

LESLEY UNIVERSITY
FREQUENTLY ASKED QUESTIONS ABOUT FERPA
FOR FACULTY AND STAFF

1) What is FERPA?

The Family Educational Rights and Privacy Act of 1974 (FERPA) is a federal law that protects the privacy of a student's education record and generally requires a student's written consent before such records are released. The law also permits students to access their own education records, as well as the right to request modifications to the records.

Please note that there are other federal laws and state laws that also protect student rights of privacy, for example data security laws and laws governing the use of photographs and videos.

2) When do the FERPA rights of a student begin?

The first day of class for the student's initial term of attendance at Lesley.

3) What is an "education record?"

The definition of "education record" is very broad. Education records are directly related to a student and maintained by a university or by a party acting for the university (subject to a written contract).

"Student" means any individual who is or has been in attendance at Lesley; this includes classes held in any modality, such as online, low residency, etc.

"Record" means any information recorded in any way, including electronically. Education records include application files (once a student has enrolled), transcripts, exams, papers, financial aid and account records, disability accommodation records, and disciplinary records, and might include photographs, email messages, and voicemail messages.

4) What does it mean for a record to be "directly related" to a student?

A record is "directly related" to a student if it contains "personally identifiable information" about that student. **Personally identifiable information** includes but is not limited to a student's name, the name of the student's parent or other family members, the address of the student or student's family, **a student's social security number, student's date of birth, place of birth, and mother's maiden name**, or other information that would allow a student to be identified.

5) What does it mean for a record to be "maintained by" the University?

The Department of Education has not yet provided definitive guidance about the extent to which electronic data is "maintained" by an educational institution. However, in many cases electronic data is likely to be considered to be maintained by a school. Paper files kept in a professor's office or the department's office are "maintained" by the University, as are student

and faculty postings on Blackboard, and likely in many circumstances, email messages on the lesley.edu account that are stored on a Lesley server. Records do not need to be located in the same location in order to be considered part of a student's education record. Nor do the records need to be labeled or considered "official" – the law will determine what constitutes the student's education record, not our labels.

The Department of Education has also not yet provided clear guidance concerning whether postings on a third-party blog used for a class, or faculty feedback on a discussion board, would constitute "education records" that the University must make available to students and protect or disclose as requested.

Please contact the Registrar (registrar@lesley.edu; 617-349-8740) or the General Counsel (legal@lesley.edu; 617-349-8505) for guidance about a particular situation or request.

6) Are email messages a part of a student's education record?

Yes, in most circumstances. Although the Department of Education has not issued guidance to resolve the extent to which e-mail messages are part of an education record, FERPA regulations broadly define what constitutes an education record. Accordingly, faculty and staff should expect that all email messages that are sent from or to students, and all email messages that include information about a particular student will constitute part of a student's education record. For example, an e-mail message transmitting comments to a student on a student assignment is likely to be considered part of a student's education record if the e-mail is routinely maintained as part of the record of the student's performance in a course.

7) Is a student's email address an "education record?"

Yes, and so the email address may not be shared with anyone other than students enrolled in the same course (solely for the purpose of completing the course assignments) or with Lesley University officials with a "legitimate educational interest" in having the email address. Please see the answer to question twenty-one for additional information concerning the definition of "legitimate educational interest."

8) How does a student authorize disclosure of information to third parties?

The consent must be in writing. A student may permit Lesley to share information with a parent or guardian, or with a third party, by completing one of the two forms available on this page of the Registrar's webpage – (1) The Parent Guardian FERPA Release Form; or (2) the Third Party FERPA Release Form: <http://www.lesley.edu/registrar/family-educational-rights-and-privacy-act/>.

The consent must indicate which records may be released, to whom, and for what purpose. It must be signed and dated.

Students may also designate parents or guardians to receive certain information on the parent portal website.

Please note, however, that Lesley is rarely required to disclose information about a student to a third party. Indeed, there may be situations when you are uncomfortable with sharing information or you have concerns about how the information may be used. Please contact the Registrar (registrar@lesley.edu; 617-349-8740) or the General Counsel (legal@lesley.edu; 617-349-8505) for guidance about a particular situation or request.

9) When is prior written consent not required from the student?

FERPA regulations permit the disclosure of personally identifiable information from a student's education records without the prior written consent of the student if the disclosure meets certain conditions. These conditions include, but are not limited to, the following:

- “Directory information” (as defined by the University in its annual FERPA notice);
- Information provided to other school officials who have a legitimate educational interest in the information (please see the response to question twenty-one for more information);
- Information provided to University officials in connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility, amount, conditions, or enforcement of terms of such financial aid;
- Information provided to officials of another school in which a student seeks or intends to enroll;
- Information provided to parents or legal guardians of a student if the student is a dependent for federal tax purposes;
- Information relevant to comply with a judicial order or lawfully issued subpoena;
- Information provided to accrediting organizations to carry out their accrediting functions;
- Information provided to parents of a student regarding the student's violation of any federal, state, or local law, or of any rule or policy of the school, governing the use or possession of alcohol or a controlled substance, if the school determines the student committed a disciplinary violation and the student is under the age of 21;
- Information provided to the parents or guardians, school officials, government agents, and/or others, as appropriate, in connection with a health or safety emergency.

