Dear Colleagues:

I've spent the last twenty-odd years advising and representing faculty and deans who find themselves the target of legal complaints by students. Not once can I recall a dean of faculty member telling me that she or he knew the law but ignored it, anyway. Almost always, my surprised and distressed clients said, “I just didn’t know.” “No one told me that my policies were illegal.” “I wished I had known sooner.”

This booklet is dedicated to the dozens of faculty and deans in the Boston area whom I have had the privilege of advising and representing before and during my time at Simmons. I am certain that none of them would have done what they did if they had known what they later learned about the Americans with Disabilities Act (ADA), the Family Educational Rights and Privacy Act (FERPA), and religious accommodations in the classroom. Everyone who teaches needs to understand the laws that govern rights and responsibilities on campus.

This booklet also offers other information of a legal nature including contract-signing authority at Simmons, use of Simmons letterhead, and what to do if you receive a summons or subpoena. I hope you find this compilation useful. I invite your comments and suggestions, as I update my advice from time to time.

With Best Wishes,

Kathy Rogers
VP & General Counsel
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1. Faculty Policy Manual

The Simmons College Faculty Policy Manual (often referred to as the "FPM") and each school’s Implementation Guidelines are essential reading for all Simmons faculty, whether tenured, tenure-track or contract. The current Manual which was approved by each school's faculty and the Simmons Board of Trustees is expected to be in effect until June 30, 2017. The Manual, and each school's accompanying guidelines, offer valuable information on the types of faculty appointments at Simmons, academic freedom, the tenure and promotion process, annual reviews, mid-point reviews, and reviews of faculty who have tenure. Many other important subjects are covered in these documents, which are available on the Simmons website.

Some questions about the FPM arise more frequently than others. Here are some frequently asked questions:

Who are the voting faculty of each School?

Only full-time and proportional faculty... shall be eligible to become voting members within their respective Schools. The Faculty of each School shall determine who shall be voting members of its Faculty. The President and Provost of the College shall be voting members of each Faculty, and the Dean of each School shall be a voting member of her or his Faculty. Section 1.7.E.2.

May full-time or proportional faculty engage in outside employment?

While the primary responsibility of any full-time or proportional faculty member is her or his service as a faculty member of the College, there are times when faculty members may engage in external professional activities, providing that they do not create a conflict of commitment or a conflict of interest with the faculty members' responsibilities and duties to Simmons College. Section 2.2.C

A faculty member’s outside teaching appointment and/or other professional activity may not exceed twenty percent (20%) of the responsibilities of a full-time faculty member. Section 2.2.C.2

Note: Full-time and proportional faculty seeking to teach part-time at other institutions or to engage in outside non-teaching activities (whether remunerated or unpaid) related to the faculty member’s area of expertise at Simmons, should review Section 2.2.C for more information.

What is a Conflict of Commitment pursuant to the FPM?

A conflict of commitment occurs when, in the course of performing external activities, a faculty member’s capacity to meet her or his obligations to Simmons College relative to workload, quality norms of teaching and advising, research, scholarship, and creative works, and/or service is adversely affected. Section 2.2.C

What is a Conflict of Interest pursuant to the FPM?

A conflict of interest occurs when a faculty member has a personal or professional external interest or obligation that compromises or interferes with her or his faculty duties and responsibilities and/or directly competes with the business of Simmons College or the faculty member’s respective School. Section 2.2.C

Who is eligible for a sabbatical pursuant to the FPM?

A faculty member is eligible to request a sabbatical only if she or he has served at least six years on a full-time basis at the College since beginning her or his work at the College or since her or his last sabbatical. The six years of service need not be consecutive. Sabbaticals are reserved for tenured faculty at Simmons and they are granted only after or in conjunction with the applicant’s being awarded tenure. If a sabbatical is delayed at the request of the faculty members or of the School, the period of the delay will be included in the calculation of years’ service until the affected faculty member is again eligible for a sabbatical. Faculty members should maintain documentation of such requested delays. Section 2.6.B.2
What is my salary if I take a Sabbatical?

A sabbatical may constitute release from 100% of one academic year’s usual teaching and service workload at 50% of base salary or a release from 50% of one academic year’s usual teaching and service workload at 100% of base salary. For purposes of sabbatical policy, an academic year is defined as the start of the fall semester to the end of the spring semester, or any other nine- or ten-month equivalent period. Alternatives to these types of sabbaticals must be approved by the appropriate Dean and the Provost. In addition, the manner in which workload adjustments may be implemented for sabbaticals may vary from School to School based on the individual School’s implementations guidelines, practices, and needs. Section 2.6.B.3

What happens to my benefits while on Sabbatical?

Faculty on sabbaticals will be covered by the College’s group plan policies (health, long-term disability, and life) (subject to applicable law and the terms of any benefits plans) on the same terms and conditions as if the faculty member had a full workload and were not on sabbatical. Section 2.6.B.3

May a faculty member on sabbatical engage in full-time gainful employment?

