

Ms. Diane Layton
Director of Admissions/Registrar
Shelton State Community College
202 Skyland Boulevard
Tuscaloosa, Alabama 35404

Dear Ms. Layton:

This responds to your February 10, 1997, request for guidance concerning the release of information from a student's education records to the local deputy sheriff who presented a contempt order or warrant for the student's arrest. This office administers the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. section 1232g and 34 CFR Part 99, and is responsible for providing technical assistance on the law to educational agencies and institutions. I apologize for the amount of time it has taken us to respond to your inquiry. Due to the large amount of correspondence this Office receives, we currently have a backlog that we are working to resolve.

You explained in your letter that the deputy sheriff came to your office seeking to locate a student that he wished to arrest on campus. The deputy sheriff presented you with "an order of contempt from a judge's office" for this student and explained that this was the same as "a warrant for the student's arrest." Nonetheless, because student class schedules are not listed as "directory information" at your campus, you declined to release the information and told the deputy sheriff that you would release the information only if he obtained a subpoena. You further advised the deputy sheriff that if he did not want you to notify the student concerning the subpoena that the subpoena should so specify. You asked this Office specifically whether "this order of contempt and . . . warrant for an arrest qualify as a judicial order" for purposes of releasing information to the deputy sheriff without the student's consent under FERPA. You also asked about having subpoenas served on students at school.

As you know, FERPA provides that an educational agency or institution may not disclose personally identifiable information contained in an eligible student's education records without the student's prior written consent except to the extent that FERPA authorizes disclosure without consent. See 34 CFR section 99.31. An institution's record of a student's class schedule constitutes an "education record" subject to FERPA rights and protections.

FERPA authorizes the non-consensual disclosure of information that has been designated as "directory information" in accordance with regulatory requirements. See 34 CFR section 99.31(a)(11). "Directory information" includes information such as a student's name, address, telephone listing, etc., and could include a student's class schedule as information that "would not generally be considered harmful or an invasion of privacy if disclosed." See definition of "directory information" at 34 CFR ' 99.3. However, if the institution has not complied with the notice requirements for directory information set forth in 34 CFR ' 99.37, then it may not disclose this information without the student's prior written consent.

FERPA also allows the non-consensual disclosure of personally identifiable information from education records if the disclosure is to "comply with a judicial order or lawfully issued subpoena." 34 CFR section 99.31(a)(9)(i). However, the institution must first make a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with --

(A) Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence of the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

34 CFR section 99.31(a)(9)(ii)(emphasis added).

It is our opinion that the order of contempt or arrest warrant from a judge's office, as you described it in your letter, would not meet the requirements for non-consensual disclosure of information from education records as set forth above. It appears from the information you provided that the document was an order of contempt against the student that provided for the student's arrest. The exception for non-consensual disclosure to comply with a "judicial order or lawfully issued subpoena" applies only to orders or subpoenas issued to the institution for the purpose of obtaining information or records in the institution's possession.

First, the institution is not legally required to comply with a judicial order or subpoena issued to or against another party. More importantly, the privacy protections at the heart of FERPA would be severely undercut if institutions could release personally identifiable information from a student's education records on the basis of a judicial order or subpoena that was issued to any party for any purpose, rather than an order directing the institution to release specified education records. Otherwise, the deputy sheriff could present this contempt order and demand to see the education records of any student who might be useful in locating the student to be arrested. We do not interpret FERPA to authorize this broad type of non-consensual disclosure. Rather, FERPA contemplates a specific decision by the court or issuing authority to seek information from an institution's education records and not a generalized grant of authority to compel the release of desired information wherever it may be found. The requirement that institutions make a "reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance" strongly supports the view that Congress intended this provision to apply only to orders directed at the institution for the purpose of obtaining information from education records.

For these reasons, we agree with the advice that you apparently provided to the deputy sheriff regarding what would be needed in order for the institution to release non-directory information without obtaining the student's prior written consent. You are also correct that the institution is relieved of its obligation to notify the eligible student of the order or subpoena in advance of compliance only if the court or other issuing agency has ordered that the existence or contents of the subpoena not be disclosed. See 34 CFR ' 99.31(a)(9)(ii)(A) and (B).

Finally, you asked about having subpoenas served on students at school. If a student's class schedule is listed as directory information, it would be permissible to disclose a student's class schedule to the individual serving the subpoena. If not, then the institution would presumably face the same problems in locating a student as occurred in the situation that prompted your inquiry. Note that FERPA does not prohibit the institution from locating a student for a law enforcement officer or anyone else if a staff member happens to know where the student is and, therefore, does not have to release or retrieve the information from an education record, such as the student's recorded class schedule, in order to do so. Otherwise, there is nothing in FERPA that would prevent law enforcement officials or other persons from serving subpoenas on students at school.

I trust that this responds to your concerns and appreciate the opportunity to assist you with these matters. Please do not hesitate to call upon this office again in the future.

Sincerely,

LeRoy S. Rooker
Director
Family Policy Compliance Office