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DEPARTMENT OF JUSTICE
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JUL 29 2015
OPINION 15-0103

Hon. John M. Schroder, Sr.
State Representative
District 77
522 N. New Hampshire Street
Suite 1
Covington, LA 70433

**94 – SCHOOLS & SCHOOL DISTRICTS – Administration,
Government and Officers**

La. R.S.17:3914(H)

La. R.S. 17:3914(H) authorizes local public school boards to adopt a policy for access to student records but does not include any specific requirements for such policies. As such, the content and application of such policies is left to the discretion of the local public school boards and the proposed policy language is not inconsistent with La. R.S. 17:3914(H).

Dear Representative Schroder:

You have requested an opinion from our office regarding proposed policy language being considered by local school districts relative to student data privacy pursuant to La. R.S. 17:3914(H).

Specifically you ask whether proposed policy language which is being considered for adoption by some school boards is consistent with La. R.S. 17:3914(H), as amended in 2015.

Act 837 of the 2014 Regular Legislative Session, authored by you, enacted what is now La. R.S. 17:3914. This statute provides for the protection of "personally identifiable student information" as defined in the statute. The statute outlines the circumstances under which various persons or entities may have access to protected student information and provides for penalties for knowing and willful violation of its provisions.

You advise that "the primary focus [of Act 837] was mandating the creation of the unique identifier system, preventing the State from broad access to personally identifiable student information, and preventing the sale or commercialization of student data." Your request letter further states that it was never your intent to prohibit "many common and non-intrusive uses of student information for such things as sports team rosters and displays of student names on school grounds."

In addition to the specific permissions and prohibitions contained in the statute, with the intent to recognize acceptable access to information for school activities, you included a general exception in Subparagraph H that read as follows:

Nothing in this Section shall prohibit a school system employee employed at the school and a person authorized by the superintendent of the school system from having access to a student's records as may be necessary to perform his duties.

Subsequent to the passage of Act 837, you determined that the original Subparagraph H did not provide enough flexibility to local school districts in allowing access to student data for ordinary and customary educational activities. Therefore, in 2015, you authored Act 228 to amend Subparagraph H, which now reads:

Nothing in this section shall prohibit a person employed in a public school or other person authorized by the superintendent of the public school or school system from having access to a student's records in accordance with a policy adopted by the local public school board for such purpose.¹

As currently written, Subparagraph H provides a general exception to La. R.S. 17:3914 when a local school board adopts a policy allowing access to protected student information. We note that La. R.S. 17:3914(H) does not mandate any specific content or application for such policies. You report that although such parameters were considered, "[d]iscussions with stakeholders and staff led to the conclusion that the local superintendent and local school board could be trusted to only allow access to student data when appropriate." You further state that the intention of the amendment to Subparagraph H "was to place into the hands of the local elected school board the ability to adopt policies that best fit the standards of their local community."

The Louisiana School Boards Association has advised us that, pursuant to La. R.S. 17:3914(H), school districts are considering adopting a proposed student data policy, and some districts are considering including the following language in their proposed policies:

Unless directed in writing otherwise by a student's parent, legal guardian or a student who has reached the age of majority, the Board approves a person employed in a school or person authorized by the superintendent to provide access to certain student personally identifiable information to further a legitimate educational purpose, in accordance with FERPA and LRS 17:3914 as follows:

--Information to protect the health, safety, or welfare of a student or the general public;

¹ The amendment also changed the effective date of the statute's requirements from June 1, 2015, to August 1, 2015.

- Information to facilitate a student's participation in a school sanctioned extracurricular activity, including but not limited to a sport, organization or club;
- Information to facilitate the operation and daily activities within district facilities, including but not limited to the display and use of student information in and around student facilities;
- Programs and activities related to school sanctioned performances or productions, events, award programs, and graduations;
- University Transcript requests, Scholarships, and admissions;
- LHSAA, NCAA and other related sports programs or sanctioning entities;
- Online resources and educational tools;
- School Photography and Yearbook providers;
- Information provided in accordance with a contract between the Board and a public or private entity which has been contracted to perform student or education services, but only to the extent provided for in such a contract; and
- Directory information, to the extent allowed in FERPA.

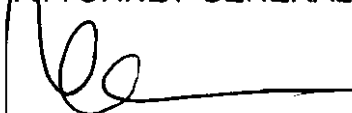
Based on the foregoing, it is the opinion of this office that because La. R.S. 17:3914(H) does not contain any specific prohibitions as to content or application of a policy regulating access to student records, local school boards have discretion to adopt such policies as they believe reasonable and necessary relative to student information access. Therefore, it is the further opinion of this office that the proposed policy language presented above, if adopted by a school board, is not inconsistent with La. R.S. 17:3914(H).

We hope that this opinion has addressed the issues that you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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ATTORNEY GENERAL

BY:



Patricia H. Wilton
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JDC:PHW