

NOTE: This letter was reformatted to make it more accessible on the Student Privacy Policy Office's (SPPO's) website. Please note that SPPO administers FERPA and the office's prior name was the Family Policy Compliance Office (FPCO). Some citations in this letter may not be current due to amendments of the law and regulations. SPPO has not revised the content of the original letter. Any questions about the applicability and citations of the FERPA regulations included in this letter may be directed to FERPA@ed.gov.

June 25, 1997

[To Attorney]

Dear [Attorney]:

This is in response to your letter, dated April 24, 1997, in which you allege that Virginia State University (University) violated the Family Educational Rights and Privacy Act (FERPA). Specifically, you state that the University violated FERPA when it did not disclose the school addresses of two enrolled students in response to a court-ordered discovery request. As explained more fully below, this Office is not authorized to initiate an investigation into this matter.

As you are aware, FERPA generally protects a student's privacy interests in "education records." The term "education records" is defined as:

[T]hose records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4). See also 34 CFR § 99.3 "Education records." FERPA provides that education records, or personally identifiable information from such records, may be disclosed by institutions of postsecondary education to third parties only after obtaining prior written consent of the student. 20 U.S.C. § 1232g(b)(1) and (d). See also 34 CFR § 99.30.

FERPA does provide a number of exceptions to the general rule requiring written consent prior to disclosure of personally identifiable information from education records. One exception provides that education records, or personally identifiable information from such records, may be disclosed in order to comply with "a judicial order or lawfully issued subpoena." 34 CFR § 99.31(a)(9). As noted, the subpoena must be lawfully issued. Whether or not a subpoena is considered "lawfully issued" is determined by State law. FERPA does not otherwise define or place conditions on what constitutes a lawfully issued subpoena. If a "discovery request" is issued by a court, as opposed to being issued by an attorney, it would be considered a "judicial order" under FERPA. Accordingly, a school could, but would not be required to, disclose the requested information without first obtaining the consent of the student to whom the records relate. Because FERPA merely permits the nonconsensual disclosure of information from education records under the conditions described in § 99.31 of the regulations, the University is not required by FERPA to comply with a lawfully issued subpoena or a court-ordered discovery request. Rather, that is a matter between the University and the court. Therefore, there is no basis for this Office to initiate an investigation.

Please note that, under FERPA, an individual must have "standing," i.e., have suffered an alleged violation, in order to file a complaint under FERPA. At the postsecondary level, FERPA vests the rights it affords with the eligible student. See 20 U.S.C. § 1232g(b)(1) and (d). The statute does not provide for these rights to be vested in a third party that has not suffered an alleged violation.

I trust that the above adequately explains the scope and limitations of FERPA as it pertains to your concern. Should you have additional questions about FERPA, you may contact this Office at the following address:

Family Policy Compliance Office
U.S. Department of Education
600 Independence Avenue, SW
Washington, DC 20202-4605

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office