

CHANCELLOR'S OFFICE LEGAL OPINIONS INTERSEGMENTAL POLICY ON DISCLOSURE OF INFORMATION FROM STUDENT RECORDS

INTRODUCTION

The purpose of this memorandum of agreement among the heads of the public segments of California is to clarify the limits of the law with respect to disclosure of information from student records, to define the conditions for such disclosure, and to describe a set of acceptable practices to be followed in disclosing such information.

Background

The privacy of student records is a critical consideration in our efforts to improve services to students and to ease the student's transition from one institution or program to another. Colleges need information such as ethnicity, income, and academic performance to focus their outreach efforts on eligible students and to determine the services needed by a particular student. Schools and colleges need information on the subsequent performance and achievement of their students in order to evaluate the effectiveness of the services they provide.

Summary

The laws, federal and state, do not preclude access to such information for such legitimate purposes, but they do place necessary limits on access to records and on the subsequent use of information from those records. The limits on access to information depend on the purpose (outreach or evaluation), the nature of the information sought (directory information or non-directory information), the status of the person requesting access (state education official or his designee), and the status of the student's file (prior consent form on file or not).

Directory information is that specified as such, within the limits of the statutes, by the institution which maintains the student record. Absent an explicit objection from the student or guardian, access to directory information is assured for purposes of outreach as well as evaluation.

Access to non-directory information in student records which contain an effective prior consent form is allowed. In the absence of such a consent form, access to non-directory information is not allowed for purposes of outreach. However, a determination of eligibility based on non-directory information may be made by the institution holding the records and the individual may be identified for outreach services if certain procedures are observed (see acceptable practices).

Delimitations

The question of reimbursement for the costs of accessing student records is not dealt with in this memorandum. It is thought that such questions can be handled best on a case-by-case basis. There is no expectation that this memorandum has anticipated all of the variations that may arise in practice, but these mutually accepted guidelines may provide a common foundation and guidelines for considering such unanticipated questions as they arise.

INFORMATION FROM STUDENT RECORDS

Legal Opinion

Questions frequently arise about possible conflict between the protections of state and federal law limiting access to student records on the one hand and, on the other, the desire to review student records by student affirmative action, EOP, EOPS, and other college outreach program staff. These staff seek access to student records to determine ethnicity, income, academic performance, and other pertinent information to assist them in contacting and recruiting qualified high school or Community College students, and to improve the coordination and evaluation of the programs themselves. This memorandum discusses ways in which these objectives can be met without violating applicable state and federal law.

Applicable Law In 1974, Congress passed the Family Educational Rights and Privacy Act as one of a number of amendments to the Elementary and Secondary Education Act of 1965 [20 USC 1232g]. This Act provides that an educational institution which receives federal funds may not, except under specified circumstances, release personally identifiable information in student records without the written consent of the students themselves or their parents. California has adopted similar legislation to bring the State into compliance with the federal law. [The California student records acts, California Education Code Sections 49060 a sea. and 67140 et seq., the California Information Practices Act of 1977, Civil Code Section 1798 et seq., and the California Public Records Act, Government Code Section 6250 et seq.]

The simplest and most straightforward way of getting confidential information from student records is to obtain the written consent of the students or their parents or guardians. Attached is sample wording for a consent form which could routinely be included in registration materials to accomplish this. Schools and colleges are encouraged to make the consent form a standard part of their registration materials. The remainder of this memorandum considers how outreach and evaluation activities can be facilitated where written consent has not been obtained.

Directory Information

One exception to the general prohibition against permitting access to student records is that certain information, referred to as "directory information," may be released unless the student or parent specifically objects [20 USC 12323 (a)(5)(B) and Sections 67140, 76240, and 49073 California Education Code]. Directory information may include the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational institution or agency attended by the student.

Non-directory Information

While directory information can be used for either outreach or evaluation activities, it does not contain some critical information for certain programs, such as ethnicity or income. The succeeding sections describe limits on access to non-directory information and methods of conducting evaluation and outreach activities subject to these constraints. Access to Non-directory Information for Evaluation: Non-directory information in a student record can be used for tracking and monitoring the performance of students in order to evaluate the effectiveness of student affirmative action programs. This is because the statutes permit the release of personally identifiable information to

State education officials or their designees for purposes of auditing or evaluating federally funded programs or enforcing the requirements of federal law [20 USC 1232g (b)(1)(C)(iv) and Sections 67143(b), 76243(b), and 49076(a)(3) California Education Code]. (State statutes also permit access for auditing or evaluating State-funded programs or enforcing State law.) Generally this exception justifies gathering information about only those students who have participated in the program during the time period being studied.

