Assembly Bill No. 261

Passed the Assembly August 17, 2009

_____

Chief Clerk of the Assembly

Passed the Senate July 16, 2009

_____

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2009, at _____ o'clock ____M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 49076 and 49076.5 of the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 261, Salas. Pupil records: privacy rights.

Existing law prohibits a school district from permitting access to pupil records to any person without written parental consent or judicial order, except as provided.

This bill would make various changes to these pupil record provisions to conform them to federal law.

The people of the State of California do enact as follows:

SECTION 1. Section 49076 of the Education Code is amended to read:

49076. A school district is not authorized to permit access to pupil records to a person without written parental consent or under judicial order except as set forth in this section and as permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations:

(a) Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

(1) School officials and employees of the district, members of a school attendance review board established pursuant to Section 48321, and a volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing followup services to pupils referred to the school attendance review board, provided that the person has a legitimate educational interest to inspect a record.

(2) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided or where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 49068.

(3) Authorized representatives of the Comptroller General of the United States, the Secretary of Education, and state education officials, or their respective designees, or the United States Office of Civil Rights, where the information is necessary to audit or evaluate a state or federally supported education program or pursuant to a federal or state law, provided that except when collection of personally identifiable information is specifically authorized by federal law, data collected by those officials shall be protected in a manner that will not permit the personal identification of pupils or their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for the audit, evaluation, and enforcement of federal legal requirements.

(4) In accordance with Section 99.31 of Title 34 of the Code of Federal Regulations, state and local officials or authorities to whom the information specifically is allowed to be reported or disclosed pursuant to state law adopted prior to November 19, 1974, and state and local officials or authorities to whom the information is specifically allowed to be reported or disclosed pursuant to state law adopted after November 19, 1974.

(5) Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of the Internal Revenue Code of 1986.

(6) A pupil 16 years of age or older, or who has completed grade 10, and who requests access.

(7) A district attorney's office that is participating in or conducting a truancy mediation program pursuant to Section 48263.5, or Section 601.3 of the Welfare and Institutions Code, or participating in the presentation of evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code. For purposes of this paragraph, a truancy mediation program under Section 48263.5 concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the pupil whose records are released, and the disclosure of those records is permitted pursuant to, and consistent with, Section 99.38 of Title 34 of the Code of Federal Regulations as that section exists on January 1, 2009.

(8) A prosecuting agency for consideration against a parent or guardian for failure to comply with the Compulsory Education Law (Chapter 2 (commencing with Section 48200)) or with

Compulsory Continuation Education (Chapter 3 (commencing with Section 48400)).

(9) A probation officer or district attorney's office for the purposes of conducting an investigation for juvenile adjudication, declaring a person a ward of the court or involving a violation of a condition of probation, where the records are relevant to the legitimate educational interests of the pupil, as these investigations concern the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the pupil whose records are released, and disclosure of those records is permitted pursuant to, and consistent with, Section 99.38 of Title 34 of the Code of Federal Regulations as that section exists on January 1, 2009. Law enforcement records may be released without consent, a subpoena, or a court order.

(10) A judge or probation officer for the purpose of conducting a truancy mediation program for a pupil, or for purposes of presenting evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code. For purposes of this paragraph, a truancy mediation program under Section 48263.5 concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the pupil whose records are released, and the disclosure of those records is permitted pursuant to, and consistent with, Section 99.38 of Title 34 of the Code of Federal Regulations as that section exists on January 1, 2009. The judge or probation officer shall certify in writing to the school district that the information will be used only for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant to this paragraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.

(11) A county placing agency for the purpose of fulfilling the requirements of the health and education summary required pursuant to Section 16010 of the Welfare and Institutions Code or for the purpose of fulfilling educational case management responsibilities required by the juvenile court or by law and to assist with the school transfer or enrollment of a pupil. School districts, county offices of education, and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of the pupil information by electronic mail, facsimile, electronic format, or other secure means.

(b) School districts may release information from pupil records to the following:

(1) Appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons.

