

THE CITY UNIVERSITY OF NEW YORK

Office of the General Counsel and Vice Chancellor for Legal Affairs

535 East 80 Street, New York, N.Y. 10021


212/794-5382



**STUDENT ADVISORY
MEMORANDUM NO. 9**

June 27, 1991

To: College Presidents

From: Vice Chancellor Robert E. Diaz 

Re: Compliance With Subpoenas for Student Records

This memorandum will provide clarification on procedures for compliance with subpoenas for student records, and whether or not they have to be "so ordered". Subpoenas may be received from private attorney, district attorneys, and other government agencies.

The Student Records Access Policy adopted by the Board of Trustees on April 23, 1979, Cal. No. 6.E at subdivision 9(h), provides that a student's records may be released without prior consent, as follows:

Pursuant to a judicial order or pursuant to a lawfully issued subpoena, provided a notice is mailed to the student three days in advance of compliance, addressed to the last known address, except a shorter period of notice may be authorized by the General Counsel and Vice Chancellor for Legal Affairs. (Emphasis provided)

If time permits, a longer period of notice may be provided to allow the student additional time to receive and review the notice by mail, e.g. five days excluding Sundays and legal holidays. A copy of the judicial order or subpoena should be attached to the written notification.

All subpoenas for records which are served upon CUNY or its constituent colleges must be "so ordered" by a judge, in accordance with Section 2307 of the New York State Civil Practice Law and Rules (C.P.L.R.). This section states in pertinent part that:

A subpoena...requiring the production of any books, papers or other things, shall be issued by a justice of the supreme court in the district in which the book, paper or other thing is located or by a judge of the court in which an action for which it is required is triable.

In responding to subpoenas for student records, the following procedures should be followed:

- a. A copy shall be made of such records. There shall be appended thereto a certification that such copy is a true and accurate reproduction of the original records.
- b. Such certification shall be signed by a vice president, full dean, registrar, financial aid director, or designee of the college president.
- c. The original records are not to be produced, unless specifically ordered by a court and approved by the office of the General Counsel.

In the event a law enforcement agency requests the non-disclosure of a subpoena, the subpoena must contain a non-disclosure order and be "so ordered" by a court.

Subdivision 9(i) of the Board's Student Records Access Policy deals separately with the disclosure of student records in connection with an emergency where "knowledge of the information is necessary to protect the health or safety of the student or other individuals," and states that the college in an emergency may decide to provide access without the prior consent of the student. In deciding whether to release information in an emergency, the factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed include the following:

- 1) The seriousness of the threat to the health or safety of the student or other individuals.
- 2) The need for the information to meet the emergency.

3) Whether the party requesting the information is in a position to deal with the emergency;

4) Whether the party requesting the information has certified in writing or otherwise that knowledge of such information is necessary to protect the health or safety of the student or other persons; and

5) The extent to which time is of the essence in dealing with the emergency.

The Board's Student Records Access Policy also provides that records may be released with the student's written consent, in which event a judicial order or subpoena is not necessary. Attorneys, insurance companies, and others will sometimes provide a written consent in lieu of a subpoena, e.g., for their own client. Subdivision 11 of the policy provides that the written consent must be signed and dated by the student and include:

- a. A specification of the records to be disclosed;
- b. The purpose of the disclosure; and
- c. The party or class of parties to whom the disclosure may be made.

c: Acting Vice Chancellor Tilden J. LeMelle
Legal Affairs Designees
Dean of Students
Registrars

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