

A GUIDE TO THE FAMILY EDUCATION RIGHTS AND PRIVACY ACT FOR VILLANOVA UNIVERSITY FACULTY AND STAFF

Introduction

The Family Educational Rights and Privacy Act—“FERPA” for short—is a three-decades-old federal law designed to protect the privacy of students’ education records and ensure students’ access to their own education records. Education records are defined as records maintained in any form (e.g., handwritten, electronic, recorded) by the institution containing information that can be used to identify the individual student who is the subject of the record. FERPA protects the privacy of education records in three ways: by prescribing standards and limitations governing the release of education records; by guaranteeing students the right to access their own education records and correct inaccurate information contained in those records; and by establishing procedures students and educational institutions can use to resolve disputes about the contents of or access to education records.

Faculty members play a key role in the protection of rights guaranteed by FERPA. To avoid inadvertent violations of the law, faculty members should understand their obligations under FERPA.

Any faculty member who needs help interpreting FERPA’s requirements or applying the law to the circumstances of a particular case should feel free to contact the Office of General Counsel for guidance and assistance.

FERPA Resources

(1) The United States Department of Education has enacted FERPA regulations that explain in simple, colloquial language what the law requires. The regulations can be found online on a Website maintained by the Department of Education at www.ed.gov/policy/gen/guid/fpco/pdf/ferparegs.pdf.

(2) FERPA is enforced by the Department of Education’s Family Policy Compliance Office (“FPCO”). FPCO maintains a helpful Website dedicated to FERPA. On that Website are simple explanations of the law’s requirements and links to the text of the law itself, the implementing regulations, and various policy guidances addressing specific enforcement questions under FERPA. The Website can be accessed at www.ed.gov/policy/gen/guid/fpco/ferpa/index.html.

(3) FERPA requires institutions of higher education to publish an annual notice of students’ rights under FERPA. Faculty members should review and be familiar with Villanova University’s official FERPA notice. It is published every year in the Undergraduate Catalog. The current version is titled *Policy on Disclosure of Student Records* and is available online at www.catalog.villanova.edu/catalog/univ/univb.htm#academic_policies.

Basic FERPA Principles

The animating principle underlying FERPA is that *an education record is confidential* and cannot be disclosed to third parties except under circumstances and in accordance with procedures specified in the law and implementing regulations. The term “education record” is defined expansively in the law to include any information maintained by an institution on a matriculated student. No matter where this information is stored (in a document in the registrar's office, on a class list on a professor's desk, on a computer display screen), it is still confidential. Faculty members have a legal obligation to protect the confidentiality of education records in their possession and not to share education records with other faculty members, other students, the parents of students, or other members of the university community except as authorized by FERPA.

FERPA makes an exception for “directory information,” defined in the FERPA regulations as “information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.” A faculty member may disclose directory information without first obtaining the student’s prior written consent. Villanova University’s *Policy on Disclosure of Student Records* defines directory information as:

- The student’s full name;
- The student’s address (local, home or electronic mail) and campus telephone number;
- A photograph of the student;
- The student’s date and place of birth;
- The student’s major field of study;
- Dates of attendance at Villanova University;
- Degrees and awards received (including Dean's list);
- High school or other most recent previous educational institution attended;
- Participation in officially recognized University activities and athletics; and
- For student athletes, the student’s weight and height.

Consistent with FERPA, a student who does not wish directory information to be released or made public can inform the Registrar, in writing, prior to the time the information is originally sought. Even with respect to directory information, therefore, faculty members should take the precaution of checking with the student or the Registrar before releasing such information to third parties. An exception to the requirement of informing the student of the request for information may apply with respect to a subpoena from a law enforcement agency. In that case, the faculty member should consult the Office of General Counsel.

Under certain limited circumstances, FERPA allows faculty members to disclose otherwise confidential information from education records. At Villanova University, a faculty member may honor a request for access to education records, without obtaining advance consent from the student who is the subject of the record, if the request comes from any of the following people (this list is not exhaustive):

- University officials (or office personnel who work for those officials) who require access for *legitimate educational purposes*. Among the officials whose requests faculty members can presumptively honor are the President, Vice Presidents, Deans, Directors, Department Chairs, personnel in the Office of the General Counsel, and others identified in the University's Policy on Disclosure of Student Records.
- Officials of other educational institutions to which the student applies for admission.
- Parents of a "dependent student"—meaning a student who is declared as a dependent on the parent's federal income tax form as authorized under Section 152 of the Internal Revenue Code of 1986. Check with Office of General Counsel in this situation.
- Financial aid personnel in connection with the student's application for or receipt of financial aid.
- A court or law enforcement agency in the form of a judicial order or lawfully issued subpoena. Check with Office of General Counsel in this situation.
- Any other person who needs information to cope with an emergency posing a threat to the health or safety of students or other individuals.

