

APPENDIX B

PROCEDURAL GUIDELINES RELATED TO SUBPOENAS FOR STUDENT EDUCATION RECORDS ISSUED BY STATE OF HAWAI'I OR FEDERAL COURTS

Types of Court Subpoena

Type 1: For attendance of witnesses.

Type 2: For the production of documentary evidence.

Type 3: For taking depositions (responding to written questions posed by an attorney, court, or legal service).

A subpoena duces tecum compels attendance to testify as a witness and further directs the individual to bring with him designated documents.

Acceptance of Subpoena

The Registrar and the Registrar's designee(s) are the only staff members authorized to accept subpoenas related to official academic records. If the subpoena is addressed specifically to:

1. "Custodian of Education Records" or "Registrar" - either the Registrar or the Registrar's designee(s) may accept the subpoena.
2. "A person" - then, only the named individual can accept the subpoena.

If the Registrar and the Registrar's designee(s) are not available or absent, advise the deputy sheriff (who is trying to serve the subpoena) to return at another time. Record the name and number of the deputy sheriff serving the subpoena so that the Registrar or the designee can contact the deputy sheriff as soon as they are able to receive the subpoena.

Scope of Subpoenaed Materials

Only official and primary academic records (e.g., academic transcripts and admissions applications) can be submitted in compliance with subpoenas served on registrars because registrars are custodians of only these records. If other records are also being subpoenaed, the attorney who requested the subpoena should be advised immediately to serve new subpoena(s) on the appropriate record custodian responsible for the student's other education records.

Procedure for Registrar

A. Upon Acceptance of Subpoena

1. Contact the judge, his court clerk, or the attorney who requested the subpoena and inform them of FERPA requirements and related University procedures including the necessity of notifying the affected student with a UH FERPA Form 5. Such procedures normally require 10 calendar days if the student resides in Hawai'i, 14

- calendar days if the student resides on the U.S. mainland, and 30 calendar days if the student lives in a foreign country. Any contact with the requesting attorney or court official should be recorded. If contact is over the telephone, follow up letters should be sent to confirm all conversations.
2. If the date for compliance with the subpoena does not allow enough time for meeting FERPA notification requirements, the Registrar should contact the attorney who requested issuance of the subpoena and explain the need for his stipulation for an extension of time. If the attorney refuses to provide an extension of time, the Registrar is legally required to appear before the judge or other court or administrative officer named in the subpoena at the designated time and location. (Failure to do so could result in the Registrar being found in contempt of court.) At that appearance, the Registrar should advise the judge or other court officer of his need for additional time in order to comply with FERPA regulations which require that the educational institution make a reasonable effort to notify the student of a subpoena or other judicial order requesting personally identifiable information in advance of compliance therewith, as required under 45 C.F.R. Section 99.31 (a) (9).
 3. Obtain the following information from the court which issued the subpoena or the attorney who requested the subpoena:
 - a. Biodata of the student whose academic records are being subpoenaed; e.g., SS#, full name including middle and/or former name(s) or “AKA’s”, date of birth, current mailing address, and telephone number.
 - b. Name, telephone number and mailing address of the student’s attorney of record (if any).
 4. Inform the student that his/her academic record is being subpoenaed:
 - a. Via Telephone – If a telephone number is available, try to contact the student by phone. If the telephone contact is made, follow up with a confirming letter for the record including whatever arrangements that have been made for an extension of the date for compliance. Additionally, attach a FERPA Form 5 and a photocopy of the subpoena.
 - b. Via mail – If telephone contact is impossible, attach a photocopy of the subpoena to FERPA Form 5 and mail it promptly to the student at his/her last known address. Be careful to allow appropriate notification time as stipulated in A-1.
 5. Inform the student’s attorney of the subpoena:
 - a. If the student has an attorney of record, contact and advise this attorney of the subpoena for the student’s records. This contact will probably be easily made by telephone. The Registrar should note this telephone contact in his or her files and mail a confirming letter to the student’s attorney.
 6. Contact the Office of the University General Counsel at (808)956-2211 if there are any questions with regard to other subpoena requirements.