

SB

27

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

No. 1
Bill Version: SB 27
(S) Publish Date: 2-25-99

Revision Date: _____
Title: An Act relating to school records and driver license records of certain children
Sponsor: Senator Leman
Requestor: (S) HES

Department Affected: Administration
BRU: Motor Vehicles
Component: _____
COMPONENT SERIAL NO. 2348

Expenditures/Revenues: (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 99) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill allows parents who are financially responsible for the actions of a minor driver to obtain the driving record of that minor. This bill has no fiscal impact on DMV.

Prepared by: Charles R. Hosack
Division: Motor Vehicles

Phone: 269-5559
Date: _____

Approved by Commissioner: Robert Poe Jr.
Agency: Department of Administration

Date: 2/19/99

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FISCAL NOTE No. 2

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: SB 27
(S) Publish Date: 2-25-99

Revision Date/Time (Note if correction) _____ Dept. Affected Education
 Title School Records and Driver BRU Teaching and Learning Support
 License Records of Certain Children _____ Component _____
 Sponsor Senator Leman _____
 Requester _____ Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	*	*	*	*	*	*
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 1 of this bill directs districts to provide a copy of a child's record, upon the request of a parent or guardian of a child under 18 years of age currently, or previously, enrolled in a school district.

* It is impossible to determine what the cost to the school districts will be.

Prepared by Barbara Thompson Phone 465-8727
 Division Teaching and Learning Support Date/Time 2/12/99 1:43 PM
 Approved by Commissioner: Shirley J. Holloway, Ph.D. Date 2/19/99
 Agency Department of Education

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SENATOR LOREN LEMAN

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Sponsor Statement - CS for SB 27 (FIN)

"An Act relating to school records and driver license records of certain children."

Senate Bill 27 ensures parents will have access to important records about their minor children, and also requires school districts to share information with other districts about potentially dangerous transfer students.

The Division of Motor Vehicles will not allow a parent or legal guardian to review a minor's driving record. AS 28.15.151(f) declares that "information and records under this section are... confidential and private." An exception in the law allows DMV to provide a certified abstract of an individual's driving record to a municipal, state, or federal administrative or judicial agency. However, no exception exists to allow parental access.

Denying parents this information is unfair and nonsensical given that state law requires a parent or legal guardian to sign a minor's application for a driver's license. Furthermore, state law holds the parent or guardian who signed the application liable for any damage caused by negligence or wilful misconduct of the minor while operating a motor vehicle [AS 28.15.071(b)].

A driving record includes information that could help parents determine whether their child is driving safely: accident reports; convictions of vehicle, driver, and traffic offenses; and any actions taken upon the driver's license, such as suspension.

SB 27 also requires school districts to make copies of a minor child's school record available to parents. Although most districts in Alaska voluntarily make school records available, parents have no explicit right under state law to review this information. However, it is the federal government's policy to deny funding to any educational agency or institution that denies parental access to school records. SB 27 adds clarity to Alaska law by clearly stating that parents have this right.

Finally, SB 27 requires school districts to transfer certain information about a child who moves from one school district to another. If a student has committed an offense that is punishable as a felony, or if the student has committed any offense involving the use of a deadly weapon, this information must be included in the student record information that follows the child from one district to another. This provision will help school districts protect their students from potentially dangerous young offenders.

Public officials are often heard imploring parents to become more involved in the lives of their children. However, rather than helping parents do their job, government sometimes creates obstacles. By removing a few of these legal impediments, SB 27 takes a small step toward helping parents meet their responsibilities.

FROM : CAROLYN

PHONE NO. : 9072489962

Mar. 22 1999 10:10AM P1

March 22, 1999

Representative Norman Rokeberg
State Capitol
Juneau, AK 99801

Dear Mr. Rokeberg,

I would like to offer this letter as a means of support and to say thank you for listening and taking action on behalf of a citizen and voter from your district.

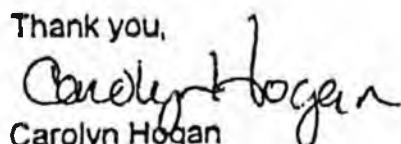
Sometime last fall (1998) I received a notice from the Municipality of Anchorage advising me of a \$300.00 fine my minor daughter received while driving. It was her second citation in as many years and I felt quite concerned and pressed to check into her driving record. She had not informed me or her father of these citations, we heard about them through the mail.

I called the DMV in Anchorage and was told that in order to get a copy of my minor daughters' driving record that I would have to get her written permission. Needless to say, I was outraged. Parents are held accountable to the strictest standards when it comes to their childrens' actions, but on the other hand minor children have little to no accountability to their parents.

This law needs to be changed. It is unreasonable and sadly outdated. Please support House Bill entitled

"An Act relating to driver license records of certain children."

Thank you,


Carolyn Hogan
PO Box 221544
Anchorage, AK 99522-1544

(907) 349-4881

payment of the required fee, obtain a duplicate license. A person who recovers an original license for which a duplicate has been issued shall immediately surrender the duplicate to the department. (§ 19 ch 178 SLA 1978)

Sec. 28.15.150. Records. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.151. Records to be kept by the department. (a) The department may maintain a file of

(1) every driver's license application, license or permit and duplicate driver's license issued by it;

(2) every license that has been suspended, revoked, canceled, limited, restricted, or denied, and the reasons for those actions; and

(3) all accident reports required to be forwarded to the department under this title.

(b) The department may also maintain a file of all accident reports, abstracts of court records of convictions of vehicle, driver, and traffic offenses, and other information which the department considers necessary to carry out the purposes of this chapter.

