

# FERPA Questions for Faculty & Staff

## 1. What is FERPA?

The Family Educational Rights and Privacy Act, commonly referred to as “FERPA,” is a federal law that protects the privacy of student education records. FERPA rights of students include the right to inspect and review education records; the right to request amendment of inaccurate or misleading information in education records; the right to require the student’s consent to disclosure of personally identifiable information (“PII”) in education records; and the right to file a formal complaint with the U.S. Department of Education for FERPA violations.

## 2. When does an individual become a “student” and trigger coverage under FERPA at STLCOP?

FERPA defines a student as “any individual who is or has been in attendance at an educational institution. At STLCOP, an individual becomes a “student” for FERPA purposes after matriculating to the institution and attending their first class. FERPA does not cover applicants who are denied admission or admitted but choose not to attend.

## 3. Does FERPA apply to deceased students?

No. Although this is not a FERPA issue, it is an institutional policy question. If you receive a request for information about a deceased student, please forward to the Office of the Registrar.

## 4. How do I determine what is an "education record"?

FERPA defines education records as files, documents, and other materials in electronic or paper form that contain information directly related to a student that are maintained by STLCOP or a third person acting on its behalf. The following records are **excluded** from the definition of education records:

- "Sole possession" records made by faculty and staff for their own use as reference or memory aids and not shared with others
- Personal observations by a person who did not record them in an education record
- University law enforcement records developed solely for law enforcement purposes
- Medical and mental health records used only for the treatment of the student
- Alumni records

- Peer graded papers and exams prior to the grade being recorded in the instructor's grade book

**5. When do my emails or notes about students become education records?**

Emails and notes are subject to FERPA unless you retain them as “sole possession records.” In other words, you maintain the records solely as a memory aid and do not share them with others. For example, FERPA would not apply to your notes regarding a student’s behavior unless you referred a complaint to a College official. Similarly, email exchanges with students about improving study techniques are not education records. However, if you forward the emails or related comments or notes to an academic advisor or discuss the contents in a student progress committee meeting, then the student has the right under FERPA to review them. It is also important to remember that all paper and electronic communications, notes, comments, etc. are subject to legal discovery even if the student does not have a right to inspect and access under FERPA. Best practice is to be factual and objective when making notes or comments as opposed to inappropriate remarks or value judgements.

**6. What are the requirements of a valid consent to release PII in education records?**

Absent a specific exception under FERPA, the College may disclose PII contained in a student's education records only with the student's prior written consent. The prior written consent must be signed and dated by the student and specify the records to be released, the purpose of the disclosure, and the persons or entities to whom disclosure may be made. The U.S. Department of Education does allow electronic signatures with appropriate authentication. An email note from a student using a STLCOP email account is deemed to comply with FERPA because the student must login using their STLCOP credentials. While faculty may communicate with a student about a grade over email the only institutional officials who have authority to release official academic information relating to a student such as enrollment verifications, transcripts, financial aid awards, and degree verifications is the Office of the Registrar.

**7. When may I disclose PII in education records without the student's consent?**

FERPA contains the following exceptions that allow disclosure without the student’s written consent:

- To College officials (including third parties under contract) with legitimate educational interests
- To certain accrediting bodies or government officials in order to carry out lawful functions

- To appropriate parties in connection with financial aid to the student
- To organizations conducting studies for school accrediting agencies
- To comply with a judicial order or lawfully issued subpoena
- To persons (including parents) who need to know in a health or safety emergency
- To parents in cases of a drug or alcohol violation when the student is under the age of 21
- To organizations conducting research studies on behalf of the College, provided there is a written agreement between the College and the research organization
- To officials at an institution in which the student seeks or intends to enroll or is currently enrolled
- To parents of “dependent students” (dependent status on IRS income tax return)
- To persons seeking “Directory Information”

## **8. What is Directory Information?**

FERPA authorizes STLCOP to disclose specific categories of PII known as “Directory Information” without a student’s written consent. Each semester STLCOP informs students of the categories of Directory Information in the Academic Catalog and gives them an opportunity to notify the Registrar in writing of their desire to block the release of Directory Information. If the student does not object to release of Directory Information, the decision of whether or not to disclose is discretionary and will depend upon the circumstances in any particular case. STLCOP has elected to treat the following as Directory Information under FERPA:

- Name
- Address
- Telephone Number
- Date of Birth
- Enrollment Status
- Dates of Attendance (including whether currently enrolled)
- Degree Awarded
- Photograph
- Email address

## **9. What happens if a student blocks release of Directory Information?**

The following are consequences of a student placing a hold on Directory Information on their record:

- Student name/address excluded from the STLCOP online directory and printed telephone directories.
- Student name will not appear in the commencement program.

