

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 643

Introduced by Assembly Member Stone

February 20, 2013

~~An act relating to public schools. An act to amend Sections 49076 and 49077 of the Education Code, relating to public schools.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 643, as amended, Stone. ~~Children in foster care: uninterrupted schooling. Public schools: pupil records: confidentiality.~~

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 and other pupil record provisions to conform them to federal law.

~~Existing law requires a pupil to complete specified courses while in grades 9 to 12, inclusive, in order to receive a diploma of graduation from high school. Existing law authorizes the governing board of a school district to adopt rules specifying additional coursework requirements. Existing law requires, in certain circumstances, a school district to exempt a transfer pupil in foster care from all coursework and other requirements adopted by the governing board of the school district that are in addition to the statewide coursework requirements for graduation.~~

~~This bill would declare the intent of the Legislature to subsequently amend this bill to include provisions that would bring state law into compliance with the federal Uninterrupted Scholars Act (USA) to improve educational outcomes for youth in foster care.~~

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 shall not permit access to pupil
4 records to a person without written parental consent or under
5 judicial order except as set forth in this section and as permitted
6 by Part 99 (commencing with Section 99.1) of Title 34 of the Code
7 of Federal Regulations.

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

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

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 state and local
27 educational authorities, or the United States Department of
28 Education’s Office for Civil Rights, if the information is necessary
29 to audit or evaluate a state or federally supported education
30 program, or in connection with the enforcement of, or compliance
31 with, the federal legal requirements that relate to such a program.
32 Records released pursuant to this section shall comply with the
33 requirements of Section 99.35 of Title 34 of the Code of Federal
34 Regulations.

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

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

7 (F) A pupil 16 years of age or older or having completed the
8 10th grade who requests access.

9 (G) A district attorney who is participating in or conducting a
10 truancy mediation program pursuant to Section 48263.5, or Section
11 601.3 of the Welfare and Institutions Code, or participating in the
12 presentation of evidence in a truancy petition pursuant to Section
13 681 of the Welfare and Institutions Code.

14 (H) A district attorney's office for consideration against a parent
15 or guardian for failure to comply with the Compulsory Education
16 Law (Chapter 2 (commencing with Section 48200)) or with
17 Compulsory Continuation Education (Chapter 3 (commencing
18 with Section 48400)).

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

23 (ii) For purposes of this subparagraph, a probation officer,
24 district attorney, and counsel of record for a minor shall be deemed
25 to be local officials for purposes of Section 99.31(a)(5)(i) of Title
26 34 of the Code of Federal Regulations.

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

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

1 (K) A county placing agency when acting as an authorized
 2 representative of a state or local educational agency pursuant to
 3 subparagraph (C). School districts, county offices of education,
 4 and county placing agencies may develop cooperative agreements
 5 to facilitate confidential access to and exchange of the pupil
 6 information by ~~email~~ *e-mail*, facsimile, electronic format, or other
 7 secure means, provided the agreement complies with the
 8 requirements set forth in Section 99.35 of Title 34 of the Code of
 9 Federal Regulations.

10 (L) (i) *An agency caseworker or other representative of a state*
 11 *or local child welfare agency, or tribal organization, as defined*
 12 *in Section 450b of Title 25 of the United States Code, that has*
 13 *legal responsibility, in accordance with state law, for the care and*
 14 *protection of the pupil.*

15 (ii) *Pupil records obtained pursuant to this subparagraph, or*
 16 *personally identifiable information contained in those records,*
 17 *may be disclosed by the agency or organization specified in clause*
 18 *(i) to an individual or entity who is engaged in addressing the*
 19 *pupil’s educational needs and who is authorized by that agency*
 20 *or organization to receive the disclosure. The records, or the*
 21 *personally identified information contained in those records, shall*
 22 *not otherwise be disclosed by that agency or organization, except*
 23 *as provided under the federal Family Educational Rights and*
 24 *Privacy Act (20 U.S.C. Sec. 1232g) and state law, including*
 25 *paragraph (3).*

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

28 (A) Appropriate persons in connection with an emergency if
 29 the knowledge of the information is necessary to protect the health
 30 or safety of a pupil or other persons. Schools or school districts
 31 releasing information pursuant to this section shall comply with
 32 the requirements set forth in Section 99.32(a)(5) of Title 34 of the
 33 Code of Federal Regulations.

