

Excerpted From: Laws, Policies, Practices and Procedures

4. Family Educational Rights and Privacy Act

FERPA, also known as the Family Educational Rights and Privacy Act, is the federal statute which both governs the privacy of student records and information and gives important rights to students with respect to their education records. All Simmons faculty members should have a solid understanding of their obligations under FERPA to avoid inadvertently violating the legal rights of Simmons students.

Generally speaking, FERPA prohibits faculty from disclosing student records, or information from student records, to anyone other than the student to whom the records pertain, unless the student has provided consent to the disclosure. The records covered by FERPA are not limited to academic records (for example, transcripts, exams, grades, and papers), but include *nearly all records regarding a student*, in any format, that contain personally identifiable information about a student, such as the student's name, class schedules, and financial aid information.

Given FERPA's scope, it is fair to assume that all records concerning a student are covered by FERPA. There are, however, a number of exceptions that permit Simmons to disclose information, even without a student's consent. These narrow exceptions permit appropriate disclosures so that the College may conduct its academic business and may protect the health and safety of those in the campus community. If you have any doubts about whether you can or should disclose information concerning a student, you should contact Simmons' General Counsel, Kathy Rogers.

FREQUENTLY ASKED QUESTIONS

Q: *Who is protected under FERPA?*

- Currently enrolled students as well as graduates are protected by FERPA.
- Applicants who do not enroll at Simmons are not protected by FERPA, but Simmons still treats applicants' records confidentially.

Q: *What does FERPA do?*

A: FERPA affords Simmons's students certain rights with respect to their education records. These rights include:

- The right to inspect their education records within 45 days of Simmons receiving a request for access
- The right to seek amendment to their education records if an error has been made
- The right to consent to the disclosure of personally identifiable information collected by Simmons and contained in their education records, except to the extent that FERPA authorizes disclosure without consent
- The right to file a complaint with the U.S. Department of Education concerning alleged failures by Simmons to comply with FERPA
- The right to be notified of their rights under FERPA

Q: *What are "education records" under FERPA?*

- Records that are directly related to students; and
- Maintained by Simmons or by a party acting for Simmons
- Examples of education records include: documents with a student's name and ID number, class schedule, grades, letters of recommendation, student information displayed on a computer screen

Q: *What is not an "education record" within the meaning of the Act?*

- Observations of a student's behavior (e.g., a professor's observation that a student has become withdrawn or uncommunicative)
- An instructor's private notes that remain in her or his sole possession (e.g., notes used as a memory aid for grading purposes)

- Records of campus security that are created for law enforcement purposes and maintained by campus security
- Employment records relating to employment at Simmons unless that employment is related to a person's status as a student at Simmons
- Medical records and any records related to medical treatment by a physician, psychiatrist, psychologist, or other paraprofessional
- Alumni records or other records of Simmons that contain only information about a person after she is no longer a student at Simmons.

Q: *Can Simmons disclose information from a student's education records without the student's consent?*

A: FERPA permits Simmons to disclose information from a student's education records without a student's consent to certain persons under certain circumstances, including:

- To other Simmons employees (such as Dean, General Counsel, or Dean for Student Life) who may have a legitimate educational interest in the information (note: mere curiosity is not a legitimate educational interest)
- To persons or institutions requesting a student's information in connection with financial aid status
- To officials at other colleges where the student seeks to enroll, or is enrolled simultaneously
- To state or local educational authorities who are conducting an audit or enforcing federal – or – state supported education programs or enforcing federal laws that related to those programs
- To accrediting organizations
- To any party requiring information pursuant to a judicial order or lawfully issued subpoena (although the student may need to be notified in advance)
- To appropriate officials in case of a health or safety emergency

Q: *Can Simmons share information from a student's educational records with the student's parent or legal guardian without the student's consent?*

A: Although many parents and guardians believe that the payment of tuition gives them the right to review a student's educational records, that is not what FERPA provides. Once a student has turned 18 years old or enrolled at postsecondary institution such as Simmons, FERPA gives the student, not the parent or guardian, primary control over the student's educational records. There are a number of circumstances, however, when Simmons may disclose information to a student's parent or guardian, even without the student's consent. Among those circumstances:

- If a parent or legal guardian claims the student as a federal tax dependent and can establish that tax dependency by providing a copy of the current federal tax return, Simmons may disclose any and all information that it has about the student to the parent or guardian
- If the student is under 21, Simmons may inform the student's parents of any violations of Simmons alcohol or drug policies
- If Simmons reasonably believes that there is a health or safety emergency involving the student, Simmons may alter the student's parents and seek their assistance

Q: *What does FERPA require if a student wants to amend her education records?*

A: Under FERPA, a student has the right to request that Simmons amend her/his education records if they contain inaccurate or misleading information, Simmons must take the following steps:

- If Simmons receives such a request, it must consider the request.
- If Simmons decides not to amend the records in accordance with the request, Simmons must inform the student of her/his right to a hearing on the matter.
- If, following the hearing, Simmons decides not to amend the record, the student has the right to place a statement in her/his education record setting forth her/his views, and the statement must be kept in the record for as long as the record is maintained.