(c) The department shall, upon request, subject to the applicable provisions of AS 12.62 and (f) of this section and without charging a fee, furnish a municipal, state, or federal administrative or judicial agency with a certified abstract of the driving record of a driver. The abstract must include a listing of accidents in which the driver has been determined by the department or a court of competent jurisdiction to have been liable, convictions of vehicle, driver, and traffic offenses, any actions taken upon the driver's license, and information relating to financial responsibility.

(d) The department shall, upon request and payment of a fee determined by the commissioner, furnish a driver or a person designated by the driver with an abstract or the original copy of the computer printed record of the driver's record as provided in (c) of this section.

(e) *[Repealed, § 2 ch 144 SLA 1980.]*

(f) Except as provided otherwise in this section, information and records under this section are declared confidential and private. (§ 19 ch 178 SLA 1978; am §§ 1, 2 ch 144 SLA 1980)

Opinions of attorney general. — Most, but not all, information pertaining to motor vehicle accidents contained in Department of Transportation and Public Facilities files or the computer data base is public information and should be released upon request. However, certain information regarding particular

accidents, including individual names and specific driver's license information, must remain confidential by operation of statute. March 30, 1988, Op. Att'y Gen.

Collateral references. — In: action of motor vehicle records, right as to, 84 ALR2d 1261.

Sec. 28.15.160. Court reports. [Repealed, § 19 ch 178 SLA 1978.]

Article 2. Cancellation, Suspension, Revocation or Limitation of Drivers' Licenses.

Section

- 161. Cancellation of driver's license
- 165. Administrative revocations and disqualifications resulting from chemical sobriety tests and refusals to submit to tests
- 166. Administrative review of revocation
- 171. Suspending privileges of a person licensed in another jurisdiction; reporting convictions, suspensions, disqualifications, and revocations
- 181. Court suspensions, revocations, and limitations
- 183. Administrative revocation of license to drive
- 184. Administrative review of revocation of a minor's license

Section

- 185. Court revocation of a minor's license to drive
- 187. Administrative revocation of a license to drive for use of false identification.
- 189. Administrative review of revocation of license for use of false identification
- 191. Court reports to department
- 201. Limitation of driver's license
- 211. Periods of limitation, suspension or revocation; opportunity for hearing and surrender of license
- 219. Definitions

Sec. 28.15.161.

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Safety. Knudsen v. City

(Alaska 1960), overruled

State, 458 P.2d 340 (Al

Collateral referenc

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Sec. 28.15.165.

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Gifts Act) or a living will under AS 18.12 (Living Wills and Do Not Resuscitate Orders) by displaying posters in the offices in which applications are taken, by providing a brochure or other written information to each person who applies in person or by mail, and, if requested, by providing oral advice.

(e) [Repealed, § 17 ch 70 SLA 1984.]

(f) At the time of application for a driver's license or an instruction permit, or renewal of a driver's license or an instruction permit, the department shall provide the applicant written information explaining the state's financial responsibility and mandatory motor vehicle insurance laws and potential penalties for failure to comply with those laws.

(g) Upon request, the department shall provide a social security number provided under this section to the child support enforcement agency created in AS 25.27.010, or the child support agency of another state, for child support purposes authorized by law. (§ 19 ch 178 SLA 1978; am §§ 5, 17 ch 70 SLA 1984; am § 9 ch 43 SLA 1988; am § 22 ch 108 SLA 1989; am § 20 ch 80 SLA 1997; am §§ 51, 52 ch 132 SLA 1998)

Delayed amendment. — Under § 54(b), ch. 132, SLA 1998, effective July 1, 2001, subsection (g) is repealed and subsection (b) is amended to delete "social security number," from paragraph (b)(1).

Cross references. — For purpose, findings, and nonseverability provisions related to the 1998 amendments affecting this section, see §§ 1 and 56, ch. 132, SLA 1998 in the 1998 Temporary and Special Acts.

Effect of amendments. — The 1997 amendment, effective September 11, 1997, in subsection (d), added

"or a living will" at the end of the first sentence and inserted "or a living will under AS 18.12 (Living Wills and Do Not Resuscitate Orders)" in the second sentence.

The 1998 amendment, effective June 26, 1998, inserted "social security number," in paragraph (b)(1) and added subsection (g).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 99.
60 C.J.S., Motor Vehicles, § 156.

Sec. 28.15.070. Examination. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.071. Application of minors. (a) The application of a person under the age of 18 years for an instruction permit or driver's license must be signed by the father, mother, guardian, or spouse who is 18 years of age or older, or if there is no parent, guardian, or spouse, then by another responsible adult who is willing to assume the obligation imposed under this section upon a person signing the application. The application must be signed and verified before a person authorized to administer oaths, or be signed in the presence of an authorized representative of the department.

(b) Any negligence or wilful misconduct of a person under the age of 18 years when driving a motor vehicle in this state is imputed to the person who signed the application of the person for a permit or license, and that person is jointly and severally liable for damage caused by the negligence or wilful misconduct of the person under the age of 18 years, except as provided in (c) of this section.

(c) If a minor deposits, or there is deposited on behalf of the minor, proof of financial responsibility for the minor's driving of a motor vehicle, in the form and amount required in AS 28.20, then the department may accept the application of the minor signed as required under (a) of this section, and, while proof of financial responsibility is maintained, the parent, guardian, spouse, or other responsible adult is not subject to the liability imposed under (b) of this section.

(d) A person who signs the application of a minor for a driver's license may file with the department a verified written request that the license of the minor be canceled. When the license is canceled, the person who signed the application is relieved from liability under (b) of this section.