Faculty members may not engage in full-time gainful employment during a sabbatical without prior written permission from the Provost. However, faculty members may continue to receive compensation for activities in which they regularly engage during their active full-time service, e.g. consulting, provided that the level of those activities is not substantially increased during the sabbatical period. When a faculty member receives compensation from other organizations or institutions to support the sabbatical, the College’s contribution plus the sum of compensation from other organizations (plus travel and extraordinary living expenses) will not exceed the faculty member’s normal College base salary for the period of the sabbatical. Section 2.6.B.3

What are my obligations to Simmons if I take a sabbatical?

In recognition of the compensation paid to a faculty member during a sabbatical, a faculty member who takes a sabbatical is expected to resume her or his usual duties at the College for at least one academic year following the completion of her or his sabbatical. Faculty taking sabbaticals are expected to accomplish the objectives set forth in the sabbatical proposal within the proposed timeframe. If a faculty member determines that unexpected developments or other factors may require changes in an approved proposal, the faculty member and her or his Dean in consultation with the Provost must reach agreement on suitable modifications. Section 2.6.B.7

For more information on sabbaticals, see Section 2.6.B.

Are there other kinds of leave available to faculty?

Special Leave:

The purpose of the special leave is to provide faculty members with the opportunity for professional development. The special leave is intended to support research activities and scholarly activity or to promote innovation and excellence in teaching. Special leaves supported by external grants, other institutions, or scholarly groups are highly encouraged.

- Special leaves are unpaid.
- A full-time faculty member is eligible for a special leave after three or more years of continuous service.
- Special leaves are granted for one or two semesters and time spent on a special leave does not count toward the probationary period.
- Proposals for special leaves must be submitted no later than October 15 of the year preceding the academic year in which the proposed leave is to be taken.

For more information on special leaves please consult Section 2.6.C.
**Family and Medical Leave**

A faculty member is eligible to request FMLA leave if she or he has worked for the College for at least twelve months and has averaged at least a two-thirds workload (including administrative duties, if any) during the twelve months before the leave. FPM Appendix D.1

Eligible faculty members may use their FMLA leave for a number of purposes, including parental leave, leave to care for a family member, or leave for a serious health condition.

Because of the particular issues that arise in covering faculty responsibilities when births or adoptions occur at different times of the academic year, faculty members may explore alternatives to taking 12 consecutive weeks of FMLA leave. Some options can be found in the FPM. This list in the FPM is not exclusive and the examples are only illustrative. The availability of any of the leave options in the FPM is subject to the approval of the Dean and the needs of the faculty member’s Department, Program, or School. A faculty member seeking leave shall consult her or his Dean(s) as soon as possible when considering a leave.

*For more information, see Appendix D of the FPM or contact the Office of Talent and Human Capital Strategy at 617-521-2084.*

**Are faculty entitled to see their Simmons personnel records? May I see my tenure file, too?**

Although private university faculty do not fall under the Commonwealth of Massachusetts law regarding access to personnel records, current and former Simmons faculty shall enjoy the same right of access under state law afforded to non-faculty employees at Simmons College, with the following exception: Documents created or acquired by the Trustees, the President, the Provost, the Deans and members of the committees on promotion and tenure in conjunction with a review for promotion and tenure qualify as confidential, both by nature, and by the terms of the Faculty Policy Manual, and shall remain confidential. Section 2.5.D

**What does the FPM say about Proportional Status?**

In certain circumstances, and for a limited time, both tenured and tenure-track faculty may request to be transferred to a proportional status.

Although a tenured appointment is generally full-time, the Dean, the Provost, and the President may, in certain circumstances and at the request of the faculty member, approve a transfer to proportional status with no loss of tenure for a limited period, which may be extended. The maximum cumulative time for a proportional appointment of a tenured faculty member is five years. Section 2.1.A

Generally, a tenure-track appointment is a full-time appointment, but the Provost may, in certain circumstances and at the request of the faculty member and upon the recommendation of the Dean, approve a transfer to proportional status for a limited period up to three years. Section 2.1.B

Faculty with proportional appointments are expected to work at least half-time and carry out the full scope of faculty responsibilities, though at a level consistent with the faculty member’s proportional status. Section 2.2.B.1

**What does the FPM say about Emerita/us Status?**

A tenured faculty member who leaves Simmons in good standing to retire or to assume a non-teaching position at another institution, or a part-time teaching position at another college or university, may be recommended for Emerita/us status by the Dean of her or his School, who then prepares a recommendation for the Provost. The Provost recommends the candidate to the President and Board of Trustees for approval. The candidate should have an academic career spanning at least 20 years and have been employed by Simmons no less than ten years. Emeriti faculty are eligible for continued institutional privileges, library privileges, access to technology workshops, parking privileges, e-mail accounts as consistent with the College’s security policies, catalogue and website listings, professional use of title, and the right to march with members of the College’s faculty on ceremonial occasions such as commencement and convocation. Emeriti faculty, at the invitation of the Dean, may also participate more actively in the academic life of the School, including serving as guest lecturers, conducting research, serving on dissertation committees, and advising students. Section 2.3.A.6.
2. Students with Disabilities: What Faculty Need to Know

The Americans with Disabilities Act (ADA), along with other federal and state laws, prohibits universities and their employees, including faculty, from unlawfully discriminating against students with disabilities. Everyone who teaches should have a solid understanding of the ADA and the rights it gives and responsibilities it imposes on universities, their employees (especially faculty), and their students. Here are 10 important things to keep in mind about the ADA:

1. The ADA is broad in scope. It covers three broad types of disabilities – physical, learning, and psychological. It broadly defines a disability to include any physical or mental impairment that substantially limits a “major life activity,” such as seeing, hearing, breathing, walking, learning, reading, concentrating, thinking, communicating, working, and caring for oneself, or a “major bodily function” such as functions of the immune system, normal cell growth, or neurological, respiratory, circulatory, endocrine or reproductive functions. Further, the ADA protects from discrimination not only persons who presently have a disability, but also persons who have a record of being disabled or are perceived to be disabled.