However, it also permits release of information about students who have not participated in the program if they are part of a control group to be studied as part of the evaluation. But even in this latter case, such information can be used only for evaluating the program and not to conduct outreach.

The statutes specify that information released to State education officials under the exception must be protected from release to third parties and must be destroyed when no longer needed for the purposes for which it was requested. Thus, personally identifiable information collected for the evaluation of student affirmative action programs is subject to these conditions. The information pertinent to a particular evaluation period must be destroyed when that evaluation is completed, and methods must be developed to protect such information from disclosure to third parties.

Access to Non-directory Information for Outreach: Privacy statutes prohibit educational institutions from permitting access to non-directory information about their students without the written consent of the student or parent. Under State law, access is defined to mean a personal inspection and review of a record or a copy thereof, an oral description or communication of a record, and release of a copy of the record.

At first glance, two exceptions would seem to permit institutional representatives to have access to non-directory information despite this general prohibition, but on closer inspection it becomes clear that neither exception is applicable to outreach.

The first exception, discussed earlier, permits institutions to release any information in a student record to State education officials for auditing or evaluating State or federally funded programs or enforcing the requirements of State and federal law. However, outreach cannot be considered auditing or evaluating and since no statutory mandate exists to conduct outreach, the collection of this information cannot be characterized as necessary to the enforcement of State or federal law.

Second, information may be released to organizations conducting research for or on behalf of educational institutions for the purpose of developing, validating, or administering predictive tests, administering student aid, or improving instruction [20 USC 12328 (b)(1)(F) and Sections 67143(g), 76243(g), and 49076(b)(4) California Education Code].

In the case of outreach, the information is not used to administer or validate tests, nor does it involve improving instruction since the programs are merely seeking to make existing forms of special instruction and support available to more students. Although this exception might appear to permit access to personally identifiable information if a student affirmative action, EOP, or outreach program also administers student aid, such programs do not qualify as research organizations.

Since these exceptions do not apply, outreach activities cannot involve directly accessing student records to gain non-directory information. However, the following

strategies can be used to facilitate outreach without fear of violating the restrictions imposed by the privacy statutes.

Collection of Non-record Information

While privacy statutes limit access to and use of information contained in student records, school or college staff are free to provide representatives of outreach programs with information derived from sources other than student records, such as through personal observation.

1. Example of Permitted Practice: The requestor asks the record holder to provide a list of names of Black students with good grades and an interest in journalism. The record holder compiles the list from personal knowledge of the students. This is permissible since it does not involve accessing student records and is beyond the scope of the statutes.

2. Example of Prohibited Practice: Same as above except that in this case the record holder reviews student records and compiles the list. This would violate the statute, unless the students in question had given their consent, because ethnicity and GPA are non-directory information.

Arranging Meetings

An institution may use non-directory information from student records to identify students who may be eligible for certain programs and may arrange meetings for these students with appropriate outreach program representatives, so long as students are not personally identified.

1. Example of Permitted Practice: The requestor asks the record holder to arrange a meeting or series of meetings with all Hispanic students with a 3.0 or better GPA. The record holder does not tell the requester who will be attending the meetings and the requestor must rely on the students to voluntarily identify themselves. This is acceptable since the record holder did not disclose any information to the requester which would make it possible to personally identify any particular student without his or her consent.

2. Example of Prohibited Practice: Same as above except that in this case the record holder hands the requester a list saying, "here are the names and addresses of the students who will be meeting with you." This is not permissible because the record holder has effectively disclosed (through oral communication) non-directory information about certain specific personally identifiable students.

Mailings

Similarly, an institution may assist outreach programs by mailing information to a particular target group of students. However, if the grouping of students is defined by non-directory information such as ethnicity, then the institution may not release the mailing list to the outreach program to conduct its own mailings.

1. Example of Permitted Practice: The requestor says to the record holder, "We would like you to send this brochure about our program to all of your Native American students who will be graduating this spring and we will reimburse you for the cost of the mailing." This is acceptable because it does not involve allowing access to student records to anyone outside the school.