(e) This section does not apply to a person under 18 years of age who is legally emancipated under AS 09.55.590 or a similar law in another jurisdiction. (§ 19 ch 178 SLA 1978; am §§ 11, 12 ch 60 SLA 1986; am § 2 ch 119 SLA 1990)

Effect of amendments. — The 1990 amendment, effective January 1, 1991, added subsection (e).

Quoted in Siemionka (1992).

Collateral references of statutes which make person signing minor's

Sec. 28.15.080.

Sec. 28.15.081. every applicant for applicant's (1) eye (3) knowledge of s on drivers and t knowledge of the l responsibility and traffic laws and r of ability to exerci the type and gene applicant who ha jurisdiction shall department reaso type and general

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(d) The departi ities, or qualified this chapter. (§ 19 am § 24 ch 108 S

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Sec. 28.15.090.

Sec. 28.15.091 good cause to bel be licensed, it ma license to submi

with respect to the child's and there were no factual hearing would flesh out, a Nelson v. Jones, 944 P.2d

change in circumstances. — The move of a considerable distance by the need to arrange with a visitation order, circumstances sufficient to require modification of the 956 P.2d 455 (Alaska 1998). *Inability of parents to make visitation arrangement* — original agreement represented circumstances requiring reexamination of custody arrangement. 956 P.2d 447 (Alaska 1998). *Change in procedure* — court-ordered two-year adjustment — parent would have primary custody would have liberal visitation share custody equally on an after two years, was not automatically based on statutory change in custody. Deininger v. (Alaska 1992).

In circumstances sufficient of custody. — Substantive mother's circumstances, custody from the father to the evidence in the record reiteration, her changed marital employment, and her sustained drinking problem. Nichols v. (Alaska 1990).

Moved to a distant locale, a physical custody arrangement — the basis that it disrupted a year-old child's life and was interests. West v. Lawson, 951

Circumstances insufficient to support custody order. — Trial court's circumstances which referred to entered into a lesbian relationship finding as to how such related the child, were insufficient custody order. S.N.E. v. R.L.B., 885).

Custody hearing based on alleged — it is impermissible to rely on racial stigma attaching to mother. S.N.E. v. R.L.B., 699 P.2d 875

Decision. — Superior court did not determine that remaining in moving with him to California children's best interests. House v. Alaska 1989).

Decision was remanded and the further findings on the effect of — where the primary changed the father relied on appeal, in to leave the state, was never

found by the trial court to negatively affect the child's best interests or to merit a change in custody. Lee v. Cox, 790 P.2d 1359 (Alaska 1990).

Error in denying father evidentiary hearing. — Superior court abused its discretion by denying the father an evidentiary hearing, where he made a prima facie showing that circumstances had changed in the years following orders which had terminated his visitation rights and restrained him from contacts with his child. Carter v. Brodrick, 816 P.2d 202 (Alaska 1991).

Modification of visitation order. — The change

Collateral references. — Putative father's right to visit illegitimate child, 15 ALR3d 887.

Right of jailed or imprisoned parent to visit from minor child, 15 ALR4th 1234.

in circumstances required for modification of visitation rights need not rise to the level sufficient to warrant a change of custody. Hermsillo v. Hermsillo, 797 P.2d 1206 (Alaska 1990).

Actions by a custodial parent which substantially interfere with the noncustodial parent's visitation rights are sufficient to constitute a change in circumstances which may justify and require a modification of the visitation order, if such modification is in the best interest of the child. Hermsillo v. Hermsillo, 797 P.2d 1206 (Alaska 1990).

Withholding visitation rights for failure to make alimony or support payments, 65 ALR4th 1155.

Post adoption visitation by natural parent, 78 ALR4th 218.

Sec. 25.20.115. Attorney fee awards in custody and visitation matters. In an action to modify, vacate, or enforce that part of an order providing for custody of a child or visitation with a child, the court may, upon request of a party, award attorney fees and costs of the action. In awarding attorney fees and costs under this section, the court shall consider the relative financial resources of the parties and whether the parties have acted in good faith. (§ 3 ch 130 SLA 1990)

NOTES TO DECISIONS

Applicability. — This section applied in a custody proceeding brought by a nonbiological parent in an attempt to modify a custody order made prior to the determination that he was not the biological father. B.J. v. J.D., 950 P.2d 113 (Alaska 1997).

Explicit findings required. — In making an award of attorney's fees and costs under this section, a court must make explicit findings as to the parties'

relative financial resources and whether the parties acted in good faith. S.L. v. J.H., 883 P.2d 984 (Alaska 1994).

The parties' relative financial resources do not necessarily take primacy over the presence or absence of good faith when considering whether or not to award attorney's fees and costs under this section. S.L. v. J.H., 883 P.2d 984 (Alaska 1994).

Collateral references. — Right to attorney's fees in proceeding, after absolute divorce, for modification of child custody or support order, 57 ALR4th 710.

Excessiveness or adequacy of attorneys' fees in domestic relations cases, 17 ALR5th 366.

Sec. 25.20.120. Closure of custody proceedings and records. At any stage of a proceeding involving custody of a child the court may, if it is in the best interests of the child, close the proceeding to the public or order the court records closed to the public temporarily or permanently. The court may modify or vacate an order under this section at any time. (§ 6 ch 88 SLA 1982)

NOTES TO DECISIONS

Broad gag order must be justified by compelling circumstances. — In a child custody hearing, a gag order which goes beyond assuring confidentiality of the file and anonymity of the parties must be

justified by compelling circumstances and drawn as narrowly as possible to protect against particular evils. S.N.E. v. R.L.B., 699 P.2d 875 (Alaska 1985).