2. To fulfill our legal obligations under the ADA, we must:
   - Admit qualified students who have disabilities into our schools and programs
   - Eliminate criteria that screen out persons with disabilities or testing methods that measure students’ disabilities, rather than their abilities
   - Refrain from creating an environment in the classroom or elsewhere that is hostile to persons with disabilities
   - Make reasonable modifications to policies, practices, and procedures to enable qualified students with disabilities to successfully participate in our educational programs
   - Refrain from retaliating against any person who asserts their rights or the rights of others under the ADA or who participates in an investigation of a potential violation of those rights

3. We have an obligation to provide reasonable accommodations for qualified students with disabilities. Examples of accommodations that might be reasonable to make for a particular student include:
   - Permitting or providing adaptive technologies
   - Permitting extended time for examinations or assignments
   - Assigning a buddy in class to answer questions about assignments, etc.
   - Providing preferential seating
   - Providing preferential assignment to course sections (e.g., morning-only or no-morning section meetings)

Whether a student is entitled to a particular accommodation always involves an individualized, fact-specific inquiry.

4. Decisions about accommodations are made only through and by the Office of Academic Support Services. Students must request accommodations through the College’s Office of Academic Support Services, which will engage with the student in an interactive process to determine whether the student is qualified to participate in the program at issue and, if so, whether an accommodation requested by the student or some other accommodation is both reasonable and necessary for the student to successfully participate in the program. Don’t permit students to circumvent the process. Faculty should not honor requests for accommodations unless the student has followed the College’s process for requesting accommodations and the accommodation has been approved by the Office of Academic Support Services. Don’t deviate and give students more, fewer, or different accommodations from what the Office of Academic Support Services has authorized them to receive.
5. Academic freedom does not trump a student’s rights under the ADA. Faculty input on the issue of reasonable accommodations is important, but ultimately it is the College and not faculty who will decide whether an accommodation is granted. Rigid attendance requirements, testing formats, coursework deadlines, and curriculum requirements are just a few of the areas where ADA requirements may outweigh your preferences.

6. A documented disability does not excuse bad behavior, poor academic performance, or irresponsibility. Don’t confuse a request for a reasonable accommodation with a request for an exemption from a Simmons College policy or standard. The ADA requires reasonable accommodation, but not exemption. It does not require the College to fundamentally alter its academic programs, conduct standards or other policies. If you are concerned about a student’s behavior or performance in your class, you are encouraged to contact the Office for Student Life.

7. Respect and uphold a student’s interest in confidentiality. Faculty should not disclose to others (either inside or outside of the Simmons community) whether a student has a disability, the nature of that disability, or the accommodation being requested or granted to the student. Faculty should be especially vigilant not to disclose a student’s disability and accommodation needs to other students.

8. Act fairly and prudently. Faculty are expected to be collaborative partners in providing reasonable accommodations for students who are eligible to receive them.

9. Don’t go it alone. Get advice and assistance from your Dean, the Simmons Coordinator of Disability Services, or the General Counsel. Seek advice early and as often as you need to.

10. Recognize that there are no easy answers. The laws and regulatory guidance pertaining to students with disabilities are constantly evolving. Last week’s approach may not be the best approach for this situation or this student at this time.
3. Religious Accommodations

Massachusetts law requires colleges and their faculty to honor a student’s request to take a particular day off for a religious observance.

Massachusetts General Laws Chapter 151C, Section 2B provides, in relevant part:

Any student ... who is unable, because of his/her religious beliefs, to attend classes or to participate in any examination, study, or work requirement on a particular day shall be excused from any such examination or study or work requirement, and shall be provided with an opportunity to make up such examination, study, or work missed because of such absence on any particular day; provided, however, that such makeup examination or work shall not create an unreasonable burden upon such school.

The statute further provides that "[n]o adverse or prejudicial effects shall result to any student because of his/her availing himself of the provisions of [this statute]."

This means that if you will be administering an exam or quiz on a day that a student has requested off for a religious observance, you will need to make arrangements for the student to take a make-up exam or quiz on an alternate date. Similarly, if a paper, project, or assignment otherwise would be due on a religious holiday, you must work with the student to establish an alternative, later due date on a date as close as possible to the assigned date. You should not require that the student submit her paper early because she will be absent on the religious holiday.