10) What has Lesley University defined as “directory information?”

Lesley University defines directory information as the following:

- student name,
- enrollment status,
- dates of attendance,
- major field of study, and
- degrees and awards received.

For purposes of responding to United States and City of Cambridge census requests only, the University also designates student residence hall addresses and student dates of birth as directory information.

Students may request that Lesley University not release directory information to the public by completing a Request to Prevent Disclosure of Directory Information Form available in the Office of the University Registrar or online at <http://www.lesley.edu/registrar/family-educational-rights-and-privacy-act/>.

11) Who is a “university official?”

A university official is a person employed by Lesley University

- in an administrative, supervisory, academic, research, or support staff position (including public safety personnel and health staff);
- a person serving on the board of trustees;
- a student serving on an official committee, such as a disciplinary or grievance committee;
- any faculty member or administrator to whom or to whose office the student has addressed a request, application, or inquiry for which the records are needed to prepare a reply.

A university official also may include

- a volunteer or contractor outside of Lesley University who performs an institutional service or function for which the University would otherwise use its own employees (such as an attorney, auditor, collection agent, or emergency alert system) and is under the direct control of the University with respect to the use and maintenance of personally identifiable information from education records; or
- a student who volunteers and is approved to assist another school official in performing the school official’s tasks.

12) What type of information is not part of the FERPA-protected education record?

Medical records, law enforcement records, employment records (provided that the records must relate exclusively to the individual in that individual’s capacity as an employee – records relating to a student who is employed as a result of his or her student status, e.g. work study records, are education records), alumni records, and sole possession records are not “student education records” under FERPA.

Personal observations that are not recorded and maintained are not student education records.

“Sole possession” records are those records that are kept in the sole possession of the maker, used only as a personal memory aid, and not revealed or accessible to any other person. An example of “sole possession” records are notes written by a professor about a student’s performance in a class over the course of a semester, which the professor keeps in a private location and uses only as a memory aid to assist with the professor’s calculation of the student’s final grade in the class.

13) May I share a student's information with his or her parent?

Under certain circumstances, which must be subject to verification. Once a student matriculates at Lesley University, the student's parents or legal guardians do not have an automatic right to access the student's education records. Unless a relevant exception applies, a student must give written permission for the student's parents to have access to the records.

However, FERPA provides that schools may release information in the student record to parents without the consent of the student if the student is claimed as a dependent for tax purposes under the IRS rules. The University may not presume tax dependency status. The student must submit a written certification that the student is claimed as a dependent, or the parent/legal guardian must submit the first page of a tax return verifying that the student is claimed as a dependent. Verification must be completed for each school year.

In addition, in the case of a health or safety emergency, the University may share information with a student's parents. Time permitting, disclosure in a health or safety emergency should be reviewed with the Registrar (registrar@lesley.edu; 617-349-8740), General Counsel (legal@lesley.edu; 617-349-8505), or Dean of Students (nmays@lesley.edu; 617-349-8539), given the requirements for such disclosure.

Please consult the Registrar (registrar@lesley.edu; 617-349-8740), the General Counsel (legal@lesley.edu; 617-349-8505), or the Dean of Students (nmays@lesley.edu; 617-349-8539) if you have any questions or concerns about disclosing information to the parent of a student.

14) What if a parent calls me to say that she hasn't heard from her daughter recently and just wants to find out whether her daughter has been attending classes regularly?

At Lesley, a student's class schedule is not included in the definition of directory information; therefore this information may not be released.

One option you could consider would be to offer to contact the student yourself and convey her mother's message. You should also consider contacting the Dean of Students (nmays@lesley.edu; 617-349-8539) to check on the student's status.

15) I received a telephone call from a parent or spouse claiming there was a family emergency and they needed to contact the student immediately. Can I give information about the day, time, and location of the student's class?

At Lesley, a student's class schedule is not included in the definition of directory information; therefore this information generally may not be released.

One option you could consider would be to offer to contact the student yourself and convey the message from the parent or spouse.

Disclosure to the parent or spouse may be permitted depending on the circumstances of the emergency. FERPA permits the release of personally identifiable information, including

information concerning a student's class schedule, if disclosure of the information is "necessary to protect the health or safety of the student or other individuals." It will be important for you to be able to authenticate the identity of the parent or spouse. Time permitting, disclosure in a health or safety emergency should be reviewed with the Registrar (registrar@lesley.edu; 617-349-8740), the General Counsel (legal@lesley.edu; 617-349-8505), or the Dean of Students (nmays@lesley.edu; 617-349-8539), given the requirements for such disclosure.

