

AMENDED IN ASSEMBLY APRIL 6, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 143

Introduced by Assembly Member Fuentes

January 13, 2011

An act to amend Section 49076 of the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 143, as amended, Fuentes. Pupil records: privacy rights.

Existing law prohibits a school district from permitting access to pupil records to a person without written parental consent or under judicial order, except to specified persons under certain circumstances, including to a probation officer or district attorney for the purposes of conducting a criminal investigation, or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.

This bill would additionally allow school districts to permit a ~~minor's~~ *counsel of record for a minor* to access pupil records for the same purposes stated above. *The bill would also require a probation officer, district attorney, and counsel of record for a minor to be deemed to be local officials for purposes of specified federal law, and would require pupil records obtained pursuant to the above provision to be subject to specified evidentiary rules.*

Existing law requires the recipient of pupil records to be notified of the prohibition against transmitting the information to others without the written consent of the parent.

This bill would require officials and authorities receiving pupil records pursuant to specified law to certify in writing to the school district that the information shall not be disclosed to another party, except as provided under specified federal law and state law, without the prior written consent of the parent of the pupil or the person identified as the holder of the pupil’s educational rights.

The bill would also make various technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

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

3 49076. (a) A school district is not authorized to permit access
4 to pupil records to a person without written parental consent or
5 under judicial order except that:

6 (1) Access to those particular records relevant to the legitimate
7 educational interests of the requester shall be permitted to the
8 following:

9 (A) School officials and employees of the district, members of
10 a school attendance review board appointed pursuant to Section
11 48321, and any volunteer aide, 18 years of age or older, who has
12 been investigated, selected, and trained by a school attendance
13 review board for the purpose of providing followup services to
14 pupils referred to the school attendance review board, provided
15 that the person has a legitimate educational interest to inspect a
16 record.

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

22 (C) Authorized representatives of the Comptroller General of
23 the United States, the Secretary of Education, and administrative
24 head of an education agency, state education officials, or their
25 respective designees, or the United States Office of Civil Rights,
26 where the information is necessary to audit or evaluate a state or
27 federally supported education program or pursuant to a federal or

1 state law, provided that except when collection of personally
2 identifiable information is specifically authorized by federal law,
3 data collected by those officials shall be protected in a manner that
4 will not permit the personal identification of pupils or their parents
5 by other than those officials, and personally identifiable data shall
6 be destroyed when no longer needed for the audit, evaluation, and
7 enforcement of federal legal requirements.

8 (D) Other state and local officials to the extent that information
9 is specifically required to be reported pursuant to state law adopted
10 prior to November 19, 1974.

11 (E) Parents of a pupil 18 years of age or older who is a
12 dependent as defined in Section 152 of Title 26 of the United States
13 Code.

14 (F) A pupil 16 years of age or older or having completed the
15 10th grade who requests access.

16 (G) A district attorney who is participating in or conducting a
17 truancy mediation program pursuant to Section 48263.5, or Section
18 601.3 of the Welfare and Institutions Code, or participating in the
19 presentation of evidence in a truancy petition pursuant to Section
20 681 of the Welfare and Institutions Code.

21 (H) A prosecuting agency for consideration against a parent or
22 guardian for failure to comply with the Compulsory Education
23 Law (Chapter 2 (commencing with Section 48200) of Part 27) or
24 with Compulsory Continuation Education (Chapter 3 (commencing
25 with Section 48400) of Part 27).

26 (I) (i) A probation officer, district attorney, or ~~minor's counsel~~
27 *counsel of record for a minor* for the purposes of conducting a
28 criminal investigation or an investigation in regards to declaring
29 a person a ward of the court or involving a violation of a condition
30 of probation.

31 (ii) *For purposes of this paragraph, a probation officer, district*
32 *attorney, and counsel of record for a minor shall be deemed to be*
33 *local officials for purposes of Section 99.31(a)(5)(i) of Title 34 of*
34 *the Code of Federal Regulations.*

35 (iii) *Pupil records obtained pursuant to this paragraph shall*
36 *be subject to the evidentiary rules described in Section 701 of the*
37 *Welfare and Institutions Code.*

38 (J) A judge or probation officer for the purpose of conducting
39 a truancy mediation program for a pupil, or for purposes of
40 presenting evidence in a truancy petition pursuant to Section 681

1 of the Welfare and Institutions Code. The judge or probation officer
2 shall certify in writing to the school district that the information
3 will be used only for truancy purposes. A school district releasing
4 pupil information to a judge or probation officer pursuant to this
5 subparagraph shall inform, or provide written notification to, the
6 parent or guardian of the pupil within 24 hours of the release of
7 the information.

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

18 (2) School districts may release information from pupil records
19 to the following:

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

23 (B) Agencies or organizations in connection with the application
24 of a pupil for, or receipt of, financial aid. However, information
25 permitting the personal identification of a pupil or his or her parents
26 may be disclosed only as may be necessary for purposes as to
27 determine the eligibility of the pupil for financial aid, to determine
28 the amount of the financial aid, to determine the conditions which
29 will be imposed regarding the financial aid, or to enforce the terms
30 or conditions of the financial aid.

31 (C) The county elections official, for the purpose of identifying
32 pupils eligible to register to vote, and for conducting programs to
33 offer pupils an opportunity to register to vote. The information
34 shall not be used for any other purpose or given or transferred to
35 any other person or agency.

36 (D) Accrediting associations in order to carry out their
37 accrediting functions.

38 (E) Organizations conducting studies for, or on behalf of,
39 educational agencies or institutions for the purpose of developing,
40 validating, or administering predictive tests, administering student

1 aid programs, and improving instruction, if the studies are
2 conducted in a manner that will not permit the personal
3 identification of pupils or their parents by persons other than
4 representatives of the organizations and the information will be
5 destroyed when no longer needed for the purpose for which it is
6 obtained.

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

12 (3) A person, persons, agency, or organization permitted access
13 to pupil records pursuant to this section shall not permit access to
14 any information obtained from those records by another person,
15 persons, agency, or organization, except for allowable exceptions
16 contained within the federal Family Educational Rights and Privacy
17 Act of 2001 (20 U.S.C. Sec. 1232g) and state law, without the
18 written consent of the pupil's parent. This paragraph does not
19 require prior parental consent when information obtained pursuant
20 to this section is shared with other persons within the educational
21 institution, agency, or organization obtaining access, so long as
22 those persons have a legitimate interest in the information.

23 (4) Notwithstanding any other provision of law, a school district,
24 including a county office of education or superintendent of schools,
25 may participate in an interagency data information system that
26 permits access to a computerized database system within and
27 between governmental agencies or districts as to information or
28 records that are nonprivileged, and where release is authorized as
29 to the requesting agency under state or federal law or regulation,
30 if each of the following requirements are met:

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

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

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

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

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

9 (b) The officials and authorities to whom pupil records are
10 disclosed pursuant to subdivision (f) of Section 48902 and
11 subparagraph (I) of paragraph (1) of subdivision (a) shall certify
12 in writing to the disclosing school district that the information
13 shall not be disclosed to another party, except as provided under
14 the federal Family Educational Rights and Privacy Act of 2001
15 (20 U.S.C. Sec. 1232g) and state law, without the prior written
16 consent of the parent of the pupil or the person identified as the
17 holder of the pupil's educational rights.