In addition, a student might request an extension of an additional day (or multiple days depending on the holiday), if an assignment otherwise would require the student to work over a religious holiday in order to meet the assignment due date. The guidepost in such a situation should be reasonableness. If the student had a relatively long period of time in which to complete the assignment, an extension may not be warranted. On the other hand, if the assignment was assigned with relatively short notice, and completion of the assignment would require the student to work over the religious holiday, an extension should be allowed.

Although much less common, it is possible that a student will request some type of course modification as a religious accommodation. As a general rule, you are not required to offer an accommodation that would lower academic standards or require substantial modification to an academic program. Nevertheless, such requests should not be dismissed out of hand. The case law in this area is still developing, and, in one recent case, a Federal Appeals Court reversed a lower court’s decision dismissing claims against a school and individual faculty members for failing to make certain course alterations to accommodate the student’s religious needs.

Because this area of the law remains in flux, you should neither immediately agree to, nor reject, a request for a religious accommodation. You are urged to bring the student’s request to your Dean who, in turn, will consult with the General Counsel. Together, your Dean and the General Counsel will advise you on how to best respond.

FAQ About Religious Accommodations

Q: Do I have to accommodate requests only for "major" religious holidays of "major" religions?

A: No. The law applies to all "religious beliefs." You need to proceed as though all religions—ancient and new, popular and little-known—are covered. If you are unfamiliar with a particular religion, you should proceed with caution when asking questions to a student about her religion, its tenets, and holy day requirements. Such inquiries, no matter how well intentioned, may give the impression that you may be hostile to a particular religion or hostile to religious observances and requirements generally.

Q: Last fall semester, a student in my class asked for an accommodation so that she could attend services for Yom Kippur. I have the same student this semester, and she is asking for an accommodation to attend Good Friday services, which are part of the Christian holy calendar. I think the student is taking advantage of the religious accommodation law. What, if anything, can I do?
A: Proceed cautiously, and do not jump to conclusions. Today, many students are being raised in homes where their parents practice different religions and have raised their children in the traditions of both. Such a student may observe the Jewish holy days with one parent and the Christian holy days with the other. If you are truly concerned that the law is being abused, you should consult with the Dean for Student Life. She may be able to shed light on the situation or assist you in having a conversation with a student about your concerns.

Q: I have a no–make-up rule that I apply to all my students, regardless of the reason they missed the test: sickness, family emergency, wedding, funeral, etc. Can I refuse to give a make-up for a religious accommodation if I enforce my no make-up rule for other reasons?

A: No. Although you can have a no–make-up rule for a wide variety of reasons, you cannot enforce a “no make-up” rule against a student who missed a quiz or exam because she observed a religious holiday.
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 of guardian. Please notify the Office of the Registrar if you do obtain prior written consent form 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 form 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

5. Consensual Relationship Policy

Simmons strongly discourages romantic or sexual relationships between an employee and his or her manager, between junior and senior faculty members, between faculty members and students, and between administrators and students. The rationale of the College is that, even when both parties have consented, the relationship can give rise to problems that compromise the professional integrity of staff and faculty, and the relationship may generate charges of unfair treatment or of sexual harassment.

Sexual or romantic relationships with students are particularly problematic. Simmons agrees with the American Association of University Professors statement that:

Sexual relations between students and faculty members with whom they also have an academic or evaluative relationship with are fraught with the potential for exploitation. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in an academic or evaluative role, make voluntary consent by the student suspect. Even when both parties initially have consented, the development of a sexual relationship renders both the faculty member and the institution vulnerable to possible later allegations of sexual harassment in light of the significant power differential that exists between faculty and students.

The College views romantic or sexual relationships between employees and their managers, between junior and senior faculty members, and between administrators and students in the same light; these relationships are also characterized by significant power differentials and are subject to the same liabilities.

If you are engaged in a romantic or sexual relationship with someone whom you instruct, supervise, evaluate, or advise, it is your professional responsibility to notify your Dean or Vice President of the existence of that relationship so that your Dean or Vice President can discuss and assess the situation with you to determine whether it is appropriate to make changes to the instructional, advisory, evaluative, or supervisory relationship. Information disclosed in these discussions shall be treated as confidential and disclosure to others shall be made only on a need-to-know basis.

Please note: In the event you are the subject of a legal complaint of sexual harassment, and if the facts show that you were engaged in a romantic or sexual relationship with someone whom you instructed, supervised, evaluated or advised, and if you did not advise your Dean or Vice President of the existence of that relationship so that steps could have been taken to change, if appropriate or necessary, the instructional, advisory, evaluative, or supervisory relationship, the College may decline to assist you in your legal defense against the allegation(s) and you, not Simmons, may bear any litigation costs or fees associated with your legal defense.
6. Using Simmons Letterhead

From time to time, I receive inquiries from faculty concerning the “rules” about the use of their Simmons letterhead when corresponding with people and organizations outside of Simmons. My advice is usually the same.

First, do you want to use your letterhead for a communication directly related to your work and responsibilities at Simmons? Are statements made on behalf of your department, your program, your school? Is the letter being written in the normal course of your job (like a letter of reference), and within the scope of your professional responsibilities to Simmons? Or is the letter of a more personal nature, expressing your own opinions on a matter that interests you because of your professional experience or training (like a letter to the editor of a local newspaper). If the letter is expressing your personal opinion which is based on your considerable professional expertise, it should be sent on Simmons letterhead.

