

Office of Chief Counsel
Internal Revenue Service
memorandum

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date: October 31, 2002

to: HOWARD P. LEVINE, SPECIAL LITIGATION ASSISTANT (CT) CC:CT:ATL:NAS

from: Joseph W. Clark
Chief, Branch 3 (Collection, Bankruptcy & Summonses) CC:PA:CBS:Br3

subject: IRS Summonses and the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, (FERPA)

LEGEND: None required.

You recently encountered a situation in which _____ State University declined to produce records pursuant to the Service's administrative summons issued under I.R.C. § 7602. The university declined to produce the records because it believed FERPA barred it from doing so unless it received a document styled as an administrative subpoena. FERPA contains an exception to its privacy requirements for records disclosed pursuant to a court order or a "lawfully issued subpoena." 20 U.S.C. § 1232g(b)(2)(B). You requested that we contact the Department of Education and seek its views regarding the status of an administrative summons under FERPA.

We contacted the Department of Education's Family Policy Compliance Office, which administers FERPA and possesses subject matter expertise in that statute. We were informed that the Department of Education has a long-standing position on this issue. It has historically viewed an IRS summons as a "lawfully issued subpoena" under FERPA. Thus, an educational institution can comply with an IRS summons without a parent's or student's written consent for a release of records, so long as that institution follows the requirements of 34 C.F.R. § 99.31(a)(9). That regulation requires an educational institution to 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,"

The Department of Education provided us with a copy of the attached June 10, 2002, letter, which it provided to the Service's Criminal Investigation Office in Philadelphia. That letter contains that Department's interpretation of the relevant FERPA provisions as they apply to IRS summonses. Additionally, the Family Policy Compliance Office has provided us with its electronic-mail address, Ferpa@ed.gov, to which we can refer officials of educational institutions should they require informal advice concerning IRS summonses as "lawfully issued subpoenas" under FERPA.

We were pleased to assist you in this matter. If you have questions or comments, please contact _____ at _____ .

Attachment (1)