- Verification of enrollment, graduation, or degrees awarded not provided to third parties without written consent, including potential employers and insurance companies.
- No information released to any person on the telephone or via email.

The Office of the Registrar requires students to renew a request for confidentiality within the first 10 days of each term. If the student does not submit the notification prior to the deadline, the Registrar's Office will assume that Directory Information may be disclosed until written notice is received from the student.

**10. Can I share education records with other administrators, faculty, or staff without a student's consent?**

Yes. FERPA permits STLCOP employees to have access to student education records in which they have a "legitimate educational interest." Such access does not require prior written consent of the student. STLCOP policy provides that a legitimate educational interest exists whenever disclosure is necessary (i.e. there is a need to know) for employees to carry out their specific responsibilities in support of STLCOP's mission.

**11. I have questions about a current student's performance in my class or on my rotation. Does FERPA prevent me from asking other faculty who are teaching the student now or taught the student in a previous semester about the student?**

Yes. Each faculty member's job duties relate to a specific course and there generally would be no reason to share information contained in the student's education records. On the other hand, the faculty member can disclose FERPA protected information to appropriate academic administrators who have overarching responsibilities for student academic performance, conduct, accommodations, etc., such as the Dean's office or the student's faculty advisor. The faculty member is also free to discuss his or her observations of the student with the other faculty member if the same information has not been incorporated into the student's education records. Remember, grades and attendance are part of the student's education record.

**12. Can I upload student information to a vendor's website so that students can log in to access some new online learning modules covering material in my course?**

Not unless the vendor has an appropriate contract containing specific language under FERPA requiring the vendor to maintain confidentiality and privacy of the students' non-Directory information. Please contact the General Counsel for assistance.

**13. Is it okay to post students' grades using their social security or student identification number?**

No. A student's social security number or institutional student identification number are highly sensitive PII and should not be used-even if the student's name is blocked or not disclosed. Instructors should use unique numbers or codes unrelated to the student's identity to post grades. They should also be careful to avoid methods of communicating grades that create risk of deciphering student identifiers such as posting grades in alphabetic order.

**14. Are there any FERPA concerns if graded papers are returned on a table in the hallway outside of a classroom?**

If the papers contain PII, then leaving them unattended is a violation of FERPA.

**15. Are student workers, teaching assistants, or proctors "school officials" with a "legitimate educational interest" under FERPA?**

Yes. You should work closely with Human Resources to clearly identify job duties and responsibilities because this will define the boundaries of PII in education records that they can receive, handle, and communicate about with other employees at STLCOP.

**16. What should I do if I receive a subpoena for a student's education records?**

Notify the Office of the Registrar or General Counsel right away. STLCOP must follow specific procedures for notifying the student of the subpoena and giving the student or their attorney an opportunity to oppose the subpoena unless otherwise directed to maintain confidentiality in the subpoena.

**17. I have concerns about a student's behavior- can I share that information with someone else at the College?**

Absolutely. You can report behavioral or conduct concerns that you observe or have personally documented to persons with a legitimate need to know to carry out their duties. For example, this might include the Vice President of Student Affairs, the Director of Public Safety, or your chair or dean.

**18. Can I release information in education records if there is an emergency?**

The College can disclose PII whenever it determines that it is necessary to protect the health and safety of the student or other individuals. Please direct any questions to the head of your division or the General Counsel. Factors considered include: 1) the severity of the threat or potential harm to the health or safety of the student or others; 2) the need to know the information; 3) whether any actual or potential emergency is imminent; and 4) the ability of the recipients of PII to deal with the emergency.

**19. What types of information can be disclosed to parents?**

Parents may have access to Directory Information (see above) unless the student has restricted release of this information without his or her consent. The College may provide access or disclose FERPA information in the case of a health or safety emergency or when the student is a dependent on a parent's income tax return. Otherwise, a parent must have the student's written consent. A one-time authorization to disclose educational records may be requested from the Office of the Registrar. Please direct all questions to the Office of the Registrar.