FERPA applies only to education records that identify *matriculated students*, whether currently or previously enrolled. FERPA does not apply to prospective students or students who applied to Villanova University but enrolled elsewhere. FERPA does not safeguard the confidentiality of records other than *education* records. This means, for example, that FERPA would not apply to the employment-related records of a student who works for Villanova University on a part-time or full-time basis, or to the records maintained by the University Development Office that contain information about a graduate who is no longer a student at the University, provided that information does not relate to the period of matriculation.

Common FERPA Compliance Issues for Faculty Members

Student grades. Public posting of grades presents problems under FERPA. The only acceptable method to post grades publicly is to assign students unique, coded identifiers. Posting grades using names, social security numbers, or decodable Villanova University identification numbers would violate FERPA. Mailing grades to students is acceptable only if the information is enclosed in a sealed envelope. Mailing grades via postcards would violate a student's right to privacy under FERPA.

Discussing or disclosing a student's academic performance. A student's academic performance is part of his/her education record, and discussing the student's performance with anyone other than the student (or another school official with a "legitimate educational interest") is a violation of FERPA. Faculty members should refrain from discussing the academic performance, grades, or other parts of a student's education record with anyone other than the student.

Parents' requests for information. Although parents frequently pay for a child's education, parents are not entitled (with one exception) to review their child's records or to obtain information concerning their child's academic progress without the student's permission.

Faculty who give parents updates about their child's academic performance without express written permission from the student may be in violation of FERPA. The exception is for the parents of students who are claimed as dependents on parents' federal income tax returns. If parents provide proof that their child is a dependent in the form of a copy of a signed tax return or a letter from an accountant. The information should be provided to the Office of the General Counsel for evaluation before protected information is disclosed. Most Villanova undergraduates sign a release permitting the University to inform parents regarding the student's educational progress. It is often the simplest response to check with your Dean or Department Chair's office to find out whether permission has already been granted.

Writing letters of recommendation. Recommendation letters on behalf of a student that contain specific information from the student's educational record, such as grades or a student's grade point average, violate FERPA unless the faculty member receives prior written permission from the student to disclose that information. When a student requests a letter of recommendation, the faculty member should ask the student to sign a written authorization allowing disclosure of relevant information in the letter. Typically, a student who requests a letter of recommendation in connection with a graduate school application or job application provides a preprinted template from the school or employer containing a disclosure provision and a line for the student's signature. Questions about the sufficiency of such forms should be addressed to the Office of General Counsel.

Returning assignments, papers and examinations. It would be a violation of FERPA to leave graded assignments, papers, or examinations for students to pick up where students could potentially view the grades of other students. If work is returned to students in a central location (for example, a department office), it should be placed in sealed envelopes with the student's name on the envelope. If circumstances permit, students should be required to present a Villanova University card or other form of identification before being allowed to pick up graded work.

Accessing student records. Faculty members should not seek access to students' education records absent a "legitimate educational interest." Ordinarily a faculty member has legitimate educational interests in a student's records when that faculty member teaches, advises or coaches that student. Casual conversations among faculty members discussing students' grades, performance, or other aspects of their education records could violate FERPA.

Recordkeeping under FERPA. FERPA obligates the University to maintain a written record documenting compliance with certain categories of requests and disclosures involving education records. Before disclosing any information from a student's education record to anyone other than the student, another school official, or a party with the written permission of a student, faculty members should contact the Office of General Counsel to discuss potential recordkeeping obligations.

Private notes. Private notes of a faculty member concerning a student and intended for the faculty member's own use are not education records and do not have to be disclosed to third

parties (including the student), provided they are kept separate from the student's education records, are used only by the faculty member, and are not shown to or accessed by anyone else.

Some Quick Questions and Answers about FERPA

1. What is FERPA?

The Family Educational Rights and Privacy Act of 1974 protects the confidentiality of education records. FERPA governs both the release of education records maintained by the University and access to those records.

2. In general, what does FERPA require?

- Villanova University must provide annual notification to students of their FERPA rights (which the University does by publishing its *Policy on Disclosure of Student Records* in the Undergraduate Catalog);
- The University must allow students to inspect and correct their education records;
- The University must ensure that students' right to privacy is protected through limits on disclosure of personally identifiable information contained in education records;
- The University must provide a mechanism for resolving disputes over access to education records, and must keep records of requests for and disclosures of student education records in specific situations.

