Under the federal law that prohibits discrimination and harassment in educational institutions based on sex, the answer is **Yes**. This reporting obligation includes reporting of sexual harassment, sexual assault, non-consensual sexual contact, or sexual exploitation.

Title IX requires all individuals who are “**responsible employees**” to report any sexual discrimination or harassment so that the University can take actions to investigate, stop any harassment, and remedy the effects of the harassment. If a responsible employee fails to report an incident of sexual harassment, not only is the University unable to address the issue, but the University can be liable under the law for failing to take appropriate action when it “should” have known about sexual harassment.

Here are some frequently asked questions about reporting obligations regarding sexual harassment or interpersonal violence:

### Q: Who is a Responsible Employee?

A: Nearly all employees of JCU are **responsible employees**.

### Q: Are there exceptions to this rule?

A: Staff or faculty who are serving in a role with a legal privilege of confidentiality do not have to report. This includes:

- » counselors performing counseling services in the University Counseling Center
- » priests performing pastoral counseling or
- » health care providers at the Student Health Center

### Q: Who Do I Report To?

A: If accused is a student – report to the Title IX Coordinator (Kendra Svilar, [ksvilar@jcu.edu](mailto:ksvilar@jcu.edu) or x1559), or JCUPD (x1234).

If accused is a faculty or staff member – report to the Title IX Coordinator or Sexual Harassment Hearing Board Chairs (Beth Martin, [bmartin@jcu.edu](mailto:bmartin@jcu.edu) or x1530; or Ryan Armsworthy, [rarmsworthy@jcu.edu](mailto:rarmsworthy@jcu.edu) or x1576).

### Q: What do I tell the individual about my reporting duty?

- A: » Duty to report: Tell them about your duty to report before they start providing details, so they are aware of your obligation.
- » Support resources: Tell them where they can get confidential support (on campus: Violence Prevention and Action Center x2175, University Counseling Center x4283, or off campus: Cleveland Rape Crisis Center (216) 619-6192 or Domestic Violence & Child Advocacy Center (216) 391-HELP).
- » Request to remain confidential: Tell them you need to report the matter, but they also can speak to the Title IX Coordinator about their options.
- » University complaint: Tell them about their right to file a complaint with the University.
- » Criminal complaint: Tell them about their right to file a complaint with JCUPD or local law enforcement.
- » Retaliation: Tell them they will not be retaliated against.

### Q: Do I need to help investigate?

A: No, faculty and staff members should not attempt to investigate a sexual harassment or sexual violence complaint themselves. Trained University investigators are assigned to conduct such investigations.

If you have questions about Title IX reporting obligations, feel free to contact the Title IX Coordinator, Kendra Svilar, at [ksvilar@jcu.edu](mailto:ksvilar@jcu.edu) or x1559, or the Office of Legal Affairs at x1590.



## MORE ON FERPA - AUTHORIZATION

As noted in the last *In Brief*, the Family Education Rights and Privacy Act (FERPA) protects the privacy of student education records and sets out requirements for the release of such information to a third person. Education records include any record directly related to a student and maintained by JCU or a JCU employee, including transcripts, grades, classwork, papers, recommendations, housing information, student conduct records, and more. The University and its employees generally cannot disclose education records of a student to a third person without the student’s consent, unless certain specified exceptions apply.

The University has several resources available to employees to assist with necessary disclosures to third persons of student education records:

- » Academic Verification from Registrar Office: The Registrar’s Office uses an Academic Records Verification Form for students to complete for release of academic records, including information on enrollment, class rank, GPA, good standing etc. to a third person. That form is available at <http://sites.jcu.edu/registrar/pages/services-and-forms/verifications>.
- » Release to Parents: The University also permits students to give parents access to educational records through the Web4Parent System. This permits parents to view student information such as student account, financial aid, mid-term and final grades, and a student’s class schedule. Students can provide permission via the Parent Access Menu in BannerWeb.
- » Other Releases of Information: For other releases of student records or information to others such as release of academic, reference, disability, or disciplinary records, the student can complete a FERPA authorization form, which is available at <http://sites.jcu.edu/legalaffairs/pages/ferpa-2> or in the Registrar’s Office. This may be used by University administrative offices to release student information to outside organizations, by faculty to provide employment references, and to other employees to release student information to an outside entity.

If you have questions about FERPA or whether a student’s authorization is necessary in a particular instance, feel free to contact the Registrar’s Office at x6650 or the Office of Legal Affairs.

