

FERPA & Faculty

The Family Educational Rights and Privacy Act (FERPA, or the Buckley Amendment) is federal legislation enacted in 1974 that controls student records. It grants students the right to access their own educational records as well as limiting, for privacy reasons, the release of those same records to anyone other than the student and/or the student's designee. FERPA applies to all current and former students.

FERPA pertains to school records, meaning information officially maintained by the school. Such FERPA-protected information includes grades, student ID numbers, course schedule, records of disciplinary actions, standardized test scores, and so forth. Exempt from FERPA regulations is information considered "directory information" by the University (e.g., name, e-mail address, "Class of ___" status, photo, etc.).

Information maintained by an individual faculty member is not considered school records unless it overlaps with official school records (e.g., grades, disciplinary actions). So, records of personal observations or opinions that are *not shared with others*, as well as communications with students that do not include protected information, are not official school records and are not regulated by FERPA.

Who is Allowed Access to FERPA-Protected Information?

- Anyone the Student Approves in Writing
- Those Who Have a "Legitimate Educational Interest" in the Specific Information Accessed

What about e-mail? FERPA does not address electronic communication, but some case law exists. It appears that e-mail communications themselves are not considered part of the student's record, and that using the student's university e-mail address is considered secure as to ensuring that the recipient is in fact the student. Messages to non-university accounts, however, lack proper assurances that the student will be the only one with access to those messages. So when discussing academic performance or other FERPA-protected information with a student via e-mail, ensure that you are using the student's university e-mail account.

What about letters of recommendation? Because a faculty member's opinions are not considered part of the school record, they are not covered by FERPA. However, information as to the student's academic performance is. It is best to secure written permission from the student to share his or her academic performance information with the recipients of the letters of recommendation. Based on case law, such permission may be in the form of an e-mail message from the student, provided that it came from the student's university e-mail account (which provides assurance that it did indeed come from the student).

In conclusion, although e-mail messages are not covered by FERPA, it is possible that a student sues for access to e-mail messages. So, remaining cognizant that such messages could end up being part of a subpoena may be prudent.