- While FERPA's amendment procedure may be used to challenge facts that are inaccurately recorded, it may not be used to challenge a grade, a disciplinary decision, an individual's opinion, or a substantive decision about a student

Q: *What is the "directory information" referred to in the Act?*

A: Directory information is identifying information that Simmons generally *may* disclose, but faculty members should use discretion in doing so.

- Directory information may include a student's name, address, telephone number, e-mail address, place and date of birth, dates of attendance, graduating class, previous institutions attended, major(s), awards, honors, degrees conferred, participation in sports and activities, and, if the student is a student athlete, physical information (height and weight).
- Directory information does *not* include social security number, personal identification number, grades, grade point average, class schedules, adverse academic action, and/or number of credits earned.

NOTE: Students have the right to "opt out" of having their directory information disclosed. Before you release any directory information about a student, you should obtain confirmation from the Office of the Registrar that a student has not raised an objection to the disclosure of her/his directory information.

Q: *What do I do if a parent or guardian calls to find out how a student is doing in my class?*

A: You may not discuss a student's performance in your class without confirming you have a legal right to do so.

- You may obtain prior *written consent* from the student to discuss his or her performance with his or her parent or guardian. Please notify the Office of the Registrar if you do obtain prior written consent from the student and provide the Office of the Registrar with a copy of this consent.
- You may also refer the parent or guardian to the Office of the Registrar. The Office of the Registrar will require documentation to establish that the student is either a legal dependent for tax purposes or has signed a written consent allowing his or her parent or guardian legal access to his or her records.

Q: *What if a person claiming to be the student's parent or guardian calls and requests a student's schedule?*

A: You should not disclose a student's class schedule to a person claiming to be a student's parent or guardian, even if the person calling states that it is an emergency. In such circumstances, you should ask the caller to give you a contact number, then promptly get in touch with the Registrar, your Dean or the Dean for Student Life for guidance in responding to the request. You may also advise the person calling you to contact the Office of the Registrar directly.

Q: *What should I do if a prospective employer, or faculty member of a program to which the student has applied for admission, contacts me for information about a student's performance in my class?*

A: Although it may be tempting, you may not discuss the student's performance in the class, without prior written consent from the student. However, you may refer the inquirer to the Office of the Registrar, especially if the inquirer seeks only to verify that the student attended Simmons and to confirm whether or not a degree was conferred.

Q: *May I post my students' grades?*

A: By following a few simple guidelines, you may post your students' grades in a way that does not violate their FERPA rights.

- You may give each student a unique number known only to you and the student, and post grades by number.
- You should not use a student's social security number, student identification, or name to post grades.
- You should not allow numbers to correspond to the student's name in any way, including assigning numbers alphabetically.

Q: *When I am finished grading papers or exams, may I leave them in a bin outside my office?*

A: No. You should not put papers, lab reports, or exams for pick-up in a publicly accessible place with students' names or grades reflected on the paper.

- You may ask students for a self-addressed stamped envelope to provide their grade information to them.

Q. *Are there any other things I should do to avoid violating FERPA?*

A: You should not:

- Leave voicemail messages for students with specific information that may be heard by roommates or others
- Send grade or course information to a student on a post-card or in an email that may be seen by roommates or others (use a sealed envelope)
- Leave student records in a public place where they may be seen or accessed by others (e.g., leaving documents on copiers)
- Access other student records for reasons unrelated to your duties
- Dispose of student records in ordinary trash – records with personally identifiable information should be shredded
- Share information about a student's performance with another student (e.g., You should not say, "Talk to Diane about providing tutoring services to you. She got an 'A' in my course.")

Q. *What happens if I ignore FERPA?*

A:

- You may face disciplinary action
- Simmons can lose federal funding from the Department of Education
- Students can file a formal complaint with the Department of Education

Q: *Where can I turn for more information?*

A: For more information about FERPA or your obligations thereunder, you may contact the Office of the Registrar at 617-521-2111; Donna Dolan, AVP, Academic Operations and Registrar, at 617-521-2101; or Kathy Rogers, General Counsel, at (617) 521-2276
<http://www.ed.gov/offices/oll/fpco/ferpa/index.html>