Second, have you reviewed Section 1.4 of the Faculty Policy Manual, which sets forth the AAUP’s statement regarding the special obligations that faculty have when communicating with the public. Subsection (c) of Section 1.4 states:

College and university teachers are citizens, members of a learned profession and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institutions by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate they are not speaking for the institution.

Third, if you still aren’t sure about whether to use Simmons letterhead, have you consulted with your Dean? Your Dean may have some thoughts on this matter and can offer guidance.
7. Intellectual Property Issues

As an academic community of scholars, Simmons College adheres to the belief that intellectual property rights must be respected and honored. Under Simmons's policies, we aim to ensure the fair and appropriate use of copyrighted materials. This is both a legal and an ethical obligation that all members of the Simmons community should observe.

Simmons College has policies to govern intellectual property issues and faculty members should be familiar with each.

- **Simmons College Intellectual Property Policy**
  
  The Intellectual Property Policy provides both a framework for understanding ownership of intellectual property rights, as well as the guiding principles used by the College Intellectual Property Committee to evaluate ownership issues that may arise. It also highlights how to seek review and the procedure for review by this Committee. The Policy covers traditional works, works involving minimal College resources, works involving exceptional use of College resources, directed works, sponsored or externally contracted works, works created by staff employees considered works made for hire, works by independent contractors, and student works.

  For details, including definitions of these works, please see:

  [http://simmons.edu/offices/counsel/ipo.php](http://simmons.edu/offices/counsel/ipo.php)

- **Simmons College Invention and Patents Policy**
  
  The Invention and Patents Policy applies to all members of the Faculty and staff, as well as students performing work on a contract which the College or a member of its faculty or staff has with a governmental agency or non-governmental sponsor. The Inventions and Patents policy outlines the rights of these groups with respect to their inventions and what rights belong to the College. Any member of the faculty, staff, or students (as outlined above) who conceives of an invention involving more than incidental use of College resources must report it to the Simmons College Fund for Research Committee, which will determine the College’s interest in the invention.

  For the full policy, including a definition of “incidental use,” please see:

  [http://simmons.edu/policies/index/docs/inventionandpatentsd.pdf](http://simmons.edu/policies/index/docs/inventionandpatentsd.pdf)

- **Simmons College Copyright Policy**
  
  The Copyright Policy outlines the requirements of copyright law and is intended to assist the Simmons community in their use of materials for teaching and research that others have produced. Copyright protection also extends to reproducing media, music, or other copyrighted material through peer-to-peer filesharing networks, without permission of the copyright holder. The policy also outlines exceptions that apply to academic uses of copyrighted works, which include (1) fair use, (2) the Face-to-Face Classroom Teaching Exception; and (3) the TEACH act.

  For the full Policy, including detailed information on these exceptions, please see:

  [http://simmons.edu/policies/index/docs/copyright.pdf](http://simmons.edu/policies/index/docs/copyright.pdf)
• Simmons College File Sharing Policy

The File Sharing Policy seeks to educate the Simmons Community about permissible and impermissible uses of file sharing in accordance with the Higher Education Opportunity Act of 2008. This federal law contains provisions to reduce illegal peer-to-peer file sharing. The Policy expressly prohibits the illegal uploading and downloading of copyrighted works, and defines illegal use.

For the full File Sharing Policy, please see:

http://www.simmons.edu/technology/full-file-sharing-policy.php

• Simmons College Acceptable Computer and Network Use Policy

The Acceptable Computer and Network Use Policy governs the use and expectations for all users of Simmons College computer and network resources. The Policy defines Simmons’s technology resources as intended for educational, scholarly, and College business uses. Prohibited uses and consequences for prohibited use are also outlined in this Policy.

For the full Acceptable Computer and Network Use Policy, please see:

http://www.simmons.edu/technology/full-acceptable-use-policy.php

8. PRESS INQUIRIES

Press inquiries, whether about court cases or any other matter affecting the College, should be directed to the Simmons College Director of Public Relations at extension 2364. Talking to press may compromise the interests of the College, your colleagues, or you. Talking to the press about any student matter also will often compromise student privacy rights under FERPA.
9. Subpoenas, Summons, and Attorney Inquiries

From time to time, faculty members may find themselves—either directly or indirectly—involved in the legal process as a result of their employment with Simmons. For those unfamiliar with the legal system, this can sometimes be intimidating, confusing, or embarrassing. What follows is a very brief overview of the ways in which you may become involved in the legal process, along with some guidelines for responding if you are served with legal papers or contacted by attorneys or others in connection with a legal matter.

In all instances, your first response should be to contact the General Counsel’s Office (Main College Building, C202, X. 2276) and provide the Office with a copy of any legal paperwork you receive. Please understand that legal
paperwork often requires an *immediate response*, and any delay may have significant legal consequences for you or the College, or both.