## Assisting Distressed Students: Guidance and Resources

In an academic setting where concerns over school violence and other campus safety events loom large, there is often a heightened sensitivity to dealing with distressed students who may act out or behave erratically. This concern operates in parallel with recognition that it is unfair, and in fact often unlawful, to treat such distressed students in ways that are stereotypical or based on unfair presumptions about psychological disabilities. Distressed students can admittedly behave in ways that are discomforting and out of line with reasonable expectations. It is important that University personnel know how to respond to these situations by responding to factual threats and behaviors, rather than presumptions or stereotypes, in order to protect the institution from threats and live up to the University's mission to help support those in need. This overview will provide some guidance to keep in mind when encountering a distressed student or distressing behavior in the classroom or on the campus.

**»Address immediate safety concerns first.** If there is ever a concern that a student represents an immediate threat of harming themselves or others, it is important to contact JCUPD (x1234) so that they can direct appropriate medical or police resources to resolve immediate safety concerns. For example, a police/EMS response would be warranted if a student ever became physically combative with those around them or began to actively threaten others.

**»Reach out to on-campus resources.** The University Counseling Center, Student Health Center, Dean of Students Office, Care Team, Threat Assessment Team, and Services for Students with Disabilities are important resources with knowledge

and expertise in working with students who are distressed due to a mental health issue.

**»Focus on behavior.** In evaluating threats, or in supporting struggling students, it is very important to focus on the behavior that the student is exhibiting. What is the student doing? Is the student in line with classroom and community behavioral expectations? Is the student making statements or engaging in specific behaviors that are threatening or concerning for the safety of others? If a student engages in disruptive behavior in the classroom, please refer to the Classroom Management Procedures Policy.

**»Offer support to students who are struggling without attempting to diagnose or guess what is wrong with them.** The University offers a broad range of support services that are appropriate for the wide range of problems that students face. The key offices for these services, such as the University Counseling Center or Student Health Center, are the same for all students regardless of the cause of their problems.

**»Hold distressed students accountable for their actions.** In conjunction with the University's supportive responses, it is important and legally defensible to uphold classroom and community behavior standards in situations involving distressed students. These standards offer a fair and objective way to regulate behavior on a basis that is neutral with respect to a student's disability or any perception of one.

**»Refrain from sharing your opinion about a student's need for psychological counseling, drugs or other medical care.** Unless serving in a health care role on campus, it is never appropriate for University employees to share their opinion about a student's medical or mental health care.

**»Report threatening/concerning behavior to the Threat Assessment Team.** The University has a Threat Assessment Team that evaluates reported behavior and incidents in order to evaluate and respond to possible threats to the campus community. An important component of the information that the Threat Assessment Team uses is information passed along from concerned individuals in the campus community. The Dean of Students chairs the Team.

For more information on working with students in distress, please contact the Dean of Students Office at x3010 or the Office of Legal Affairs.

### Resources for Students

- University Counseling Center: x4283
- Student Health Center: x4349
- National Alliance on Mental Illness: [www.nami.org](http://www.nami.org)  
NAMI is a nonprofit, self-help, support and advocacy organization of individuals with mental disorders and their families, which offers peer support groups for families and consumers.

## Employee Leave Time for Personal Medical Issues under the Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) provides eligible employees with the right to 12 weeks of annual job-protected leave for certain reasons. One of the most common leaves taken under the FMLA is leave for an inability to do one's job due to a "serious health condition".

What exactly is a "serious health condition"? The FMLA defines "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical facility, or continuing treatment by a health care provider.

The first scenario is easy to identify – an illness, injury or impairment that results in an overnight hospital stay may trigger FMLA leave. As a practical matter, this sort of leave is often identified as part of the leave process under the University's [Sick Time/Leave Policy](#), which outlines leave procedures and return to work documentation for those on leave for three or more days.

The test for an FMLA leave becomes more complicated when it involves "continuing treatment" where FMLA leave is triggered due to time off caused by (a) chronic conditions, (b) permanent or long-term conditions and/or (c) conditions requiring multiple treatments. These scenarios are much more complicated and generally more foreseeable, and therefore they should be discussed with Human Resources as soon as practicable when they arise.

It is important for both employees and their supervisors to identify leaves caused by a serious health condition and work through appropriate FMLA processes in a timely manner. For additional information on FMLA leaves, go to <http://sites.jcu.edu/hr/absences-and-leave/>, or contact Human Resources at x1576 or the Office of Legal Affairs.