Sec. 25.20.130. Access to records of the child. A parent who is not granted custody under AS 25.20.060 — 25.20.130 has the same access to the medical, dental, school, and other records of the child as the custodial parent. (§ 6 ch 88 SLA 1982)

Sec. 25.20.140. Action for failure to permit visitation with minor child.
(a) When a court order is specific as to when a custodian of a minor child must permit

request regarding flagged records, including any knowledge as to the whereabouts of the child. Upon notification by the Department of Public Safety that the person who was listed as a missing child has been found, the school or school district shall remove the flag from the person's record. (§ 1 ch 202 SLA 1990)

Sec. 14.30.710. Required records upon transfer. Within 14 days after enrolling a child as a transfer student from this or another state in an elementary or secondary school, the school or school district shall request directly from the child's previous school a certified copy of the child's record. An elementary or secondary school or a school district in this state requested to forward a copy of a transferring child's record to another school shall comply with the request within 10 days after receiving the request unless the record has been flagged under AS 14.30.700. Upon receipt of a request for a record that has been flagged, the school or school district shall immediately notify the Department of Public Safety. Unless directed to do so by the Department of Public Safety, a school or a school district may not forward a copy of a flagged record. (§ 1 ch 202 SLA 1990)

Sec. 14.30.720. Definitions. In AS 14.30.700 — 14.30.720,

- (1) "child" means a person under 18 years of age;
- (2) "school district" means a municipal school district or a regional educational attendance area. (§ 1 ch 202 SLA 1990)

Sec. 14.30.750. Alaska school counseling program grant fund. [Repealed, § 12 ch 42 SLA 1997.]

Chapter 33. School Safety Patrols.

Section

- 10. Requirements for school safety patrols
- 20. Organization of a patrol
- 30. Duties of a patrol

Section

- 40. Guidance for patrols
- 50. Cooperation with law-enforcement authorities
- 60. Immunity from liability

Collateral references. — 68 Am. Jur. 2d Schools, §§ 252-254.

78A C.J.S. Schools and School Districts, §§ 725, 781, 793.

Coverage and exceptions under student accident policy. 74 ALR2d 1253.

Tort liability of public schools and institutions of higher learning for accident occurring during school

athletic events. 35 ALR3d 725.

Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students. 36 ALR3d 330.

Permitting child to walk to school unattended as contributory negligence of parents in action for injury or death of child. 62 ALR3d 541.

Sec. 14.33.010. Requirements for school safety patrols. The school board, borough or city school district or regional educational attendance area, or a parochial or denominational school may require that school safety patrols be established for pupils to cross streets and highways adjacent to schools in safety. (§ 1 ch 68 S am § 53 ch 98 SLA 1966; am § 25 ch 46 SLA 1970; am § 27 ch 124 SLA 1975)

Sec. 14.33.020. Organization of a patrol. (a) If a school board, or a parochial or denominational school determines that a safety patrol should be established for the principal of the school shall appoint pupils in the school to serve as members of the patrol.

(b) A pupil may not be appointed a patrol member unless the pupil's parent or guardian give written consent to the pupil's membership in the patrol.

(c) The principal shall designate a teacher or teachers in the school to supervise the operation of the patrol.

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cess, for the purpose of audit examination, to any records maintained by a recipient that may be related, or pertinent to, grants, subgrants, cooperative agreements, loans, or other arrangements to which reference is made in subsection (a), or which may relate to the compliance of the recipient with any requirement of an applicable program.

(Jan. 2, 1968, P. L. 90-247, Title IV, Part C, Subpart 4, § 443 [437], as added Nov. 1, 1978, P. L. 95-561, Title XII, Part C, § 1231(c), 92 Stat. 2346; Oct. 20, 1994, P. L. 103-382, Title II, Part A, § 212(b)(1), Part D, § 248, 108 Stat. 3913, 3924.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior 20 USCS § 1232f was redesignated § 406A of Act Jan. 2, 1968, P. L. 90-247, by Act Nov. 1, 1978, P. L. 95-561, Title XII, Part C, § 1231(c), 92 Stat. 2346, and has been reclassified as 20 USCS § 1221e-1a, prior to repeal by Act Oct. 20, 1994.

Amendments:

1994. Act Oct. 20, 1994 (effective on enactment, as provided by § 3(a)(2) of such Act, which appears as 20 USCS § 1221 note), in subsec. (a), substituted "grant, subgrant, cooperative agreement, loan, or other arrangement" for "grant, subgrant, contract, subcontract, loan, or other arrangement (other than procurement contracts awarded by an administrative head of an educational agency)"; substituted "three" for "five", and inserted "financial or programmatic"; and, in subsec. (b), substituted "to any records maintained by a recipient that may be related, or pertinent to, grants, subgrants, cooperative agreements, loans, or other arrangements" for "to any records of a recipient which may be related, or pertinent to, the grants, subgrants, contracts, subcontracts, loans, or other arrangements".

Redesignation:

This section, enacted as § 437 of Act Jan. 2, 1968, P. L. 90-247, Title IV, Part C, Subpart 4, was redesignated § 443 of such Act by Act Oct. 20, 1994, P. L. 103-382, Title II, Part A, § 212(b)(1), 108 Stat. 3913 (effective on enactment as provided by § 3(a)(2) of such Act, which appears as 20 USCS § 1221 note).