**SUBPOENAS**

A subpoena is a legal document that can require a person (1) to appear at a certain time and place to give testimony upon a certain matter, or (2) to produce, at a certain time and place, documents or other records regarding specific persons or issues. Subpoenas seeking to compel testimony are generally called "Deposition Subpoenas" or "Trial Subpoenas," depending on the forum in which the testimony is sought. Subpoenas seeking the production of documents or other records are generally called a "Subpoena Duces Tecum.” Depending on the circumstances, the College may provide you with legal representation in connection with the subpoena.

Depending on the court in which legal proceedings are pending, subpoenas may be served by a sheriff, a constable, by any disinterested adult, or even by mail. Some people, understandably, may find it disturbing to be served with papers by a sheriff at their workplace (or at home). Please understand that receipt of a subpoena does not necessarily mean that you have been named in a lawsuit. Indeed, more often than not, when faculty members receive a subpoena, it is not an indication that they are (or are about to be) parties to a legal action.

There are many situations in which faculty members are sometimes served with subpoenas, including for example:

- A student or former student is involved in a legal action and one of the parties believes that the student’s grades or class performance are relevant to the legal dispute.

- A student or former student has brought a legal action against the College, another faculty member, or an employee of the College and one of the parties believes that you have information or records that are relevant to this dispute.

- A member of the Simmons community has brought a legal action against another member of the College community and one of the parties believes that you have information or records that are relevant to the dispute; or

- An individual or business has brought a legal action against Simmons, and one of the parties believes that you have information or records that are relevant to the dispute.

Virtually any subpoena that would require you to provide records or other information about a student will implicate FERPA, the Family Educational Rights and Privacy Act, which generally prohibits the disclosure of such information subject to certain exceptions. Compliance with FERPA is just one reason that prompt consultation with the Office of the General Counsel is essential.

Although a subpoena will state that you must appear to testify and/or to produce documents or records at a certain date or time, the Office of General Counsel or your own counsel often will be able to arrange for that date to be rescheduled for your convenience, or for the production of documents or records to suffice without the need for you to appear in person.

**SUBPOENAS THAT INSTRUCT YOU NOT TO DISCLOSE THE SUBPOENA TO OTHERS**

It is also conceivable that you may receive a subpoena that instructs you not to disclose the subpoena to others generally, or to a specific person whose information is the subject of the subpoena. Such a subpoena may be issued under the USA Patriot Act and/or the Foreign Intelligence Surveillance Act (FISA), which generally indicates that the federal government is conducting an investigation into possible terrorist activity, ties, or suspicions. Such a subpoena also may be issued by federal or state authorities in connection with an investigation into other unlawful conduct. It is imperative that any such subpoenas be forwarded immediately to the office of the General Counsel. Although the subpoena may admonish you not to disclose the existence of the subpoena to other persons, the American Association of University Professors and most educational institutions, Simmons included, do not believe that this language restricts your ability to communicate with the Office of the General Counsel.

**SUMMONSES**
A summons is a legal document that signifies the start of a civil legal action. If you are served with a summons that specifically lists your name, this is usually (although not always) an indication that you have been made a party to a lawsuit. Generally, a summons will be accompanied by a complaint (a document which sets forth one or more legal causes of action and the facts that the plaintiff believes justify the lawsuit) and other legal documents. If the lawsuit involves actions that you took in the course of your employment, you should immediately notify the Simmons General Counsel, who will want the originals of all documents that were provided to you.

If you are served a summons on the Simmons campus for a lawsuit wholly unrelated to your employment with Simmons, you are wise to seek private legal counsel immediately. Summonses generally must be answered within twenty (20) days of service (sometimes less, depending on the circumstances), so quick consultation with legal counsel is essential.

ACCEPTANCE OF SERVICE FOR THE COLLEGE

Under no circumstances should you accept a subpoena or a summons directed at Simmons College. Individual faculty members are not authorized to accept service of process on behalf of the College. If a sheriff, constable, or other process server asks you to accept service of a subpoena or summons on behalf of Simmons, direct them instead to the Office of General Counsel. If they insist that you accept the subpoena or summons, do not relent; tell them that you are not authorized to accept it and direct them to the Office of General Counsel.

ATTORNEY INQUIRIES

Sometimes an attorney may attempt to contact you directly, either in writing or by telephone or email, in an attempt to gather information about a pending or possible lawsuit. You are under no obligation to speak with an attorney or someone working on his behalf, such as a private investigator or paralegal, and you should proceed with great caution before you decide to talk with anyone before first speaking with the General Counsel. Your best intentions to be helpful could create serious unintended consequences and problems for you or the College, or both. Your decision to speak with an investigator or attorney may compromise student confidentiality. Your statements may be considered to be admissions that can be used against the College, or against one of your colleagues, or against you.

