

Assembly Bill No. 143

CHAPTER 434

An act to amend Sections 49061 and 49076 of the Education Code, relating to pupil records.

[Approved by Governor October 3, 2011. Filed with
Secretary of State October 3, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 143, Fuentes. Pupil records: privacy rights.

(1) Existing law authorizes school districts to release pupil directory information, as specified, and defines directory information as one or more prescribed items, including, among others, a pupil's name, address, telephone number, and date and place of birth.

This bill would redefine directory information to no longer include a pupil's place of birth and to also include a pupil's e-mail address.

(2) 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 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.

(3) 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 authorize a local educational agency or other person or party to release pupil records or information to specified persons or parties not otherwise permitted access if the records or information are deidentified, as specified.

(4) This bill would also make various technical, nonsubstantive changes to these provisions.

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

SECTION 1. Section 49061 of the Education Code is amended to read: 49061. As used in this chapter:

(a) "Parent" means a natural parent, an adopted parent, or legal guardian. If the parents are divorced or legally separated, only a parent having legal custody of the pupil may challenge the content of a record pursuant to Section 49070, offer a written response to a record pursuant to Section 49072, or consent to release records to others pursuant to Section 49075. Either parent may grant consent if both parents have notified, in writing, the school or school district that an agreement has been made. If a pupil has attained the age of 18 years or is attending an institution of postsecondary education, the permission or consent required of, and the rights accorded to, the parents or guardian of the pupil shall thereafter only be required of, and accorded to, the pupil.

(b) "Pupil record" means any item of information directly related to an identifiable pupil, other than directory information, that is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

"Pupil record" does not include informal notes related to a pupil compiled by a school officer or employee that remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute. For purposes of this subdivision, "substitute" means a person who performs the duties of the individual who made the notes on a temporary basis, and does not refer to a person who permanently succeeds the maker of the notes in his or her position.

(c) "Directory information" means one or more of the following items: pupil's name, address, telephone number, date of birth, e-mail address, 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 public or private school attended by the pupil.

(d) "School district" means any school district maintaining any of grades kindergarten through 12, any public school providing instruction in any of grades kindergarten through 12, the office of the county superintendent of schools, or any special school operated by the department.

(e) "Access" means a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record.

(f) "County placing agency" means the county social service department or county probation department.

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

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

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

(A) School officials and employees of the district, members of a school attendance review board appointed pursuant to Section 48321, and any 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.

(B) 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.

(C) Authorized representatives of the Comptroller General of the United States, the Secretary of Education, and administrative head of an education agency, 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.

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

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

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

(G) A district attorney who 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.

(H) 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) of Part 27) or with Compulsory Continuation Education (Chapter 3 (commencing with Section 48400) of Part 27).

(I) (i) A probation officer, district attorney, or counsel of record for a minor 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.

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

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

(J) 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. 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 subparagraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.

(K) 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.

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

(A) 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.

(B) 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 which will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

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

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

(E) 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.

(F) 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.

(3) 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 another person, persons, agency, or organization, except for allowable exceptions contained within the federal Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) and state law, without the written consent of the pupil's parent. 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 interest in the information.

(4) Notwithstanding any other provision of 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 to a computerized database system within and between governmental agencies or districts as 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 are met:

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

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

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

(D) 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.

(E) 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.

(b) The officials and authorities to whom pupil records are disclosed pursuant to subdivision (f) of Section 48902 and subparagraph (I) of paragraph (1) of subdivision (a) shall certify in writing to the disclosing school district that the information shall not be disclosed to another party, except as provided under the federal Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) 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.

(c) (1) Any person or party who is not permitted access to pupil records pursuant to subdivision (a) or (b) may request access to pupil records as provided for in paragraph (2).

(2) A local educational agency or other person or party who has received pupil records, or information from pupil records, may release the records or information to a person or party identified in paragraph (1) without the consent of the pupil's parent or guardian pursuant to Section 99.31(b) of Title 34 of the Code of Federal Regulations, if the records or information are deidentified, which requires the removal of all personally identifiable information, provided that the disclosing local educational agency or other person or party has made a reasonable determination that a pupil's identity is not personally identifiable, whether through single or multiple releases, and has taken into account other pertinent reasonably available information.