Other provisions:

Effective date and application of section. Act Nov. 1, 1978, P. L. 95-561, Title XII, Part E, § 1261, 92 Stat. 2356, which appears as 20 USCS § 1232c note, provided that this section shall take effect with respect to appropriations for fiscal year 1980 and subsequent fiscal years.

CROSS REFERENCES

This section is referred to in 20 USCS §§ 1232d, 1232e.

§ 1232g. Family educational and privacy rights

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information

to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions. (1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

- (i) financial records of the parents of the student or any information contained therein;
- (ii) confidential letters and statements or recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;
- (iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations—

- (I) respecting admission to any educational agency or institution,
- (II) respecting an application for employment, and
- (III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically

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intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

- (i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;
- (ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;
- (iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or
- (iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: 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 agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of Federally-supported education programs; recordkeeping. (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, or (iii) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

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- (i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or
- (ii) after November 19, 1974, if—

- (I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

- (II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student.[:]

- (F) 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;

- (G) accrediting organizations in order to carry out their accrediting functions;

- (H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1986 [26 USCS § 152];

- (I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons; and

- (J)(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

- (ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

- (2) No funds shall be made available under any applicable program to any

educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

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(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18, United States Code), the results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime with respect to such crime.

(c) **Surveys or data-gathering activities; regulations.** Not later than 240 days after the date of enactment of the Improving America's Schools Act of 1994 [enacted Oct. 20, 1994], the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) **Students' rather than parents' permission or consent.** For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) **Informing parents or students of rights under this section.** No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) **Enforcement; termination of assistance.** The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) **Office and review board; creation; functions.** The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations

of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(h) Certain disciplinary action information allowable. Nothing in this section shall prohibit an educational agency or institution from—

- (1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or
- (2) disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student.

(Jan. 2, 1968, P. L. 90-247, Title IV, Part C, Subpart 4, § 444 [438], as added Aug. 21, 1974, P. L. 93-380, Title V, § 513(a), 88 Stat. 571; Dec. 31, 1974, P. L. 93-568, § 2(a), 88 Stat. 1858; Aug. 6, 1979, P. L. 96-46, § 4(c), 93 Stat. 342; Nov. 8, 1990, P. L. 101-542, Title II, § 203, 104 Stat. 2335; July 23, 1992, P. L. 102-325, Title XV, Part H, § 1555(a), 106 Stat. 840; Oct. 20, 1994, P. L. 103-382, Title II, Part A, § 212(b)(1), Part D, § 249, Part E, § 261(h), 108 Stat. 3913, 3924, 3928.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "Improving America's Schools Act of 1994", referred to subsec. (c), is Act Oct. 20, 1994, P. L. 103-382, 108 Stat. 3518. For full classification of this Act, consult USCS Tables volumes.

"This Act", referred to in this section, is Act Jan. 2, 1968, P. L. 90-247, 81 Stat. 783, popularly known as the Elementary and Secondary Education Amendments of 1967, Title IV of which is popularly known as the General Education Provisions Act and appears generally as 20 USCS §§ 1221 et seq. For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

The bracketed semicolon was inserted in subsec. (b)(1)(E)(ii)(II) to indicate the probable intent of Congress to retain that punctuation in the 1994 amendment. See 1994 Amendment note.

Effective date of section:

This section took effect ninety days after enactment, pursuant to Act Aug. 21, 1974, P. L. 93-380, Title V, § 513(b)(1)(i), 88 Stat. 574.

Amendments:

1974. Act Dec. 31, 1974, in subsec. (a), para. (1), designated existing provisions as subpara. (A), in subpara. (A) as so designated, substituted "educational agency or institution" for "State and local educational agency, any institution of higher education, any community college, any school agency offering a preschool program, or any other educational institution", substituted "who are or have been in attendance at a school of such agency or at such institution, as the case may be" for "attending

any school of such agency, or attending such institution of higher education, community college, school, preschool, or other educational institution", substituted "the education records of their children" for "any and all official records, files, and data directly related to their children, including all material that is incorporated into each student's cumulative record folder, and intended for school use or to be available to parties outside the school or school system, and specifically including, but not necessarily limited to, identifying data, academic work completed, level of achievement (grades, standardized achievement test scores), attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns.", substituted "If any material or document in the education record of a student includes" for "Where such records or data include", substituted "one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material" for "any student shall be entitled to receive, or be informed of, that part of such record or data as pertains to their child"; substituted "educational agency or institution" for "recipient", substituted "the education records of their children" for "their child's school records", and added subparas. (B) and (C), in para. (2), substituted "No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order" for "Parents shall have an opportunity for a hearing to challenge the content of their child's school records," and inserted "and to insert into such records a written explanation of the parents respecting the content of such records", and added paras. (3)-(6); in subsec. (b), para. (1), introductory matter, substituted "educational agency or institution" for "State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution", inserted "or practice", and substituted "education records (or personally identifiable information contained 'herein other than directory information, as defined in paragraph (5) of subsection (a))" for "personally identifiable records of files (or personal information contained therein)", in subpara. (A), substituted " , who have been determined by such agency or institution to" for "who", in subpara. (B), inserted "seeks or", in subpara. (C), substituted "section 408(c)" for "section 409 of this Act", and deleted "and" after "subsection;", in subpara. (D), substituted a semicolon for the final period, added subparas. (E)-(I) and the concluding matter, in para. (2), substituted "educational agency or institution" for "State and local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution", and substituted "releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection." for "furnishing, in any form,