**20. How do I properly dispose of education records?**

You should dispose of education records by shredding or placing them in a receptacle intended for the collection of material to be disposed of in a secure manner. Please contact the Vice President of Operations if you need further guidance. For details about when records must be retained see the College's [Record Retention Policy](#).

**21. If a third party is paying for the student to attend school can information about the student's grades or academic progress be released without consent?**

FERPA allows discretion to authorized school officials to disclose financial aid information without consent if it is necessary to determine eligibility for the aid, the amount of the aid, or the conditions for the aid, or to enforce the terms and conditions for the aid. However, the Office of the Registrar and Enrollment Services are the only authorized departments who can respond to financial aid inquiries and the offices as a matter of policy require proof of a student's consent.

**22. What should I do if I receive a media inquiry seeking information from a former student's education records?**

You cannot release the information without the student's consent-FERPA protection extends to former and current students. Please direct all media inquiries to our marketing and communications department.

**23. Do I need to worry about FERPA if I receive a request for education records from a spouse?**

Yes, FERPA does not contain any exception to the written consent rule for spouses.

**24. When are a student's employment records covered by FERPA?**

Whenever a student's employment arises out of their status as a student-FERPA applies. Typical examples include work-study students and teaching or research assistants.

**25. What laws govern a student's medical records?**

FERPA does not apply to unshared treatment records. However, HIPAA specifically excludes shared and unshared treatment records and states that shared records (e.g. student medical information disclosed in connection with disability accommodations, a medical withdrawal, or a leave of absence) is governed by FERPA. Although both FERPA and HIPAA do not cover unshared treatment records, other laws may apply to mental health treatment records or disclosures by licensed professionals (e.g. counselors, clergy). You should direct all questions regarding access or release of information from a student's medical records to the General Counsel for guidance.

**26. Does FERPA cover all student witness statements obtained during a College investigation?**

Depends. If the Department of Public Safety conducts an investigation solely for the purpose of enforcing the law, the records are not considered education records. On the other hand, if the Department of Public Safety is developing information for use in a student discipline case FERPA protects the statements from disclosure without the student's consent.

**27. Can I disclose information from education records that contain references to more than one student?**

FERPA prohibits disclosure of PII relating to other students and any other information that would allow a person to identify a student. The College will use its best efforts to redact information relating to other students before allowing access or disclosure. DOE has indicated that when information relating directly to more than one student is inextricably intertwined it may be disclosed if redaction cannot be achieved without destroying the meaning of the record. For example, student A grabbed student B's backpack and then hit him over the head.

**28. Does a student have a right to see a letter of recommendation?**

A reference letter maintained in a student's file is a FERPA education record. This means that the student has a right to see it unless the student has waived his/her right of access to the letter in writing.

**29. What obligation do I have whenever giving an outside party access to a student's education records under a FERPA exception?**

You should notify the third party in writing that FERPA information may only be revealed on a need to know basis.

**30. If a record is not protected by FERPA, can it still be confidential?**

Yes. Other laws and College policies may govern the release of these records. You should always treat Personally Identifiable Information (PII) relating to students as sensitive and confidential even if it is not contained in a student's education records. The best practice is to follow the "need to know" rule to all private student information.

**31. Does FERPA govern records of campus disciplinary proceedings?**

Yes, however, certain limited exceptions come into play. The College *must* disclose to a victim the results of a disciplinary proceeding involving a finding against a student who has violated College policy by committing a crime of violence or a non-forcible sex offense. Additionally, the College *may* disclose the identity of the accused and the finding of a violation and sanctions to persons other than the victim without consent. The College may not include the victim's identity in a broader disclosure without obtaining written consent. Lastly, FERPA permits the College to disclose to a victim in a Title IX discrimination or harassment case the details of any sanction impacting the victim.

**32. Is it permissible to disclose FERPA protected information without a student's name or other unique personal identifiers?**

Even if you do not disclose a student's name or a personal identifier, the test is whether any anonymous or redacted information that is released would allow a reasonable person to identify the student. These types of disclosures might inadvertently occur, for example, when a student is asked to leave the classroom to go to an alternate testing location.

**33. Do I have to allow a student to inspect and review emails copied to the General Counsel?**

The attorney client privilege extends only to communications directed to legal counsel to obtain legal advice. A cc to the General Counsel is probably insufficient to invoke the attorney-client privilege and block access by the student.