A wiser course is to take down the name of the caller and say you will get back to her once you have had a chance to confer with the General Counsel. Do not be intimidated by threat of consequences for failing to cooperate or the threat that “if you don’t talk to me over the phone, I’ll be forced to send a subpoena.” Don’t be taken in by statements that trial is Imminent and your cooperation is “desperately needed today.” Reputable lawyers and those who work for them don’t threaten or intimidate people to gain their cooperation. They also prepare for trials months in advance, and it is unlikely that information you have which is so important to the outcome could have been ignored or forgotten until the eve of trial. Proceed cautiously and confer with the General Counsel. There is always time to get advice.
10. Contracts and the Authority to Sign Them *(Revised to reflect Oct. 2012 changes)*

From time to time in the course of your professional responsibilities at Simmons you may be asked to draft or review a contract for your department, program, or School with someone or some organization outside of the Simmons community. You could also be asked to “sign” an agreement on behalf of your department, schools, or Simmons that someone outside of Simmons has drafted. Simmons has several policies and procedures regarding contracts, and faculty members should have a good understanding of what you can and cannot do with regard to contractual agreements.

First, any contract or agreement should be reviewed and approved by your Dean, Vice President, or department head to ensure that the business terms are acceptable. Additionally, if the request pertains to any of the Academic Units, the Provost must also approve; if the request pertains to technology, the Chief Information Officer must approve; and if the request pertains to facilities, the VP for Administration must approve. These signatures should be obtained on the Simmons College Routing form, which is available at:

http://www.simmons.edu/offices/finance-administration/vp/docs/Routing_Form(1).pdf.

All contracts must also be reviewed and approved by the General Counsel. Contracts may not be executed without prior review by the General Counsel. Typically, it may take 3-5 business days for the General Counsel to return the contract to you with comments, so you are encouraged to forward a copy of the contract to the General Counsel early in the process. Here are just a few examples of contracts that the General Counsel must review before they are signed.

- Affiliation Agreements
- Clinical Placement Agreements
- Study Abroad Agreements
- Speaker’s Contract’s
- Contracts for functions held off-campus at such places as hotels, arenas, and convention centers
- Consulting agreements
- Agreements to purchase goods or services

All agreements and contracts for goods and services must also be approved by the Director of Budget and Financial Planning, as well as the Sr. VP for Finance and Administration, Treasurer following approval by the General Counsel.

Finally, every contract needs to be signed by an authorized representative of Simmons College. The Simmons College Board of Trustees has empowered the President and the Treasurer to sign contracts on behalf of the College, and it has also permitted the President to delegate their signature authority to other College officers, including Deans, for limited purposes and limited amounts. The *Contract Signing Authority Policy* also authorizes a select group of Simmons College employees to sign contracts and agreements that will legally bind Simmons College. Authority is limited by type of contract and agreement, as well as by dollar amount. Please consult the *Policy* to determine who may sign your contract or agreement.

A copy of the most recent *Contract Signing Authority Policy* can be found in this manual.

Further information on contract review is available on the General Counsel’s website at:

http://www.simmons.edu/offices/counsel/contracts.php

11. Simmons College Contract Signing Authority Policy
Purpose: To define the authority to represent Simmons College in legally binding agreements and to approve and sign contracts, memoranda of understanding or other documents on behalf of Simmons.

Policy: According to the Simmons College By-Laws Article IV, Section 10, “The President shall be responsible for general supervision of the affairs of the Corporation, subject to the direction of the Board of Trustees…”

Article VII, Section 3 states “All deeds, leases, transfers, contracts, bonds, notes and other obligations to be entered into by the Corporation in the ordinary course of its business without Trustee action but within guidelines set by the Finance Committee, may be executed on behalf of the Corporation by the President or Treasurer.”

The President may delegate signature authority to other College officers for limited purposes or amounts. The purpose of delegating signature authority is to improve efficiency and effectiveness of the College’s operations while not unduly exposing the College to financial loss.

All signature authority must be designated in writing with specific limitations delineated by the President. Agreements or contracts may not be entered into unless reviewed and approved by the College’s General Counsel, including those fully funded as part of the authorized College Operating or Capital Budgets, or funded through sponsored grants, contracts, gifts or other sources.

Additional approval is required as follows:

- All agreements and contracts for goods and services must be approved by the Director of Budget and Financial Planning, as well as the Sr. VP for Finance and Administration.
- All academic agreements and contracts or those involving a department or unit reporting to the Provost must be approved by the Provost.
- All contracts and agreements for the purchase of technology goods or services must be approved by the Chief Information Officer.
- All contracts and agreements for capital budget or facilities purchases must be approved by the Assistant Vice President for Administration.

Note: The Simmons Treasurer is also the “Senior Vice President for Finance and Administration” and is more commonly referred to by the latter title. All references to “Sr. VP for Finance and Administration” are meant to refer to the Treasurer.

Academic Deans

(Subject to the prior approval of the Provost and limited to their respective units and paid for within already established budgets)

- Appointment letters/offer letters to hire faculty to teach less than one fiscal year
- Staff hires, provided that the position has been approved by the Provost or the Sr. VP for Finance & Administration and posted
- Appointments of faculty to administrative positions, including but not limited to: Department Chair, Program Director, Committee Chair
- Agreements for speakers not to exceed $10,000
- Agreements for College-sponsored entertainment and special events not to exceed $5,000
- Agreements to purchase, lease or otherwise obtain services or equipment to be employed on behalf of students, or a school or an academic unit and not to exceed $5,000