any personally identifiable information contained in personal school records, to any persons other than those listed in subsection (b)(1)", in para. (3) substituted "Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements" for "Provided, That, except when collection of personally identifiable data is specifically authorized by Federal law, any data collected by such officials with respect to individual students shall not include information (including social security numbers) which would permit the personal identification of such students or their parents after the data so obtained has been collected.", in para. (4), substituted subpara. (A) for one which read: "With respect to subsections (c)(1) and (c)(2) and (c)(3), all persons, agencies, or organizations desiring access to the records of a student shall be required to sign a written form which shall be kept permanently with the file of the student, but only for inspection by the parents or student, indicating specifically the legitimate educational or other interest that each person, agency, or organization has in seeking this information. Such form shall be available to parents and to the school official responsible for record maintenance as a means of auditing the operation of the system."; in subsec. (e), substituted "to any educational agency or institution unless such agency or institution" for "unless the recipient of such funds"; and in subsec. (g), deleted ", according to the procedures contained in sections 434 and 437 of this Act" after "violations of this section", and inserted the sentence beginning "Except for the conduct . . .".

1979. Act Aug. 6, 1979 (effective 10/1/78, as provided by § 8 of such Act, which appears as 20 USCS § 2701 note), added subsec. (b)(5).

1990. Act Nov. 8, 1990 added subsec. (b)(6).

1992. Act July 23, 1992 (effective on enactment as provided by § 1555(b) of such Act) substituted subsec. (a)(4)(B)(ii) for one which read: "if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;"

1994. Act Oct. 20, 1994 (effective on enactment, as provided by § 3(a)(2) of such Act, which appears as 20 USCS § 1221 note), in subsec. (a), in para. (1), redesignated subparas. (B) and (C) as subparas. (C) and (D), respectively, and added a new subpara. (B), in subpara. (C) as redesignated, in cl. (iii), substituted "subparagraph (D)" for "subparagraph (C)" and, in subpara. (D) as redesignated, substituted "subparagraph (C)" for "subparagraph (B)", in para. (2), substituted "rights" for "or other rights" and, in para. (4)(B)(ii), substituted the semicolon for a period; in subsec. (b), in para. (1), in subpara. (A), inserted ", including the educational interests of the child for whom consent would otherwise be required", in subpara. (C), substituted "or (iii)" for "(iii) an administrative head of an education agency (as defined in section 408(c)), or (iv)",

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substituted subpara. (E) for one which read: "State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;" in subpara. (H), substituted "1986" for "1954" and deleted "and" following the semicolon, in subpara. (I), substituted ";" and" for a period, and added subpara. (J), in para. (2)(B), inserted "except as provided in paragraph (1)(J)," in para. (3), substituted "or (C)" for "(C) an administrative head of an education agency or (D)" and substituted "education programs" for "education program" and, in para. (4)(B), inserted the sentence beginning "If a third party outside . . ."; in subsec. (c), substituted "Not later than 240 days after the date of enactment of the Improving America's Schools Act of 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which" for "The Secretary shall adopt appropriate regulations to"; in subsec. (d), inserted a comma after "education"; in subsec. (e), inserted "effectively"; in subsec. (f), deleted ", or an administrative head of an education agency," following "The Secretary", substituted "enforce this section" for "enforce provisions of this section", substituted "in accordance with" for "according to the provisions of", and substituted "comply with this section" for "comply with the provisions of this section"; in subsec. (g), deleted "of Health, Education, and Welfare" following "Department" and deleted "the provisions of" following "adjudicating violations of"; and added subsec. (h). Such Act further (effective as above) purported to amend the introductory matter of subsec. (b)(2), by substituting ", unless—" for a period; however, the amendment could not be executed because the introductory matter included no period.

Redesignation:

This section, enacted as § 438 of Act Jan. 2, 1968, P. L. 90-247, Title IV, Part C, Subpart 4, was redesignated § 444 of such Act by Act Oct. 20, 1994, P. L. 103-382, Title II, Part A, § 212(b)(1), 108 Stat. 3913 (effective on enactment as provided by § 3(a)(2) of such Act, which appears as 20 USCS § 1221 note).

Short title:

Act Aug. 21, 1974, P. L. 93-380, Title V, § 513(b)(2)(i), 88 Stat. 574 provided: "This section [this section and note thereto] may be cited as the 'Family Educational Rights and Privacy Act of 1974'."

Transfer of functions:

Act Oct. 17, 1979, P. L. 96-88, Title III, § 301, 93 Stat. 677, which appears as 20 USCS § 3441, transferred functions and offices (relating to education) of the Department of Health, Education, and Welfare to the Department of Education.

Other provisions:

Effective date and application of 1974 amendments. Act Dec. 31, 1974, P. L. 93-568, § 2(b), 88 Stat. 1858, provided: "The amendments made by subsection (a) [amending this section] shall be effective, and retroactive to, November 19, 1974."

CODE OF FEDERAL REGULATIONS

Office of the Secretary, Department of Education—Family education rights and privacy, 34 CFR Part 99.

CROSS REFERENCES

This section is referred to in 20 USCS §§ 1232i, 1417, 5917; 25 USCS § 3205; and 42 USCS § 11432.

RESEARCH GUIDE

Federal Procedure L Ed:

15 Fed Proc L Ed, Freedom of Information § 38:12, 17.

17 Fed Proc, L Ed, Health, Education, and Welfare §§ 42:1853, 1908, 1910.

Am Jur:

37A Am Jur 2d, Freedom of Information Act (1994) § 31.

Annotations:

What is "interest" relating to property or transaction which is subject of action sufficient to satisfy that requirement for intervention as matter of right under Rule 24(a)(2) of Federal Rules of Civil Procedure. 73 ALR Fed 448.