(2) Agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid. However, information permitting the personal identification of a pupil or his or her parents may be disclosed only as may be necessary for purposes as to determine the eligibility of the pupil for financial aid, to determine the amount of the financial aid, to determine the conditions that will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(3) The county elections official may obtain directory information as defined in Section 99.3 of Title 34 of the Code of Federal Regulations for the purpose of identifying pupils eligible to register to vote, and for conducting programs to offer pupils an opportunity to register to vote if the pupil's parents, or in the case of pupils 18 years of age or older, have not opted out of participation in this voter registration activity. The directory information that may be disclosed pursuant to this subparagraph shall be limited to a pupil's name, address, phone number, email address, and date of birth, and shall not be used for any other purpose or given or transferred to any other person or agency.

(4) Accrediting associations in order to carry out their accrediting functions.

(5) 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 the studies are conducted in a manner that will not permit the personal identification of pupils or their parents by persons other than representatives of the organizations and the information will be destroyed when no longer needed for the purpose for which it is obtained.

(6) (A) (i) Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to the rights of parents as provided in Section 49068. This information shall be in addition to the pupil's permanent record transferred pursuant to Section 49068.

(ii) A person, persons, agency, or organization permitted access to pupil records pursuant to this section shall not permit access to any information obtained from those records by any other person, persons, agency, or organization without the written consent of the pupil's parent.

(B) However, this paragraph does not require prior parental consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency, or organization obtaining access, so long as those persons have a legitimate educational interest in the information pursuant to Section 99.31 of Title 34 of the Code of Federal Regulations.

(c) Notwithstanding any other law, a school district, including a county office of education or superintendent of schools, may participate in an interagency data information system that permits access by authorized school officials to a computerized database maintained by a noneducational governmental agency to information or records that are nonprivileged, and where release is authorized as to the requesting agency under state or federal law or regulation, if each of the following requirements is met:

(1) Each agency and school district shall develop security procedures or devices by which unauthorized personnel cannot access data contained in the system.

(2) Each agency and school district shall develop procedures or devices to secure privileged or confidential data from unauthorized disclosure.

(3) Each school district shall comply with the access log requirements of Section 49064.

(4) The right of access granted shall not include the right to add, delete, or alter data without the written permission of the agency holding the data.

(5) An agency or school district shall not make public or otherwise release information on an individual contained in the database where the information is protected from disclosure or release as to the requesting agency by state or federal law or regulation.

(6) A school district, including a county office of education or superintendent of schools, shall not disclose personally identifiable pupil information from educational records into this interagency data information system unless permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations.

SEC. 2. Section 49076.5 of the Education Code is amended to read:

49076.5. (a) Notwithstanding Section 49076, each school district shall release the information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. As permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations, the designated peace officer, or law enforcement agency, shall show the school district that the peace officer or law enforcement agency has obtained prior written consent from one parent, or provide information indicating that there is an emergency in which the information is necessary to protect the health or safety of the pupil, or that the peace officer or law enforcement agency has obtained a lawfully issued subpoena or a court order.

(b) In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:

(1) For purposes of this section, "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.

(2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law enforcement agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers authorized to request pupil record information.

(3) This section does not authorize designated peace officers to obtain any pupil record information other than that authorized by this section.

(4) The law enforcement agency requesting the information shall ensure that at no time shall information obtained pursuant to this section be disclosed or used for a purpose other than to assist in the investigation of suspected criminal conduct or kidnapping. A violation of this paragraph shall be punishable as a misdemeanor.

(5) The designated peace officer requesting information authorized for release by this section shall make a record on a form created and maintained by the law enforcement agency that shall include the name of the pupil about whom the inquiry was made, the consent of a parent having legal custody of the pupil or a legal guardian, the name of the officer making the inquiry, the date of the inquiry, the name of the school district, the school district employee to whom the request was made, and the information that was requested.

(6) Whenever the designated peace officer requesting information authorized for release by this section does so in person, by telephone, or by some means other than in writing, the officer shall provide the school district with a letter confirming the request for pupil record information prior to any release of information.

(7) No school district, or officer or employee of the school district, shall be subject to criminal or civil liability for the release of pupil record information in good faith as authorized by this section.

Approved _____, 2009

_____

Governor