Dean for Student Life
• Agreements or contracts for athletic events not to exceed $10,000
• Agreements or contracts for College-sponsored entertainment and special events for students activities, not to exceed $5,000
• Agreements or contracts to purchase, lease or otherwise obtain services or equipment to be used by or for the benefit of the unit, not to exceed $5,000

**Provost**

• Personnel appointments/offer letters, including but not limited to, initial faculty hires as recommended by Deans, and after financial authorization by the President or the Sr. VP for Finance & Administration
• Counter-offers in connection with offers of employment to faculty after financial authorization by President or Sr. VP for Finance & Administration
• Appointment/offer letters for visiting faculty or for special academic appointments after financial authorization from the President or Sr. VP for Finance & Administration
• Appointment/offer letters to new hires who will be employed within the Provost’s unit
• Agreements, memoranda of understanding, articulation agreements or other commitments for:
  - Academic affiliations, domestic or international
  - Academic partnerships, domestic or international
  - Academic joint ventures, domestic or international
  - Academic off-site programs, domestic or international
• Agreements for speakers exceeding $10,000, but not to exceed $50,000
• Agreements for consultants exceeding $5,000, but not to exceed $50,000 for one individual or one project directly related to the academic units
• Agreements for athletic events over $10,000
• Agreements for College-sponsored entertainment and special events exceeding $5,000, but not to exceed $50,000
• Proposals for Sponsored Research of any kind, including grant proposals and sub-recipient agreements, whether publically (governmental) or privately sponsored
• Solicitations and/or proposals to foundations or corporations for contributions to the College, unless dictated otherwise by foundation or corporation funding guidelines. Any resulting agreements and/or acceptance letters pursuant to such solicitations and/or proposals require review by the General Counsel and approval from both the Provost’s and President’s approval, unless dictated otherwise by foundation or corporation funding guidelines.
• Agreements to purchase, lease or otherwise obtain services or equipment for the benefit of students, faculty or an academic unit, exceeding $5,000, but not to exceed $50,000

**Associate Provost (s)**

• Internship and clinical placement agreements recommended by the Dean of the School or his/her designee (e.g. a Director of a Program or Department Chair)
• Agreements for study abroad programs, subject to review and approval by the Provost

**Assistant VP for Administration**

• All rental agreements and conference services agreements not to exceed $5,000
• Agreements for consultants not to exceed $5,000
• Agreements to purchase, lease or otherwise obtain services, equipment or products not to exceed $5,000

**Assistant Vice President and Comptroller**

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1 Consulting agreements exceeding $25,000 but not more than $50,000 require two signatures: the Provost’s and either the President or Sr. VP Finance & Administration. Consulting agreements exceeding $50,000 may only be approved and executed by the President or the Sr. VP for Finance & Administration. Consulting Agreements in excess of $200,000 require the signatures of both the President and the Sr. VP for Finance and Administration.
• Agreements to purchase, lease or otherwise obtain services, equipment or products not to exceed $5,000
• Estate receipts and acknowledgments.
• All tax documents and returns

Senior Vice President for Finance, Administration & Treasurer

• Personnel appointments (limited to his/her area), after financial authorization by the President
• Agreements for speakers
• Agreements for consultants not to exceed $200,000**
• Agreements for College-sponsored entertainment and special events not to exceed $200,000**
• Employee severance agreements with total compensation and benefits not to exceed $200,000**
• Agreements to settle litigation matters not to exceed $200,000**
• Agreements to purchase, lease or otherwise obtain services, equipment or products not to exceed $200,000**
• Promissory notes not to exceed $500,000. Instruments over $500,000 shall be approved and signed by the President
• Annuity agreements
• Bank and brokerage agreements
• Stock powers
• Investment managers’ agreements, after authorization from the Investment Committee of the Board of Trustees.
• Vendor agreements not to exceed $200,000**
• Leases not to exceed $500,000 for the life of the lease. Leases above this amount shall be approved and signed by the President
• Rental agreements not to exceed $500,000. Agreements above $500,000 shall be approved and signed by the President
• Construction contracts and change orders
• Contracts that relate to the use of the College’s physical facilities
• All other contracts that impose a financial obligation to the College

** Unless otherwise noted, any agreement for more than $200,000 requires the signature of both the Sr. VP for Finance & Administration and the President.

Vice President for Advancement
Vice President for Marketing and Admission
Vice President for Talent and Human Capital Strategy

(Limited to their respective units and paid for within already established budgets)

• Personnel appointments, after financial authorization by the President and the Sr. VP for Finance & Administration
• Agreements to purchase, lease or otherwise obtain services or equipment to be used by or for the benefit of the unit not to exceed $5,000
• Agreements for speakers not to exceed $ 25,000*
• Agreement for consultants not to exceed $25,000*
• Agreements for College-sponsored entertainment and special events, not to exceed $25,000*

*Agreements for speakers or consultants over $5,000 also require financial authorization from the Sr. VP for Finance & Administration.

Vice President and General Counsel
- Personnel appointments (limited to his/her area), after financial authorization by the President and Sr. VP for Finance & Administration
- Employee severance agreements of total value not to exceed $50,000
- Agreements to settle litigation matters not to exceed $50,000
- Agreements to hire outside legal counsel
- Agreements for consultants not to exceed $25,000
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