Validity, construction, and application of Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USCS § 1232g). 112 ALR Fed 1.

Validity, construction, and effect of provision releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities. 85 ALR4th 344.

Auto-Cite™: Cases and annotations referred to herein can be further researched through the Auto-Cite™ computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Applicability
3. —"Student"
4. Relation to other laws
5. Availability of private right of action
6. Application to particular records and information
7. —Expenditures
8. —Law enforcement records
9. —Names and addresses of students
10. Subpoenas
11. Immunity

1. Generally

In view of the significant role of private law suits in ending various forms of discrimination in school systems, 20 USCS § 1232g should not serve as a cloak for alleged discriminatory practices simply because litigation to end such practices is initiated by private plaintiffs rather than the government. *Rios v Read* (1977, ED NY) 73 FRD 589.

In action against school officials for censorship of student newspaper, allegation in answer, that information contained within articles was subject to proscriptions of 20 USCS § 1232g, will not be stricken, since it cannot be said at early stage of litigation that 20 USCS § 1232g is legally insufficient defense. *Kuhlmeier v Hazelwood School Dist.* (1984, ED Mo) 578 F Supp 1286, 38 FR Serv 2d 1491.

Right of privacy in student records is recognized by 20 USCS § 1232g. *Porten v University of San Francisco* (1976, 1st Dist) 64 Cal App 3d 825, 134 Cal Rptr 839.

2. Applicability

20 USCS § 1232g of Family Educational Rights and Privacy Act only gives students and their parents access to their educational records and has no relationship to complaint for defamation brought by person arrested for driving while intoxicated, and sanction will be awarded against arrestee for bringing such suit. *Vukadinovich v McCarthy* (1990, CA7 Ind) 901 F2d 1439, 16 FR Serv

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GENERAL PROVISIONS

3d 915, reh den, en banc (1990, CA7) 1990 US App LEXIS 9683 and cert den (1991) 498 US 1050, 112 L Ed 2d 780, 111 S Ct 761.

Cause of action against university and professor based on disappointing grade received in physics class is dismissed, even though 20 USCS § 1232q(a)(2) provides that no federal funds shall be made available to educational agency unless parents have opportunity for hearing to insure accuracy of student's education records, because neither statute nor school policy provides means by which student may obtain information on how particular grade was assigned. *Tarka v Cunningham* (1990, WD Tex) 741 F Supp 1281, affd (1990, CA5 Tex) 917 F2d 890.

Employee's action for invasion of privacy cannot be supported by 20 USCS § 1232g, where employee attended technical college classes as part of employee training program but refused to sign consent to release records showing attendance and grades to employer, because § 1232g does not prohibit request for or release of student records nor create private right of action. *Tombrello v USX Corp.* (1991, ND Ala) 763 F Supp 541, 30 BNA WH Cas 650, 119 CCH LC ¶ 35502.

Former medical student seeking to challenge his failure of exam administered to allow student to waive pharmacology course did not have cause of action under 20 USCS § 1232g(a)(2), where complaint fundamentally was challenge to substance of professor's evaluation, which was beyond reach of statute, exam test score did not even appear in student's permanent school record, and score of "high pass" that student ultimately received after taking class was accurately reflected in his permanent record. *Lewin v Medical College* (1996, ED Va) 931 F Supp 443, affd without op (1997, CA4 Va) 120 F3d 261, reported in full (1997, CA4 Va) 1997 US App LEXIS 20851.

3. —"Student"

Teacher was employee and not "student" of institution requested to disclose her college transcript, and thus did not fall within class of people for whose benefit act was created. *Klein Independent School Dist. v Mattox* (1987, CA5 Tex) 830 F2d 576, 2 BNA IER Cas 1391, cert den (1988) 485 US 1008, 99 L Ed 2d 702, 108 S Ct 1473.

Person is not "student" for purpose of gaining access to admission files pursuant to FERPA where his application was rejected and he only audited some classes. *Tarka v Franklin* (1989, CA5 Tex) 891 F2d 102, cert den (1990) 494 US 1080, 108 L Ed 2d 940, 110 S Ct 1809, reh den (1990) 496 US 913, 110 L Ed 2d 285, 110 S Ct 2605.

4. Relation to other laws

Although no private right of action exists under 20 USCS § 1232g, action under 42 USCS § 1983

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may be premised on violation of § 1232g. *Tarka v Cunningham* (1990, CA5 Tex) 917 F2d 890.

Student's claim against school district seeking declaratory and injunctive relief under 20 USCS § 1232g may be brought under 42 USCS § 1983, because (1) language of § 1232g reveals congressional intent to impose obligations directly on educational agencies or institutions, (2) plain meaning of statute sets forth what educational agencies or institutions must do and not do in order to be eligible for federal funds, (3) plaintiff's claim can be readily enforced by judiciary, and results will not vary based on facts and law, and (4) enforcement regulations do not demonstrate congressional intent to preclude suits under § 1983 to remedy violations of § 1232g. *Belanger v Nashua Sch. Dist.* (1994, DC NH) 856 F Supp 40.

Section 1983 action on behalf of 13-year-old hermaphrodite may proceed, where Family Educational Rights and Privacy Act (20 USCS § 1232g) does not give rise to private cause of action but does create interest that may be vindicated in § 1983 action, because question of fact remains as to whether information disclosed in due process hearing and reported by newspaper in story about establishment of emotional behavior disorder unit was personally identifiable and in violation of statute. *Doe v Knox County Bd. of Educ.* (1996, ED Ky) 918 F Supp 181.