2. Example of Prohibited Practice: The requestor asks the record holder to supply a mailing list for all Native American students who will be graduating from the school. Fulfilling this request is not permissible since it would mean that the requestor could personally identify certain students as belonging to a particular ethnic group.

Use of Financial Aid Information

The statutes provide that non-directory information can be released in connection with an application for financial aid {20 USC 1232g (b)(l)(D) and Sections 67143(e), 76243(e), and 49076(b)(2) California Education Code}. If an outreach program also provides financial aid, then an institution may release non-directory information to representatives of that program on those students who have filed an application for financial aid. However, only that information necessary to the determination of eligibility for financial assistance may be released under this exception.

1. Example of Permitted Practice: The requester presents the record holder with a list of students who have submitted applications for financial aid to the requestor's institution. The requestor explains that his program provides financial assistance to qualified low income ethnic minority students, and that it would speed the determination of their eligibility for such assistance if the record holder could consult their records and identify their ethnicity. This is permissible under the exception.

2. Example of Prohibited Practice: Same as above, except that the requestor asks the record holder for a list of names and addresses of students who might be in need of financial assistance, but no application has been filed. This is not acceptable because the exception to the statute specifically requires that the information be released in connection with an application for financial aid.

Use of Consultants

Privacy statutes permit sharing non-directory information with other employees of the institution the student attends. Thus, an institution that is concerned about improving opportunities in higher education for its students may engage a consultant to assist in working with disadvantaged students. It sometimes happens that a person working in an outreach program at a local college or university serves in such a capacity and thereby gains access to non-directory information in student records. This is permissible under the statutes so long as the individual in question is clearly acting as an agent of the record-holding institution and does not retain or use non-directory information about students for the outreach program for which he or she is regularly employed.

1. Example of Permitted Practice: Institution X hires A, who is regularly employed by institution Y in its outreach program, as a consultant to assist in a new program to encourage the students of X to attend college. A sets up a meeting with all of the eligible students at X and makes a presentation about opportunities in local colleges and special programs, including the program operated by Y, which may be able to assist them. She mentions that she is an employee of the program at Y and that if they want more information about that program they should contact her at her office at Y. This is acceptable because A does not retain any record on the students after the special project.

2. Example of Prohibited Practice: Same as above except that while participating in the project, A is given access to non-directory information about the students at X. After completing the project, A makes a list of the names and addresses of students who would be eligible for her program at Y and sends them a contact letter on behalf of Y. This is not permissible because it permits A, in her capacity as an employee of Y, to have access to personally identifiable information other than directory information.

3. Example of Prohibited Practice: As above, except that X and Y decide to set up a joint program to improve opportunities for the students at X to attend Y after graduation.

As a part of the project, A accesses non-directory information in the student records of X and uses this information to contact students who would be eligible for special assistance at Y. This is not permissible because A must be an agent of X alone.

SUMMARY

The Family Educational Rights and Privacy Act and its State companion statutes generally prohibit educational institutions from releasing personally identifiable information about their students to third parties. However, these statutes describe certain classes of information, called directory information, which an institution may release unless the student or parent has specifically objected. The best way to gain access to additional information is to obtain the written consent of the student or parent. In addition, if proper precautions are taken to protect information from further disclosure and to destroy it when no longer needed, educational institutions may release personally identifiable information from student records to State education officials for the purpose of evaluating student affirmative action programs. On the other hand, such information cannot be released for the purpose of conducting outreach to high school or Community College students absent written consent. But certain techniques, discussed above, for facilitating outreach activities are permissible notwithstanding the privacy statutes.

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ATTACHMENT - CONSENT FORM

I hereby consent, for the period of my current registration, to the release of information from my student records maintained by (name of school. college. or university); consistent with the Federal Family Educational Rights and Privacy Act of 1974, or other laws, regulations, or policies; to designated representatives of other educational institutions in order that they may determine my eligibility for and need of special services provided by their institutions.

(signature) We)

(guardian's signature if under 18) (date)

ARTICLE 2. PERIOD OF RETENTION

Section 59023. Class I-Permanent Records.

The original of each of the records listed in this Section, or one exact copy thereof when the original is required by law to be filed with another agency, is a Class I-Permanent records and shall be retained indefinitely, unless microfilmed in accordance with Subsection (e) of Section 59022.

