

ASSEMBLY BILL

No. 1937

Introduced by Assembly Member Silva

February 22, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1937, as introduced, Silva. 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 a school official and employees of the district, members of a school attendance review board appointed pursuant to a specified statute, 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.

This bill would additionally allow a contractor, consultant, volunteer, or other party to whom a local educational agency or institution has outsourced institutional services or functions to be considered a school official for purposes of this provision if he or she performs an institutional service or function for which the agency or institution would otherwise use employees, he or she is under the direct control of the agency or institution with respect to the use and maintenance of educational records, and he or she may use the information only for purposes for which the disclosure was made, and is prohibited from

disclosing the information to any other party without the prior written consent of the parent or eligible pupil.

The bill would require a local educational agency or institution to use reasonable methods to ensure that school officials and employees obtain access only to those educational records in which they have a legitimate educational interest, as prescribed.

By requiring local educational agencies to provide for greater privacy protection for records, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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) (i) School officials and employees of the district, members
- 10 of 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 (ii) A contractor, consultant, volunteer, or other party to whom
- 18 a local educational agency or institution has outsourced

1 *institutional services or functions, may be considered a school*
2 *official under this subparagraph provided that the outside party:*

3 *(I) Performs an institutional service or function for which the*
4 *agency or institution would otherwise use employees.*

5 *(II) Is under the direct control of the agency or institution with*
6 *respect to the use and maintenance of educational records.*

7 *(III) May use the information only for purposes for which the*
8 *disclosure was made, and shall not disclose the information to any*
9 *other party without the prior written consent of the parent or*
10 *eligible pupil.*

11 *(iii) A local educational agency or institution shall use*
12 *reasonable methods to ensure that school officials and employees*
13 *obtain access only to those educational records in which they have*
14 *a legitimate educational interest. A local educational agency or*
15 *institution that does not use physical or technological access*
16 *controls shall ensure that its administrative policy for controlling*
17 *access to educational records is effective and that it remains in*
18 *compliance with the legitimate educational interest requirement*
19 *of this paragraph.*

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

25 *(C) Authorized representatives of the Comptroller General of*
26 *the United States, the Secretary of Education, and administrative*
27 *head of an education agency, state education officials, or their*
28 *respective designees, or the United States Office of Civil Rights,*
29 *where the information is necessary to audit or evaluate a state or*
30 *federally supported education program or pursuant to a federal or*
31 *state law, provided that except when collection of personally*
32 *identifiable information is specifically authorized by federal law,*
33 *data collected by those officials shall be protected in a manner that*
34 *will not permit the personal identification of pupils or their parents*
35 *by other than those officials, and personally identifiable data shall*
36 *be destroyed when no longer needed for the audit, evaluation, and*
37 *enforcement of federal legal requirements.*

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

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

4 (F) A pupil 16 years of age or older or having completed ~~the~~
5 ~~10th~~ grade *10* who requests access.

6 (G) A district attorney who is participating in or conducting a
7 truancy mediation program pursuant to Section 48263.5, or Section
8 601.3 of the Welfare and Institutions Code, or participating in the
9 presentation of evidence in a truancy petition pursuant to Section
10 681 of the Welfare and Institutions Code.

11 (H) A prosecuting agency for consideration against a parent or
12 guardian for failure to comply with the Compulsory Education
13 Law (Chapter 2 (commencing with Section 48200) ~~of Part 27~~) or
14 with Compulsory Continuation Education (Chapter 3 (commencing
15 with Section 48400) ~~of Part 27~~).

16 (I) (i) A probation officer, district attorney, or counsel of record
17 for a minor for the purposes of conducting a criminal investigation
18 or an investigation in regards to declaring a person a ward of the
19 court or involving a violation of a condition of probation.

20 (ii) For purposes of this subparagraph, a probation officer,
21 district attorney, and counsel of record for a minor shall be deemed
22 to be local officials for purposes of Section 99.31(a)(5)(i) of Title
23 34 of the Code of Federal Regulations.

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

27 (J) A judge or probation officer for the purpose of conducting
28 a truancy mediation program for a pupil, or for purposes of
29 presenting evidence in a truancy petition pursuant to Section 681
30 of the Welfare and Institutions Code. The judge or probation officer
31 shall certify in writing to the school district that the information
32 will be used only for truancy purposes. A school district releasing
33 pupil information to a judge or probation officer pursuant to this
34 subparagraph shall inform, or provide written notification to, the
35 parent or guardian of the pupil within 24 hours of the release of
36 the information.

37 (K) A county placing agency for the purpose of fulfilling the
38 requirements of the health and education summary required
39 pursuant to Section 16010 of the Welfare and Institutions Code or
40 for the purpose of fulfilling educational case management

1 responsibilities required by the juvenile court or by law and to
2 assist with the school transfer or enrollment of a pupil. School
3 districts, county offices of education, and county placing agencies
4 may develop cooperative agreements to facilitate confidential
5 access to and exchange of the pupil information by electronic mail,
6 facsimile, electronic format, or other secure means.

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

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

12 (B) Agencies or organizations in connection with the application
13 of a pupil for, or receipt of, financial aid. However, information
14 permitting the personal identification of a pupil or his or her parents
15 may be disclosed only as may be necessary for purposes as to
16 determine the eligibility of the pupil for financial aid, to determine
17 the amount of the financial aid, to determine the conditions which
18 will be imposed regarding the financial aid, or to enforce the terms
19 or conditions of the financial aid.

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

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

27 (E) Organizations conducting studies for, or on behalf of,
28 educational agencies or institutions for the purpose of developing,
29 validating, or administering predictive tests, administering student
30 aid programs, and improving instruction, if the studies are
31 conducted in a manner that will not permit the personal
32 identification of pupils or their parents by persons other than
33 representatives of the organizations and the information will be
34 destroyed when no longer needed for the purpose for which it is
35 obtained.

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

1 (3) A person, persons, agency, or organization permitted access
 2 to pupil records pursuant to this section shall not permit access to
 3 any information obtained from those records by another person,
 4 persons, agency, or organization, except for allowable exceptions
 5 contained within the federal Family Educational Rights and Privacy
 6 Act of 2001 (20 U.S.C. Sec. 1232g) and state law, without the
 7 written consent of the pupil’s parent. This paragraph does not
 8 require prior parental consent when information obtained pursuant
 9 to this section is shared with other persons within the educational
 10 institution, agency, or organization obtaining access, so long as
 11 those persons have a legitimate interest in the information.

12 (4) Notwithstanding any other provision of law, a school district,
 13 including a county office of education or superintendent of schools,
 14 may participate in an interagency data information system that
 15 permits access to a computerized database system within and
 16 between governmental agencies or districts as to information or
 17 records that are nonprivileged, and where release is authorized as
 18 to the requesting agency under state or federal law or regulation,
 19 if each of the following requirements are met:

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

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

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

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

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

36 (b) The officials and authorities to whom pupil records are
 37 disclosed pursuant to subdivision (f) of Section 48902 and
 38 subparagraph (I) of paragraph (1) of subdivision (a) shall certify
 39 in writing to the disclosing school district that the information
 40 shall not be disclosed to another party, except as provided under

1 the federal Family Educational Rights and Privacy Act of 2001
2 (20 U.S.C. Sec. 1232g) and state law, without the prior written
3 consent of the parent of the pupil or the person identified as the
4 holder of the pupil's educational rights.

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

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

20 SEC. 2. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.