

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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 amended, 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.~~

Existing law authorizes school districts to release information from pupil records to specified persons, including 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; agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid; county elections officials, for the purpose of identifying pupils eligible to register to vote; accrediting associations in order to carry out their accrediting functions; 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, or improving instruction; and officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to specified rights of parents.

This bill would additionally allow a school district to release information from pupil records to 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~~ *the contractors, consultants, or other parties to whom information from pupil records is released under this bill* 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~~*no*.
State-mandated local program: ~~yes~~*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:

1 49076. (a) A school district is not authorized to permit access
2 to pupil records to a person without written parental consent or
3 under judicial order except that:

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

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

15 ~~(ii) A contractor, consultant, volunteer, or other party to whom~~
16 ~~a local educational agency or institution has outsourced institutional~~
17 ~~services or functions, may be considered a school official under~~
18 ~~this subparagraph provided that the outside party:~~

19 ~~(I) Performs an institutional service or function for which the~~
20 ~~agency or institution would otherwise use employees.~~

21 ~~(II) Is under the direct control of the agency or institution with~~
22 ~~respect to the use and maintenance of educational records.~~

23 ~~(III) May use the information only for purposes for which the~~
24 ~~disclosure was made, and shall not disclose the information to any~~
25 ~~other party without the prior written consent of the parent or~~
26 ~~eligible pupil.~~

27 ~~(iii) A local educational agency or institution shall use~~
28 ~~reasonable methods to ensure that school officials and employees~~
29 ~~obtain access only to those educational records in which they have~~
30 ~~a legitimate educational interest. A local educational agency or~~
31 ~~institution that does not use physical or technological access~~
32 ~~controls shall ensure that its administrative policy for controlling~~
33 ~~access to educational records is effective and that it remains in~~
34 ~~compliance with the legitimate educational interest requirement~~
35 ~~of this paragraph.~~

36 (B) Officials and employees of other public schools or school
37 systems, including local, county, or state correctional facilities
38 where educational programs leading to high school graduation are
39 provided or where the pupil intends to or is directed to enroll,
40 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 grade 10 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)) or with Compulsory Continuation Education (Chapter 3 (commencing with Section 48400)).

(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.

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

4 (J) A judge or probation officer for the purpose of conducting
5 a truancy mediation program for a pupil, or for purposes of
6 presenting evidence in a truancy petition pursuant to Section 681
7 of the Welfare and Institutions Code. The judge or probation officer
8 shall certify in writing to the school district that the information
9 will be used only for truancy purposes. A school district releasing
10 pupil information to a judge or probation officer pursuant to this
11 subparagraph shall inform, or provide written notification to, the
12 parent or guardian of the pupil within 24 hours of the release of
13 the information.

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

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

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

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

37 (C) The county elections official, for the purpose of identifying
38 pupils eligible to register to vote, and for conducting programs to
39 offer pupils an opportunity to register to vote. The information

1 shall not be used for any other purpose or given or transferred to
2 any other person or agency.

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

5 (E) Organizations conducting studies for, or on behalf of,
6 educational agencies or institutions for the purpose of developing,
7 validating, or administering predictive tests, administering student
8 aid programs, and improving instruction, if the studies are
9 conducted in a manner that will not permit the personal
10 identification of pupils or their parents by persons other than
11 representatives of the organizations and the information will be
12 destroyed when no longer needed for the purpose for which it is
13 obtained.

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

19 (G) *A contractor, consultant, or other party to whom a local*
20 *educational agency or institution has outsourced institutional*
21 *services or functions, provided that this party complies with all of*
22 *the following:*

23 (i) *Performs an institutional service or function for which the*
24 *agency or institution would otherwise use employees.*

25 (ii) *Is under the direct control of the agency or institution with*
26 *respect to the use and maintenance of educational records.*

27 (iii) *Uses the information only for purposes for which the*
28 *disclosure was made, and does not disclose the information to any*
29 *other party without the prior written consent of the parent or*
30 *eligible pupil.*

31 (H) *A local educational agency or institution shall use*
32 *reasonable methods to ensure that a contractor, consultant, or*
33 *other party to whom it has outsourced institutional services or*
34 *functions pursuant to subparagraph (G) obtains access only to*
35 *those educational records in which that party has a legitimate*
36 *educational interest as set forth in subparagraph (A) of paragraph*
37 *(1). A local educational agency or institution that does not use*
38 *physical or technological access controls shall ensure that its*
39 *administrative policy for controlling access to educational records*
40 *is effective and that it remains in compliance with the legitimate*

1 *educational interest requirement as set forth in subparagraph (A)*
2 *of paragraph (1).*

3 *(I) For an entity referenced in subparagraph (G), access to any*
4 *record of a pupil with exceptional needs, as defined in Section*
5 *56026, shall be subject to Chapter 5 (commencing with Section*
6 *56500) of Part 30.*

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

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

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

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

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

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

37 (E) An agency or school district shall not make public or
38 otherwise release information on an individual contained in the
39 database where the information is protected from disclosure or

1 release as to the requesting agency by state or federal law or
2 regulation.

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

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

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

27 ~~SEC. 2. If the Commission on State Mandates determines that~~
28 ~~this act contains costs mandated by the state, reimbursement to~~
29 ~~local agencies and school districts for those costs shall be made~~
30 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
31 ~~4 of Title 2 of the Government Code.~~