16) What if I am concerned about a student's welfare? What information can I share and with whom?

The University encourages faculty and staff to share information with the Dean of Students (nmays@lesley.edu; 617-349-8539), the Dean of the School/College, or the Counseling Center (counselingcenter@lesley.edu; 617-349-8545) about students who appear troubled and/or may pose a threat to themselves or other people.

FERPA only restricts sharing education records, and personal, unrecorded observations about a student are not education records. In addition, FERPA permits University officials to share information with each other and third parties when necessary to protect the health or safety of the student or other persons.

17) A Cambridge Police Officer informed me that she is conducting an investigation and needs to know whether a particular student was scheduled for a class on a specific day and time. Can I tell her?

No. Since the class schedule is not listed as directory information, it cannot be shared without a subpoena, court order, or the student's written consent.

You must send any subpoenas or court orders to the University Registrar and the General Counsel upon receipt.

18) An FBI agent came to my office and asked for a copy of a student's transcript or housing information. The agent said that he was performing a background check on the student. Can I release the transcript or housing information?

No. The FBI agent must present a written consent from the student authorizing the release of that information to the agent for the purpose of a background check. If you have any questions or concerns about the authenticity of a student's consent, please contact the Registrar (registrar@lesley.edu; 617-349-8740) or the General Counsel (legal@lesley.edu; 617-349-8505).

19) A student asked me to write a letter of recommendation. Can I include the grade the student received in my class in the letter?

No, unless you have a signed and dated written consent from the student authorizing the disclosure of information concerning the grade for the purpose of the recommendation. Without the student's written permission, you may not disclose any personally identifiable information (grades, GPA, etc.) obtained from a student's education record.

20) Can I post grades or exam results in a public place?

No. It is a FERPA violation if an instructor or department leaves or posts graded coursework in a public place, such as outside of an office for students to pick up, or on the class blog.

21) Can I send students their grades or evaluations through email?

It is a best practice to use the University's Blackboard learning management system to give students their grades, evaluations, or evaluative comments. The University encourages all faculty to use Blackboard for these purposes. However, if you wish to send a student evaluative comments on a paper by email message, you must use your and the student's lesley.edu email addresses only. If you have any reason to think the student is not the only person reading his or her email messages, you must stop sending such information to that student by email message. Grades, evaluations, and evaluative comments should never be posted on blogs or other public or non-secure sites.

22) Can I share information about a student's progress with other faculty?

Yes, but only if the faculty has a "legitimate educational interest" in the information. Faculty and staff can only share such information concerning student records with a University official, as that term is defined by the University, who has a "legitimate educational interest" in the information.

A University official has a legitimate educational interest if the official needs the information in order to perform his or her job at the University. Mere curiosity about a student's progress is not sufficient or appropriate to merit disclosure of the student's personal information if the disclosure is unrelated to the official's specific job responsibilities. An example of a permissible disclosure includes if an academic advisor requests information in a student's admission or course files in order to perform advising responsibilities.

23) Is student work produced on a third-party website protected by FERPA?

First, University officials may not submit a student's personally identifiable information, any sensitive data, or student education records into a third-party tool, or send such information to a third party without student permission (subject to the exceptions noted in this document) and without first obtaining the assistance and approval of the Chief Information Officer and the General Counsel. So, for example, do not provide a class roster to a third party site.

Second, student work voluntarily created and posted by students to YouTube, WordPress, Tumblr, GoogleDocs, and similar sites or services, is not a "student education record" for the purposes of FERPA because it is not maintained by the University. However, if you "maintain" that content in your own files, the copy of the record in your files does become a "student education record" and is protected by FERPA.

24) Can faculty have students post work in a public blog or other type of third-party tools?

As a best practice, you should describe your pedagogical use of third party tools to the students on the syllabus. You should encourage students not to post information that might indicate grades, course schedule, their enrollment, or information that identifies them. Students should be advised that they can minimize exposure by creating their own username that is not associated with their real name, and mask their location and identity as they see fit when posting publically. Students should also have the option to opt out of the assignment or have an option to post privately. If posting on Facebook, or Twitter, students should be encouraged to disconnect class connections after the end of the semester or term and/or delete their account. You should inform students that information they post publically can have consequences and must be done in a responsible manner. You must remove student work from third party tools as soon as the assignment is complete.

25) Can there be electronic communications about a student's work among students in a class?

As long as the electronic comments do not include grades or evaluative comments from the professor, communications in this format are acceptable. Instructors should not post confidential information concerning a student's grade or coursework in this format. The course syllabus should notify students that this type of electronic communication will be a course requirement. If this is a course requirement, postings must also be only accessible to other members of the course.

26) May I require students to engage in peer review of their classmates' work?

Yes, so long as the students are sending their work to each other and providing comments only to each other. Once the peer review is sent to the professor, it is subject to FERPA and may not be shared with others absent student consent or an applicable FERPA exception.