5. Availability of private right of action

Enforcement of 20 USCS § 1232g is solely in hands of Secretary of Health, Education and Welfare under § 1232g(f); no private remedy is granted under statute, and none arises by inference to aid student who received discharge on student loan in bankruptcy proceeding, and who sought to obtain college transcript from university to which loan was owed. *Girardier v Webster College* (1977, CA8 Mo) 563 F2d 1267.

20 USCS § 1232g creates interest that may be vindicated in action under 42 USCS § 1983, but does not give rise to private cause of action, and divorced father with joint legal custody is entitled to present evidence on his claim for compensatory damages for school's denial of access to his children's records, and District Court erred in awarding nominal damages on summary judgment. *Fay v South Colonie Cent. Sch.* (1986, CA2 NY) 802 F2d 21.

Buckley Amendment set forth at 20 USCS § 1232g did not provide private cause of action to compel college to issue certified copies of college transcripts to former students. *Girardier v Webster College* (1976, ED Mo) 421 F Supp 45, vacated on other grounds (1977, CA8 Mo) 563 F2d 1267.

20 USCS § 1232g does not give rise to private federal cause of action in favor of aggrieved person since it is simply directed to Secretary of Educa-

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officials, school's graduate may not amend complaint to add claim under § 1983 for alleged violation of 20 USCS § 1232g, where claim was based on fact that defendants attached to their answer to student's complaint for breach of contract and interference with contractual relations 2 letters from student to defendants concerning matters relevant to lawsuit, because § 1232g(b) requires only that participating institution not have policy or practice that permits unauthorized release of educational records and defendant's discrete submission of 2 letters to court does not state claim for violation of this section. *Gundlach v Reinstein* (1996, ED Pa) 924 F Supp 684, aff'd without op (1997, CA3 Pa) 114 F3d 1172.

20 USCS § 1232g does not bar disclosure of murder victim's school records in criminal trial of alleged murderer where victim's reputation for belligerence and aggressiveness was at issue, since statute prohibits only practice or policy of disclosure of educational records and expressly recognizes that disclosure may be made in response to subpoena duces tecum or other judicial order. *State v Birdsall* (1977, App) 116 Ariz 196, 568 P2d 1094.

7. —Expenditures

Claim premised on violation of Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USCS § 1232g) must fail, even though FERPA establishes federal statutory rights which are enforceable under § 1983, where: only information released by school board was reporting of authorized expenditures in board meeting minutes published according to requirements of state law, which led to public identification of autistic child requiring expenditures which led to property tax increase, because board cannot be liable for complying with state law which was not clearly preempted by federal law. *Maynard v Greater Hoyt Sch. Dist. No. 61-4* (1995, DC SD) 876 F Supp 1104, subsequent app sub nom *Greater Hoyt Sch. Dist. No. 61-4 v National Union Fire Ins. Co.* (1997, CA8 SD) 1997 US App LEXIS 19763.

Information concerning amount of money paid to student athletes are not educational records required to be closed under Family Education Rights and Privacy Act (20 USCS §§ 1230 et seq.). *Arkansas Gazette Co. v Southern State College* (1981) 273 Ark 248, 620 SW2d 258, 7 Media L R 1837, cert den and app dismd (1982) 455 US 931, 71 L Ed 2d 640, 102 S Ct 1416.

8. —Law enforcement records

Public university student newspaper editor is entitled to receive and publish criminal investigation and incident reports compiled by campus security department, where such reports do not contain type of information student is required to submit as precondition to enrollment or atten-

dance, nor academic data created in natural course of student's career, because reports are not exempt from disclosure under state sunshine law nor protected as "educational records" under 20 USCS § 1232g. *Bauer v Kincaid* (1991, WD Mo) 759 F Supp 575, 112 ALR Fed 671.

Department of Education is enjoined from preventing universities from releasing to public personally identifiable information in law enforcement records regarding students by withdrawing or threatening to withdraw federal funding, where public interest in greater access to information bearing on personal safety and crime prevention outweighs arrested students' privacy interests in protecting their reputations, because 20 USCS § 1232g prohibition of information disclosure was afoul of First Amendment. *Student Press Law Center v Alexander* (1991, DC Dist Col) 778 F Supp 1227, 19 Media L R 1620.

9. —Names and addresses of students

Names and addresses of students enrolled at community college which have not been designated as "directory information" by college need not be disclosed; necessity of court order for disclosure must take into account students' right to privacy against demonstrated need for disclosure; in absence of demonstrated need for disclosure of names and addresses of students enrolled at community college, requesting party is not entitled to court ordered access. *Krauss v Nassau Community College* (1983, Sup) 122 Misc 2d 218, 469 NYS2d 553.

Although names and addresses of students sought by plaintiff are protected by Educational Privacy Act, court would compel college to disclose information in statistical, summary form such as number of transferees, exams taken for transfer purpose, and schools sponsoring them. *Naglak v Pennsylvania State University* (1990, MD Pa) 133 FRD 18.

10. Subpoenas

In view of policies underlying Family Educational and Privacy Rights Act, court will impose limitations on subpoenas so as to restrict their scope to material that pertains to acts specified in complaint. *Chazin v Lieberman* (1990, SD NY) 129 FRD 97.

11. Immunity

In suit by black students against state college seeking damages against college employees who released list of names and addresses of black male students to law enforcement officers looking for armed, young black male suspected in violent crime, it was unclear whether "emergency exception" of 20 USCS § 1232g applied and therefore no clearly established right of plaintiffs was infringed, and defendants were thus entitled to qualified immunity. *Brown v City of Oneonta* (1997, CA2 NY) 106 F3d 1125.