

**Responding to an Order of Subpoena Requesting Student Records--Civil Action**

Employee Notification:

A properly served subpoena must be served in person and should include a check if out of district travel is required. A subpoena that is provided by facsimile only has not been lawfully issued and a University employee would not be permitted, under federal law, to comply. The party issuing the subpoena should be notified in writing that the University cannot comply.

Executive Staff Notification:

Employees receiving a subpoena must notify their division provost/vice president. The provost/vice president, in turn, must notify the President's Office.

Institutional requirements when Order of Subpoena is properly served.

- The University must make a reasonable effort to notify the affected party (the student or former student if 18 or older) of the Order of Subpoena in advance of compliance, so that the student (or former student) may seek protective action through the court if objecting to release of the records.
- Document what efforts were made to notify the student (or former student).
- Document what information is being provided; who is requesting the information; and when the information was provided.
- Comply with the Subpoena that "commands to appear."

**Method I** (risk-free due to full compliance with Subpoena)

- A. Contact the student (or former student) to inform her/him that the records will be disclosed on the date of the Subpoena unless the student objects by obtaining a court order for protective action by that date. Otherwise the records are delivered in person to the court or at the deposition as ordered by the Subpoena. Records should not be provided to the requesting attorney in advance of the court or deposition date.
- B. If the student objects to the release of the records, notify the student that he/she has until 24 hours before the "command to appear" date on the Subpoena to notify the University in writing, with a copy of the court order that protective action has been obtained, otherwise the records will be disclosed. If proof of protective action is not provided by the date indicated, the subpoenaed employee may express deliver the documents in lieu of appearing in person if the employee seeks from the attorney who issued the subpoena, and is granted, a release from appearing in court or at a deposition.

**Method II** (risk-free and may not require record custodian to appear in court or at deposition)

Contact the student to see if she/he does not object to the release of the records. If no objection, the records can be released to the requesting party in advance of the date of the hearing or deposition. The University employee must seek from the attorney who issued the subpoena a release from appearing in court or at a deposition in lieu of providing the requested documents in advance of the court or deposition date.

Reimbursable Charges:

Departments may charge for copies and postage to meet requests for information. When the labor costs are significant, reasonable charges for compilation time may be billed.