Subpoenas for Student Records

Policy/Procedure

This document is intended to help guide the Registrar’s Office in responding to subpoenas it receives requesting information from a student’s education record in the normal course of business. These are guidelines only and any questions should be raised with General Counsel before honoring a subpoena served upon the College.

FERPA states that a student’s prior consent is not required for the release of information from a student’s education record if the disclosure is made in compliance with a lawfully issued subpoena. 34 CFR 99.31(a)(9)(i). However, before making a disclosure, FERPA generally requires the College to make a reasonable effort to notify the student so that the student may seek protective action. 34 CFR 99.31(a)(9)(ii). There are some circumstances where the subpoena itself directs that such disclosure not be made. 34 CFR 99.31(a)(9)(ii)(A)(B). In such cases, consultation with Dickinson’s General Counsel should occur to determine how to proceed. Determining whether a subpoena is “lawfully issued” has many facets. Some of the questions raised include whether the subpoena was issued on the authority of a court of competent jurisdiction. Was it properly served upon the college? Is the scope of information sought reasonable? Is the time for responding reasonable? Below are some general guidelines for a process to be used by the Registrar’s Office in meeting the requirements of both FERPA and a lawfully issued subpoena.

Was the subpoena properly served?

Generally, subpoenas will be served in person by a sheriff or U.S. Marshall. Under some circumstances, service by mail is appropriate. It is permissible for an authorized representative of the Registrar’s Office to accept service of the subpoena and to then explore whether the service was proper.

Following service of the subpoena

- Immediately notify the Registrar
- Contact General Counsel immediately if there are any questions about service, scope, timing or any other issues related to the subpoena itself
- Note the date for responding on the subpoena and use best efforts to meet it

Contact the student

- Contact College Relations for current address
- Send student a copy of the subpoena and notify student of College’s intention to comply
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- Send letter by method that will prove delivery and receipt - certified mail, return receipt requested or by overnight delivery
- Unless there is proper action by the student to stop compliance with the subpoena, the College should move forward with responding

Gathering information

The scope of inquiry for education records potentially covered by a subpoena might include the following. It is the Registrar’s responsibility to seek responses from the appropriate areas:

- Registrar’s file and transcripts
- Student Life (disciplinary files, student activities, etc.)
- Department(s) where student majored
- Student accounts
- Financial Aid
- Advising
- Academic Resource Services
- Athletics
- Admissions

NOTE: Records retained in the Health Center and Counseling Center are not generally within the scope of a student’s education records, and a specific request for such information IN ADDITION to education records must be made.

Preparing information for response

- Verify response from each area from which information was sought
- Make a copy of all information to be sent in response to subpoena
  - One for party issuing subpoena
  - One for the file from which you can verify what information was sent
- Prepare list identifying the documents contained within the pages to be sent
- Complete any forms necessary to accompany subpoena response

Responding to subpoena

- Send responsive documents and list summary to requesting party
- Send response by means that will prove delivery and receipt - certified mail, return receipt requested or by overnight delivery
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**Recordkeeping**

You must retain among records of the College the following:

- A copy of the subpoena
- A copy of the letter to the student
- A copy of the response to the subpoena, including all documents forwarded

**Related Information**

**History/Revision Information**

**Responsible Office/Division:**

**Effective Date:** July 24, 2008

**Last Amended Date:** July 24, 2008

**Next Review Date:**

**Also Found In:**