(a) The following annual reports:

- (1) official budget;
- (2) financial report of all funds, including cafeteria and student body funds;
- (3) audit of all funds;
- (4) full-time equivalent student, including Period 1 and Period 2 reports; and
- (5) other major annual reports, including:

(A) those containing information relating to property, activities, financial condition, or transactions; and

(B) those declared by board minutes to be permanent.

(b) The following official actions:

(1) minutes of the board or committees thereof, including the text of a rule, regulation, policy, or resolution not set forth verbatim in minutes but included therein by reference only;

(2) elections, including the call, if any, for and the result (but not including detail documents, such as ballots) of an election called, conducted or canvassed by the governing board for a board member, the board member's recall, issuance of bonds, incurring any long-term liability, change in maximum tax rates, reorganization, or any other purpose; and

(3) records transmitted by another agency that pertain to that agency's action with respect to district reorganization.

(c) The following personnel records of employees. All detail records relating to employment, assignment, employee evaluations, amounts and dates of service rendered, termination or dismissal of an employee in any position, sick leave record, rate of compensation, salaries or wages paid, deductions or withholdings made and the person or agency to whom such amounts were paid. In lieu of the detail records, a complete proven summary payroll record for every employee of the school district containing the same data may be classified as Class I-Permanent, and the detail records may then be classified as Class 3-Disposable.

(d) The following student records:

(1) the records of enrollment and scholarship for each student. Such records of enrollment and scholarship may include but need not be limited to:

(A) name of student;

(B) date of birth;

(C) place of birth;

(D) name and address of a parent having custody or a guardian, if the student is a minor;

(E) entering and leaving date for each academic year and for any summer session or other extra session;

(F) subjects taken during each year, half year, summer session or quarter; and

(G) if grades or credits are given, the grades and number of credits toward graduation allowed for work taken.

(2) All records pertaining to any accident or injury involving a student for which a claim for damages has been filed as required by law, including any policy of liability - insurance relating thereto, except that these records cease to be Class I-Permanent records, one year after the claim has been settled or after the applicable statute of limitations has run.

(e) Property Records. All detail records relating to land, buildings, and equipment. In lieu of such detail records, a complete property ledger may be classified as Class I-Permanent, and the detail records may then be classified as Class 3-Disposable, if the property ledger includes:

(1) all fixed assets;

(2) an equipment inventory; and

(3) for each unit of property, the date of acquisition or augmentation, the person from whom acquired, an adequate description or identification, and the amount paid, and comparable data if the unit is disposed of by sale, loss, or otherwise.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 7090 1, Education Code.

Section 59024. Class 2-Optional Records.

Any record worthy of further preservation but not classified as Class I-Permanent may be classified as Class 2-Optional and shall then be retained until reclassified as Class 3-Disposable. If the chief executive officer, or other designee, determines that classification should not be made by the time specified in Section 59022, all records of the prior year may be classified as Class 2- Optional, pending further review and classification within one year.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

Section 59025. Class 3-Disposable Records.

All records, other than Continuing Records, not classified as Class I-Permanent or Class 2- Optional, shall be classified as Class 3-Disposable, including, but not limited to, detail records relating to:

(a) records basic to audit, including those relating to attendance, full-time equivalent student, or a business or financial transaction (purchase orders, invoices, warrants, ledger sheets, canceled checks and stubs, student body and cafeteria fund records, etc.), and detail records used in the preparation of any other report; and

(b) periodic reports, such as daily, weekly, and monthly reports, bulletins, and instructions.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 7090 1, Education Code.

Section 59026. Retention Period.

(a) Generally, a Class 3-Disposable record, unless otherwise specified in this Subchapter, should be destroyed during the third college year after the college year in which it originated (e.g., 1993-94 plus 3--l 996-97). Federal programs, including various

student aid programs, may require longer retention periods and such program requirements shall take precedence over the requirements contained herein.

(b) With respect to records basic to an audit, a Class 3-Disposable record shall not be destroyed until after the third July 1 succeeding the completion of the audit required by Education Code Section 84040 or of any other legally required audit, or that period specified by Section 59118, or after the ending date of any retention period required by any agency other than the State of California, whichever date is later.

(c) With respect to continuing records, a continuing record shall not be destroyed until the third year after it has been classified as Class 3-Disposable.

Note: Authority cited: Sections 66700, 70901, 71020.5 and 84500, Education Code.

Reference: Section 70901. Education Code.