



OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

August 18, 1975

75-267

(R75-141)

BRUCE E. BABBITT  
ATTORNEY GENERAL

Mr. Herbert D. Rhodes, Executive Secretary  
The Arizona Commission of the Western Inter-  
state Commission for Higher Education  
The University of Arizona  
Tucson, Arizona 85721

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**ARIZONA ATTORNEY GENERAL**

Dear Mr. Rhodes:

This letter is in response to your letter of March 10, 1975, in which you requested this office's opinion concerning the effect of certain of the provisions of the Act of August 21, 1974, Public Law 93-380, 88 Stat. 484, on Arizona's participation in the operations of the Western Interstate Commission for Higher Education (WICHE).

WICHE is an organization composed of representatives from thirteen western states. Its purpose is to aid those states cooperatively to meet their need for persons educated in professional and graduate fields some of which are specifically designated. The legislation approving Arizona's membership in WICHE is contained in A. R. S. Sections 15-761 through 15-765.

Section 513 of Public Law 93-380, which section is referred to as the "Family Educational Rights and Privacy Act of 1974", and which is set forth at 20 U. S. C. Section 1232g, requires all states, educational agencies and schools which receive federal funds under any program for which the United States Commissioner of Education has administrative responsibility to comply with its provisions. It seems clear that the Act does not apply to WICHE directly, but only to the educational institutions with which WICHE contracts.

The Act, among other things, requires a recipient to make a student's records available to his parents and also prohibits the release of a student's records or any of the information therein without the written consent of the student's parents, unless the information is to be released pursuant to certain exceptions set forth in the Act, one of which is in connection with a student's application for or receipt of financial aid.

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The consent must specify the records to be released, the reasons for the release and the person to whom the release is to be made. The Act also requires persons desiring access to a student's records to sign a written application form which must be kept with the student's file and further requires that the student's parents be notified concerning their rights under the Act. It further specifies that a student's personal information can only be transferred to a third party by a recipient on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. Lastly, the Act provides that, once a student is eighteen years or older, the student is accorded all the rights previously accorded the student's parents.

With the above provisions of the Act in mind, we have reviewed the draft of the Consent and Waiver and accompanying material to be utilized in connection with the WICHE Student Exchange Programs. The Consent and Waiver may be deficient in two respects. First, as above stated, the Act requires a recipient of funds to inform the parents of the students or the student, as appropriate, of the rights accorded them under the Act. No such statement is contained in the material preceding the Consent and Waiver or in the Consent and Waiver itself. Though the WICHE educational institutions may generally advise their students and the parents of their students about the rights accorded them under the Act, it would be helpful to include a specific reference to those rights in the Consent and Waiver or the material accompanying it.

Secondly, though there is a statement in the material preceding the Consent and Waiver that certain of the information on a student's personal records may be published, the Consent and Waiver itself does not contain an authorization permitting such publication. It should contain such an authorization to assure compliance with the Act.

In the latter regard, you question whether the Arizona annual report to the Governor and Board of Regents can be published in its usual form even if the Consent and Waiver is obtained from all participating students. The Act, in this connection, requires regulations to be promulgated to protect the rights of privacy of students and their families in connection with any surveys or other data-gathering activities conducted by certain persons. No such activity can be conducted unless authorized by law. To the extent that the compilation and publication of the annual

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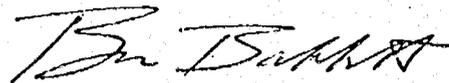
report is data-gathering, it is probably authorized by Article VII of A. R. S. Section 15-761, which requires WICHE, among other things, to submit an annual report of its activities to the governors and legislatures of the thirteen compacting states. Though the report accompanying your letter was directed only to Arizona's students, we assume it to be but a part of the general report the publication of which is clearly authorized by law. Furthermore, we do not believe that the regulations relating to data-gathering have yet been promulgated, but, when they are, we seriously doubt that they will prohibit data-gathering or data publication relating to the personal information of students with respect to which a proper consent has been obtained. Consequently, the publication of the report will probably continue to be proper, though you may wish to delete the names of students if their inclusion is unnecessary.

You also question whether the Act requires a former student's records to be treated in a confidential manner. The mandate of the Act does not appear to terminate upon the termination of a particular student's enrollment at an educational institution.

Lastly, you wish to know what to do if a student refuses to sign the Consent and Waiver. If such refusal materially interferes with the conduct of the WICHE program or with the enrollment of that student in an institution participating in the WICHE program, then that student, even though otherwise eligible, need not be supported or sponsored by the State of Arizona. If the confidentiality of a student's records were nonwaivable, if the purpose for attempting to obtain the waiver were to harass the student, or if it were not necessary to obtain the transfer of the student's records or the information therein, then the student might have a right to participate in the WICHE program though he refused to sign the Consent and Waiver. But such is not the case here and the student can therefore be required to sign the Consent and Waiver. This is all the more true because the release of the information is in connection with a student's application for or receipt of financial aid, one of the exemptions not requiring written consent for the release of information. It is still recommended, however, that the Consent be obtained.

Should you have any further questions in this regard, please let us know.

Sincerely,



BRUCE E. BABBITT  
Attorney General