

Transcript Release: Legal Opinion

QUESTION POSED

MAY A STUDENT OR HIS/HER PARENT(S) GUARDIAN(S) OR LEGAL REPRESENTATIVE AUTHORIZE RELEASE OF HIS/HER ACADEMIC TRANSCRIPTS TO ISACS FOR THE PURPOSES OF A LONGITUDINAL STUDY?

ANSWER

YES. A STUDENT OR HIS/HER PARENT(S) GUARDIAN(S) OR LEGAL REPRESENTATIVE MAY, BY A PROPERLY EXECUTED TRANSCRIPT REQUEST FORM, AUTHORIZE THE RELEASE OF HIS/HER ACADEMIC TRANSCRIPTS TO ISACS FOR THE PURPOSES OF STATISTICAL ANALYSIS OR FOR THE PURPOSES OF AIDING ISACS TO CARRY OUT ITS ACCREDITING FUNCTIONS.

DISCUSSION

Traditionally, student records were considered public records of a private character and were not generally available to the public but only to a parent or student. *Valentine v. Independent School District of Casey*, 187 Iowa 555, 174 N.W. 334 (1919). The special right of the parent existed to aid the parent in the discharge of the parent's duty to care for the child. *Van Allen v. McCleary*, 27 Misc.2d 81, 211 N.Y.S.2d 501 (1961).

In the wake of the apparent abuse of student privacy and concern for more certain parental and student access to student records, Senator James Buckley introduced legislation known as the Family Educational Rights and Privacy Act (FERPA) or, more popularly, the Buckley Amendment, after its principal sponsor, as an amendment to the bill extending the Elementary and Secondary Education Act of 1965. Pub.L.No. 93-380; 20 U.S.C. §1232g. The law was enacted on August 21, 1974, and took effect on November 1974. FERPA was subsequently amended on December 1, 1974, and took effect January 4, 1975. Pub. L. No. 93-568. A subsequent amendment was adopted effective August 6, 1979. Pub. L. No. 96-46.

FERPA assures parents of students, and students themselves if they are over 18 years of age or attending an institution of post-secondary education, access to their education records. Secondly, FERPA protects the individuals' right to privacy by limiting the transferability and disclosure of information in their records without prior consent.

A parent of an eligible student may waive any of the student's rights under FERPA. Rule 99.7(a). An educational institution may request, but not require, a waiver of rights under FERPA. Treas. Reg. 599.7(b). A waiver may not be required as a condition of admission to, receipt of financial aid from, or receipt of any other services or benefits from an educational institution. 20 U.S.C. §1232g(a)(1)(C).

An educational institution may disclose personally identifiable information from the education records of a student even without written consent if it is being disclosed to

organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted. 20 U.S.C. §1232g(b)(1)(F); Rule 99.31(a)(6).

Disclosure without consent may be made to "accrediting organizations in order to carry out their accrediting functions." 20 U.S.C. §1232g(b)(1)(G); Rule 99.31(a)(7). Contemplated are organizations such as the North Central Accreditation Association.

CONCLUSION

Based on the foregoing and when read in the light most favorable to protecting the privacy rights of students as set out in FERPA, we are of the opinion that:

STUDENTS OR THEIR PROPERLY DESIGNATED REPRESENTATIVES MAY WAIVE THEIR RIGHTS UNDER FERPA.

THE WAIVER OF RIGHT MUST BE IN WRITING WITH SELF-EXECUTING TIME LIMITATIONS.

WITH PROPERLY EXECUTED DOCUMENTATION PERSONALLY IDENTIFIABLE DATA AND/OR REDACTED OR NON-PERSONAL IDENTIFIABLE DATA MAY BE RELEASED TO ACCREDITATION ASSOCIATIONS SUCH AS ISACS FOR STATISTICAL AND OTHER PURPOSES PERFORMED BY ISACS ON BEHALF OF ITS MEMBERSHIP.

TRANSCRIPTS CONSTITUTE THAT SPECIES OF DATA, DOCUMENTATION AND/OR STUDENT RECORDS, AS THOSE TERMS ARE SET OUT IN FERPA AND APPLICABLE STATE OR LOCAL STATUTES WHICH ARE INTENDED TO PROTECT STUDENT PRIVACY AND GOVERNMENT RECORDS.

WHEN LOCAL LAW IS IN CONFLICT WITH FERPA THE MORE SPECIFIC STATUTE SHOULD CONTROL OVER THE GENERAL PROVISION(S).

THE FEDERAL GOVERNMENT HAS NOT PREEMPTED THE FIELD OF LAW DEALING WITH THE RIGHTS OF STUDENTS TO PRIVACY OF THEIR STUDENT RECORDS.

WHENEVER AND WHEREVER POSSIBLE OPT OUT FOR USING NON-PERSONALLY IDENTIFIABLE OR REDACTED DATA.

Any person relying on this opinion should call the undersigned to inquire as to its current status and or applicability to a specific set of facts or situations.

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