

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](mailto:FERPA@ed.gov).

June 10, 2002

Mr. James B. Kamieniecki  
Internal Revenue Service  
Criminal Investigation  
600 Arch Street  
Room 6224  
Philadelphia, Pennsylvania 19106

Dear Mr. Kamieniecki:

This is in follow-up to your June 3, 2002, fax and telephone inquiries to this Office. Specifically, you asked whether, under the Family Educational Rights and Privacy Act (FERPA), an IRS summons is considered to be a "lawfully issued subpoena" and, as such, if information from a student's education records may be disclosed pursuant to a summons issued by the Internal Revenue Service (IRS) without prior written consent. This Office administers FERPA and is responsible for providing technical assistance to educational agencies and institutions on the requirements of FERPA.

FERPA generally protects a student's privacy interests in "education records." FERPA defines "education records" as "those 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)(i) and (ii). FERPA generally requires that prior written consent be provided by the parent of a minor student or by an eligible student before education records are disclosed to a third party. 20 U.S.C. § 1232g(b)(2)(A). 34 CFR § 99.30. When a student turns 18 years of age or attends an institution of postsecondary education, the student becomes an "eligible student" and all FERPA rights transfer to the student. 34 CFR § 99.3.

FERPA provides a number of exceptions to the general prohibition on nonconsensual disclosures. One of the exceptions permits the nonconsensual disclosure of education records when the disclosure is made in compliance with a lawfully issued subpoena or court order if the educational agency or institution makes a reasonable attempt to notify the parent or eligible student of the order or subpoena in advance of compliance. 20 U.S.C. § 1232g(b)(2)(B); 34 CFR § 99.31(a)(9).

Section-99.32 of the FERPA regulations requires that an educational agency or institution maintain a record of all requests for access to and disclosures from education records. However,

this Office has determined that such recordation would not be required when the disclosure was made in compliance with a judicial order or subpoena so long as the school was successful in its attempt to notify the parent or eligible student of the order or subpoena in advance of compliance.

Additionally, we have determined that the redisclosure provisions at 34 CFR § 99.33 do not apply to records that are disclosed pursuant to a court order or lawfully issued subpoena. Once an institution determines that the subpoena or judicial order is valid and makes a reasonable attempt to provide advance notice in sufficient time to allow the parent or eligible student to take appropriate action, the institution is not responsible for taking any further action to protect the records against redisclosure, even to the press.

When subpoenas or court orders are issued for certain law enforcement purposes requesting the disclosure of education records, advance notification is not required before compliance. The waiver of the advance notification requirement applies only when the law enforcement subpoena or court order contains language that specifies that the subpoena or court order should not be disclosed. 20 U.S.C. § 1232g(b)(1)(J); 34 CFR § 99.31(a)(9). Please note that the recordation requirements at 34 CFR § 99.32 would not apply when disclosure of education records is made in such instances, even though no prior notification will be made when a court order or subpoena prevents disclosure of the existence of the order or subpoena.

The Department has historically interpreted an IRS summons to constitute a "lawfully issued subpoena" under FERPA. Enclosed for your reference is this Office's letter of July 3, 1997, that also addresses this matter. Accordingly, an educational agency or institution may, in order to comply with an IRS summons, disclose to agents of the IRS personally identifiable information from education records without a parent or student's written consent, as long as the educational agency or institution has followed the FERPA requirements set forth at 34 CFR § 99.31(a)(9) for response to a court order or subpoena.

I trust this is responsive to your inquiry.

Sincerely,

/s/

LeRoy S. Rooker  
Director  
Family Policy Compliance Office

Enclosure