



## Brief FERPA Summary for Faculty

The Family Educational Rights and Privacy Act (“FERPA”) is a federal law that prescribes how colleges must handle student education records. The law was enacted in 1974 in response to concern about the public disclosure of private student information by schools as well as parents and students’ inability to access secret files maintained by schools about students.

### **WHAT ARE EDUCATION RECORDS?**

“Education records” means those records that are:

- *Directly related* to a student; and
- Maintained by the College or another party acting for the College.

The term “education records” is extremely broad and covers records beyond academic records. The term includes financial, disciplinary, athletic, extra-curricular, and all other records maintained in any form (e.g., handwriting, print (such as a computer printout in your office), electronic (such as yours emails), video or audio tape, film, microfilm, and microfiche).

“Directly related” to a student means that the record contains *personally identifiable information* about that student.

“Personally identifiable information” means information that, alone or in combination, is linkable to a specific student. Personally identifiable information includes obvious identifiers such as an individual’s name, picture, and student ID number, but also other information that would allow a person in the College community, who does not have personal knowledge of the relevant circumstances, to identify the student. A record does not need to be significantly related to a student to qualify as directly related to that student.

### **WHAT RIGHTS DO STUDENTS HAVE WITH RESPECT TO THEIR EDUCATION RECORDS?**

FERPA gives students four rights with respect to their education records:

- The right to inspect their education records. The College must provide access to the requested records within 45 days of a request.<sup>1</sup> “Access” means just that: the right to inspect the records. The College is not required to provide copies in most circumstances. In general, student requests for access to records should be referred to the appropriate class dean, who can make further referrals if necessary. If a requested record contains information about more than one student, the requesting student may access only those portions of the record that pertain to him- or herself and other student education records may need to be redacted.

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<sup>1</sup> The only exception to this rule applies to letters of recommendation written by faculty members or administrators to which students have formally waived their right of access.

- The right to seek amendment of their education records. If a student believes that his or her education records contain inaccurate or misleading information, the student may request that the College amend the records by contacting the Registrar's Office. This right is intended to deal with "scrivener's errors" and was not intended to provide a means to challenge the underlying substantive decisions.
- The right to consent to disclosures of their education records. In general, the College may not disclose student education records, *whether in writing or orally*, to anyone other than the student unless the student has first provided consent. However, there are exceptions to the consent requirement described below.
- The right to make a complaint to the Department of Education regarding the College's failure to comply with FERPA.

### **WHEN CAN EDUCATION RECORDS BE DISCLOSED WITHOUT STUDENT CONSENT?**

- Disclosure of Directory Information. Certain information is designated as "directory information" and may be disclosed without a student's prior consent. Directory information includes a student's name, address, telephone number, email address, date and place of birth, photograph, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, class level (i.e., first-year, second-year), enrollment status (i.e., full-time or part-time status), degrees, honors and awards received, and the most recent previous educational institution attended by the student. It is important to note that students may opt out of this provision and ask that their directory information be kept confidential. The Registrar's Office handles such requests.
- Disclosure to School Officials. A "school official" is a person employed by the College in an administrative, supervisory, academic or research, or support staff position, members of the Board of Trustees, students serving on an official committee and certain contracted agents (*which requires special language in the contract*). Education records may be shared with a school official if the official needs to review an educational record in order to fulfill his or her professional responsibilities for the College. This is the exception allows intra-College transfer of student information (e.g., from a faculty member to a dean or from a dean to the Study Abroad Office).
- Disclosure to parents or guardians of a student if the student has consented or if the student is a dependent for IRS tax purposes. If a parent contacts a faculty member, the faculty member should refer the call to the appropriate class dean for handling.
- Disclosure of information in a health or safety emergency to appropriate parties as necessary to protect the health or safety of the student or other individuals. The College has significant discretion to determine what constitutes an emergency, what parties are "appropriate," and what information is necessary as long as there was a rational basis for the decisions. While these issues do not come up frequently for faculty members, it is important to know this exception exists.

- Disclosure to comply with a subpoena. If a faculty member receives a subpoena, anything that looks remotely like a subpoena, a lawsuit, a letter from an attorney seeking student records, or a visit from someone claiming to be a law enforcement agent requesting information, the faculty member should contact the General Counsel immediately. If the General Counsel is unavailable, she or he may refer the matter to a class dean or to the Dean of the College.
- Disclosure for Financial Aid. Disclosure in connection with financial aid that the student has applied for or received and that is for the purpose of determining the student's eligibility for, the amount of, or the conditions for the aid, or to enforce the terms and conditions of the aid.
- There are also some exclusions from "education records" that may be useful:
  - Information that you know but *is not recorded anywhere*.
  - Records kept in the sole possession of the maker that are used only as a personal memory aid and that are not accessible or revealed to any other person. This could include your private notes recording class participation which you consult before you set final grades.
  - Records which relate solely to the employment of a student (as long as the student is not employed as a result of his/her status as a student – work study records are not excluded).
  - Records with respect to an applicant for admission who is not admitted to the College. Records of applicants become protected by FERPA once a student enrolls in the College.
  - Records *created or received by the College after* the individual is no longer in attendance (such as alumni records created after the individual graduates).

#### SOME DOs AND DON'Ts

1. **Do not handle any student's materials in such a way that other students may learn what grade the student earned.** Specifically, do not leave graded papers outside your office door for students to pick up; do not give graded work by a student who is ill to his or her friend (even if the friend solemnly assures you that he or she has been expressly charged to pick it up); and do not make comments while handing work back in class that clearly identifies those who have done well or poorly.
2. **Do insist that a student who asks you to write a letter of reference (related to admission, application of employment or receipt of an honor) provide you with a waiver of his or her right to see the letter** (unless, of course, you are comfortable making the reference without the assurance of confidentiality – a concession that you should probably explain to the student can be interpreted in different ways by its readers). If the student provides a waiver, the student must be provided, upon request, the names of the person(s) providing the recommendation(s).

#### FERPA NOTICE AND DIRECTORY INFORMATION NOTICE

Colleges must provide students with an annual notification of their rights under FERPA and what is included as directory information. This annual notice appears in the College catalog and the Student Handbook and is linked to the Policies webpage. The notice is also on the Registrar's website.

**If you have any questions about FERPA or about student education records, please contact the Registrar or the General Counsel.**