34 (B) Agencies or organizations in connection with the application
 35 of a pupil for, or receipt of, financial aid. However, information
 36 permitting the personal identification of a pupil or his or her parents
 37 may be disclosed only as may be necessary for purposes as to
 38 determine the eligibility of the pupil for financial aid, to determine
 39 the amount of the financial aid, to determine the conditions ~~which~~

1 *that* will be imposed regarding the financial aid, or to enforce the
2 terms or conditions of the financial aid.

3 (C) Pursuant to Section 99.37 of Title 34 of the Code of Federal
4 Regulations, a county elections official, for the purpose of
5 identifying pupils eligible to register to vote, or for conducting
6 programs to offer pupils an opportunity to register to vote. The
7 information shall not be used for any other purpose or given or
8 transferred to any other person or agency.

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

11 (E) Organizations conducting studies for, or on behalf of,
12 educational agencies or institutions for the purpose of developing,
13 validating, or administering predictive tests, administering student
14 aid programs, and improving instruction, if the studies are
15 conducted in a manner that will not permit the personal
16 identification of pupils or their parents by persons other than
17 representatives of the organizations, the information will be
18 destroyed when no longer needed for the purpose for which it is
19 obtained, and the organization enters into a written agreement with
20 the educational agency or institution that complies with Section
21 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

22 (F) Officials and employees of private schools or school systems
23 where the pupil is enrolled or intends to enroll, subject to the rights
24 of parents as provided in Section 49068 and in compliance with
25 the requirements in Section 99.34 of Title 34 of the Code of Federal
26 Regulations. This information shall be in addition to the pupil's
27 permanent record transferred pursuant to Section 49068.

28 (G) (i) A contractor or consultant with a legitimate educational
29 interest who has a formal written agreement or contract with the
30 school district regarding the provision of outsourced institutional
31 services or functions by the contractor or consultant.

32 (ii) Notwithstanding Section 99.31(a)(1)(i)(B) of Title 34 of the
33 Code of Federal Regulations, a disclosure pursuant to this
34 paragraph shall not be permitted to a volunteer or other party.

35 (3) A person, persons, agency, or organization permitted access
36 to pupil records pursuant to this section shall not permit access to
37 any information obtained from those records by another person,
38 persons, agency, or organization, except for allowable exceptions
39 contained within the federal Family Educational Rights and Privacy
40 Act of 2004 (20 U.S.C. Sec. 1232g) and state law, *including this*

1 *section, and implementing regulations*, without the written consent
2 of the pupil's parent. This paragraph does not require prior parental
3 consent when information obtained pursuant to this section is
4 shared with other persons within the educational institution, agency,
5 or organization obtaining access, so long as those persons have a
6 legitimate educational interest in the information pursuant to
7 Section 99.31(a)(1)(i)(A) of Title 34 of the Code of Federal
8 Regulations.

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

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

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

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

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

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

32 (b) The officials and authorities to whom pupil records are
33 disclosed pursuant to subdivision (f) of Section 48902 and
34 subparagraph (I) of paragraph (1) of subdivision (a) shall certify
35 in writing to the disclosing school district that the information
36 shall not be disclosed to another party, except as provided under
37 the federal Family Educational Rights and Privacy Act ~~of 2001~~
38 (20 U.S.C. Sec. 1232g) and state law, without the prior written
39 consent of the parent of the pupil or the person identified as the
40 holder of the pupil's educational rights.

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

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

16 *SEC. 2. Section 49077 of the Education Code is amended to*
17 *read:*

18 49077. Information concerning a ~~student~~ *pupil* shall be
19 furnished in compliance with a court order or a lawfully issued
20 subpoena. The school district shall make a reasonable effort to
21 notify the parent or legal guardian and the pupil in advance of
22 compliance with a lawfully issued subpoena and, in the case of
23 compliance with a court order, if lawfully possible within the
24 requirements of the order, *except that additional notice by the*
25 *school district to the parent or legal guardian is not required when*
26 *the parent or legal guardian is a party to a court proceeding*
27 *involving child abuse and neglect, as defined in Section 3 of the*
28 *federal Child Abuse Prevention and Treatment Act (42 U.S.C. Sec.*
29 *5101 notes) or dependency matter and the order is issued in the*
30 *context of that proceeding.*

31 ~~SECTION 1. It is the intent of the Legislature to subsequently~~
32 ~~amend this measure to include provisions that would bring state~~
33 ~~law into compliance with the federal Uninterrupted Scholars Act~~
34 ~~(USA) to improve educational outcomes for youth in foster care.~~