

SB

27

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 27

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 () | | | | | | |
|------------------------|--|--|--|--|--|--|

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

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB27

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 |

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|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

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|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

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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SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/19/99

FURTHER: Finance

Date of 5-Day Notice: 2/15/99
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2/24/99

Health, Education and Social Services Committee considered SENATE BILL NO. 27

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

and recommends:

- be replaced with CSSB27 (HES) (HES)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to the Committee

- Senate Bill: same title
- new title
- House Bill:**
- same title
- technical title
- new: SCR#

| SIGNING <u>DO</u> PASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|----------------------------------|-------------------------------------|-----------------------|-------------------------------------|-----|-------------------------------------|
| <i>[Signature]</i> | <input checked="" type="checkbox"/> | <i>[Signature]</i> | <input checked="" type="checkbox"/> | | |
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| CHAIR: <i>[Signature]</i> | <input checked="" type="checkbox"/> | CHAIR: | | | |

NEW FISCAL NOTE(S):

| Department | Date | Zero | Fiscal |
|-----------------------|----------------|-------------------------------------|--------|
| <i>Administration</i> | <i>2/24/99</i> | <input checked="" type="checkbox"/> | |
| <i>Education</i> | <i>2/24/99</i> | <input checked="" type="checkbox"/> | |
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PREVIOUS FISCAL NOTE(S):*

| Department | Date | Zero | Fiscal |
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APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

*2/24/99
Adopted AS SB 27
Moved from committee
Indicates fiscal*

DRAFT

CS FOR SENATE BILL NO. 27()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Mong

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

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

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 14.03 is amended by adding a new section to read:

4 Sec. 14.03.115. Access to school records by parent or guardian. Upon
5 request of a parent or guardian of a child under 18 years of age who is currently or
6 was previously enrolled in a municipal school district or a school district that is a
7 regional educational attendance area, the school district shall provide a copy of the
8 child's record. This section does not apply to

- 9 (1) *Medical records* a record of a child who is an emancipated minor; or
- 10 (2) record information that consists of the child's address if the school
- 11 district determines that the release of the child's address poses a threat to the health or
- 12 safety of the child.

13 * Sec. 2. AS 28.15.151(c) is amended to read:

14 (c) The department shall, upon request, subject to the applicable provisions of
15 AS 12.62 and (f) of this section and without charging a fee, furnish (1) a municipal,

1 state, or federal administrative or judicial agency with a certified abstract of the driving
2 record of a driver; and (2) a parent or guardian of a driver who is under 18 years
3 of age and not an emancipated minor an abstract of the driving record of that
4 driver; the department may refuse to release the driver's address to the parent
5 or guardian if the department determines that the release of the driver's address
6 poses a threat to the health or safety of the driver. The abstract must include a
7 listing of accidents in which the driver has been determined by the department or a
8 court of competent jurisdiction to have been liable, convictions of vehicle, driver, and
9 traffic offenses, any actions taken upon the driver's license, and information relating
10 to financial responsibility.



SENATOR LOREN LEMAN

Northwest Anchorage

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Session: State Capitol, Juneau, AK 99801 (907) 465-2095
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Sponsor Statement – SB 27

“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, specifically driving records and school records.

Existing state law is merely silent on the matter of parental access to school records. But in the case of driver license records, state law explicitly *denies* the Division of Motor Vehicles the authority to allow parental access. AS 28.15.151(f) declares that “information and records under this section are... confidential and private.” An exception is allowed for the 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 for parents or legal guardians.

Denying parental access is unfair and nonsensical given that state law requires that a parent or legal guardian of an unmarried minor sign the 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 by DMV includes the following 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. Policymakers are constantly urging parents to become more involved in the lives of their children. By removing a legal impediment, SB 27 takes a small step toward helping parents meet their responsibilities.

Prepared by Mike Pauley, Staff Aide to Senator Loren Leman (465-3841)
Last updated: January 28, 1999

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 for a visitation order, circumstances sufficient to warrant modification of the 956 P.2d 455 (Alaska 1998).
 t. — Inability of parents to make visitation arrangement under original agreement represents circumstances requiring reexamination of custody arrangement. 956 P.2d 447 (Alaska 1998).
 ing 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 custody not based on statutory change in custody. Deininger v. (Alaska 1992).

in circumstances sufficient of custody. — Substantive the 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).

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

stances 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).

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

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

on 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.

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'

in circumstances required for modification of visitation rights need not rise to the level sufficient to warrant a change of custody. Hermosillo v. Hermosillo, 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. Hermosillo v. Hermosillo, 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.

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

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. — Inspection 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.

a driver's license u

(1) the licensee i

license, or has bee

(2) there is an e

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application; or

(4) the license w

(b) The licensee

removal of the cau

Intent of act. — The intent that all revocatory licenses be the act of Safety. Knudsen v. City (Alaska 1960), overruled State, 458 P.2d 340 (Al

Collateral references. — Bibles and Highway Traffic 60 C.J.S., Motor Vehicle Denial, suspension, license because of physical 452.

Necessity of notice of suspension of motor vehicle 361.

Sufficiency of notice :

Sec. 28.15.165.

from chemical sobriety test. An officer shall read a commercial motor 28.33.031(a) or AS a chemical test ad 28.33.030(a)(2); or 28.33.031(a) or AS

(1) the department privilege to obtain : the person;

(2) the person h person's license or

(3) if the person itself is a temporary person, except that will be ordered out

(4) revocation of a license, a temporary person, takes effect within seven days,

(b) After reading, seize the person's (the department w

EDUCATION

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GENERAL PROVISIONS

20 USCS § 1232g

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 of 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

GENERAL PROVISIONS

20 USCS § 1232g

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 (F) 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. 2385; 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