3. What are "education records" under FERPA?

Education records are defined as records in any form (handwritten, typed, electronic) that are directly related to a student and maintained by Villanova University or a University faculty member, staff member, officer or representative. The statutory definition of education record excludes medical records, law enforcement records, employment records, alumni records, and records (such as private notes) in the sole possession of the maker that are used only as a personal memory aid and are not revealed or accessible to any other person.

4. What is not an education record and, therefore, falls outside the scope of FERPA?

Villanova University's *Policy on Disclosure of Student Records* excludes the following categories of records from the definition of education records:

- Confidential letters and statements of recommendation placed in a student's record before January 1, 1975, or confidential letters and statements of recommendation to which students have waived their rights of access.
- Employment records of students as University employees.
- Campus law enforcement records created and maintained by the Public Safety Office.

- Records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in his or her paraprofessional capacity, and that are made, maintained, or used only in connection with treatment of a student and not disclosed to anyone other than the individuals providing the treatment. Please note that the confidentiality of such records may be subject to other laws and regulations.
- Financial records of the parents of a student or any information contained in those records. Again, the confidentiality of such records may be subject to other laws and regulations.
- Those portions of student A's records that contain information on student B might not be an education record of student A, but might be an education record of student B.

5. When do the FERPA rights of a student begin?

The first day of class for the student's initial term of attendance at Villanova University. FERPA rights do not apply to prospective students or students who have applied to but never enrolled at the University.

6. When would Villanova University release information from a student's education record without the permission of the student?

FERPA and Villanova University's *Policy on Disclosure of Student Records* authorize disclosure of information from a student's education records under the following circumstances:

- To University officials (or office personnel ancillary to the officials) who require access for legitimate educational purposes such as academic, disciplinary, health or safety matters.
- To officials of other educational institutions to which the student seeks or intends to enroll.
- To appropriate federal, state or local officials or authorities, consistent with federal regulations.
- To accrediting organizations to carry out their accrediting functions.
- To the parents or guardians of a student, where the information pertains to violations of any federal, state or local law or of any University rule or policy governing the use or possession of alcohol or a controlled substance, and the student has committed a disciplinary violation.
- In connection with the student's application for, or receipt of financial aid.

- To comply with a judicial order or lawfully issued subpoena (on condition that a reasonable effort is made to notify the student of the order or subpoena, if legally permitted to do so).
- In case of an emergency, to protect the health or safety of students or other individuals.

7. When else could Villanova University release information from a student's education record without the permission of the student?

FERPA and Villanova University's *Policy on Disclosure of Student Records* authorize, but do not require disclosure of information from a student's education records under the following circumstances:

- To the parents of a dependent student as defined in Section 152 of the Internal Revenue Code of 1986.
- If the information is directory information and the student has not withheld consent for its disclosure.
- Under limited circumstances to organizations conducting studies for, or on behalf of, educational agencies or institutions.

8. What is directory information?

FERPA defines directory information as information contained in an education record that generally would not be considered harmful or an invasion of privacy if disclosed. Under Villanova University's *Policy on Disclosure of Student Records*, the following categories of information are defined as directory information that can be disclosed to third parties without the student's consent:

- Full name;
- Address (local, home and/or electronic mail);
- Campus telephone number;
- Photograph;
- Date and place of birth;
- Major field of study;
- Dates of attendance;
- Degrees and awards received (including Dean's list);
- Most recent previous educational institution attended;
- Participation in officially recognized University activities and athletics; and
- Weight and height of members of athletic teams.

9. Can information about a student be shared with the student's parent?

Presumptively no. Once a student enrolls at Villanova University, the student's parents have no rights under FERPA. Only the student can give permission for his or her parents to have access to records. If, however, the parent produces evidence (ordinarily a signed tax return) that the student still qualifies as a dependent as that term is defined for federal income tax purposes, then information from the student's education records may be shared with the parent, provided that the student has not requested that the parent be denied access. Particular care should be exercised with respect to non-custodial parents.

10. What should you do if your unit receives a subpoena for an academic record?

Without responding to or complying with the subpoena, you should forward it (via fax followed by inter-office mail) to the Office of General Counsel as soon as you receive it. An attorney will instruct you how to respond.

11. Are faculty members entitled to inspect education records of any student without giving a reason?

No. Faculty members must demonstrate "a legitimate educational interest" for accessing records, for example advising a student, supervising a student in extracurricular activities, etc.