

NOTE: This letter was reformatted to make it more accessible on the Student Privacy Policy Office's (SPPO's) website. Please note that SPPO administers FERPA and the office's prior name was the Family Policy Compliance Office (FPCO). Some citations in this letter may not be current due to amendments of the law and regulations. SPPO has not revised the content of the original letter. Any questions about the applicability and citations of the FERPA regulations included in this letter may be directed to FERPA@ed.gov.

October 29, 1993

Mr. Robert E. Bienstock
Associate University Counsel
The University of New Mexico
Scholes Hall 150
Albuquerque, New Mexico 87131-0056

Dear Mr. Bienstock:

This is in response to your letter, dated September 2, 1993, addressed to Ms. Frances Moran, regarding the Family Educational Rights and Privacy Act (FERPA). Your letter was referred to this Office for response because we administer FERPA. Specifically, you ask "at what point in the process of application, acceptance, mailing in a deposit, attendance at orientation sessions, matriculation, and attendance at classes" is a student considered "in attendance" for the purposes of FERPA. In your letter, you also state the following:

Because we are constantly inundated with requests for communication by parents of student-applicants and admittees, for assistance in making arrangements for orientation, student housing, registration, and the like, and because we prefer to continue communicating with these parents as long as possible in order to assist high school students in making the transition to college, it is imperative that we know precisely when we may no longer communicate to the parents without specific written consent from the students....

As you are aware, FERPA affords parents and eligible students certain rights with respect to the student's education records. When a student has reached the age of 18 or is attending an institution of postsecondary education, the student becomes an "eligible student" and all rights afforded by FERPA transfer from the parent to the student. Prior to that time, FERPA rights belong to the parents. FERPA defines the term "student" as any individual who is or has been in attendance at an-educational agency or institution.

With regard to your specific question as to when a student would be considered "in attendance" for the purposes of FERPA, neither the statute nor the regulations offer guidance which would provide further clarification. Historically, the Department has left it to each institution to determine when a student is considered to be "in attendance" at that particular institution.

However, such a determination should be justified by some reasonable basis of fact. Please note that the Department reserves the right ultimately to conclude whether, as a matter of Federal law, the facts on which the determination is based are relevant and reasonable and that such determination is applied consistently.

With regard to your concern that the University be able to continue communication with parents for as long as possible, you may wish to consider the following alternative. As you know, FERPA limits an educational agency or institution's ability to release personally identifiable information from a student's education records without the student's prior written consent. However, FERPA also provides certain exceptions to this general limitation on disclosure under section 99.31. One of these exceptions permits a school to disclose information from a student's education records to that student's parent if the student is claimed as a dependent for income tax purposes. Specifically, FERPA states that a school can disclose education records without prior written consent if:

The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

34 CFR 99.31(a)(8). While FERPA does not offer guidance on what may be considered adequate documentation of a student's status as a dependent, this Office would support a policy of documenting a student's dependency status by requiring a parent seeking access to his or her child's education records to supply a copy of the parent's most recent Federal income tax form, as was the University's previous policy.

Additionally, nothing in FERPA would preclude a university from requiring students to identify their status at the time of registration or even application for incoming freshmen and transfer students. If an institution elects to adopt such a requirement, we believe that students should be advised of the reason why they are asked about their tax status as dependents and suggest the following or a similar statement to students:

Under FERPA, the University may disclose information from the education records to parents of a student who is "dependent" under the Federal tax laws without the student's consent. Have you been claimed by your parents as a dependent for Federal tax purposes?

Thereafter, if a parent were to request access to information from a student's education records and those records have been identified as the records of a non-dependent student, the record custodian could then ask that the parent supply a copy of his or her most recent Federal income tax form before access to those records would be given. In this way, the burden on a university of obtaining proof of a student's dependent status from a parent would be removed in many instances and colleges and universities could more readily distinguish those students who are dependent students from those who are not.

I trust that the above information is responsive to your inquiry. Should you have any further questions on FERPA, please feel free to contact this Office again.

Sincerely,

/s/

LeRoy S. Rooker

Director

Family Policy Compliance Office