



Uline
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert H. Corbin

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

May 15, 1980

INTERAGENCY
The Honorable Tony Gabaldon
Arizona State Senator
Senate Wing, State Capitol
Phoenix, AZ 85007

I80-084 (R80-073)

Dear Senator Gabaldon:

This is in response to your letter dated March 20, 1980, concerning the release of student academic records by private, elementary or high schools. Your specific question is:

Can a private school refuse to release a student's academic records to a second school, in which the student has enrolled, even if the student leaves the first school owing the school money?

The right of access to school records by students or their parents is governed by A.R.S. § 15-151, which provides in part:

A. The right to inspect and review educational records and the release of or access to such records, other information or instructional materials is governed by federal law in the Family Educational Rights and Privacy Act, Title 20, United States Code, § 1232g and § 1232h, and federal regulations issued pursuant to such act.

We must therefore look to the federal statutes and regulations to determine a private school's responsibilities with respect to student records.

Failure to comply with a federal act can result in severe consequences to an educational institution. As stated in 20 U.S.C. § 1232g(a)(1)(A):

No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which

May 15, 1980

effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children.¹

In 20 U.S.C. § 1232g(a)(1)(C)(3):

For the purposes of this section, the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

Therefore, pursuant to the federal act, only public or private schools who are recipients of federal funds are subject to the act. However, our inquiry does not end here, because Arizona has not only incorporated the provisions of the federal act, but has also extended its applicability through A.R.S. § 15-151.B, which states:

1. As previously discussed in Ariz.Att'yGen.Op. No. I79-110, federal regulations permit a school from refusing to supply copies of student records pursuant to 45 C.F.R. § 99.5(a)(2)(ii), which provides:

With an understanding that it may not deny access to an education record, [the school district shall adopt a policy which includes] a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such record. . . .

However, a refusal to provide copies may effectively prevent a parent from access to student records. For example, where the parents' residence or physical condition makes it unreasonably difficult for the parent to come to the school to review the records, the district cannot refuse to provide copies. 45 C.F.R. § 99.11(b)(2) provides for:

(2) The right to obtain copies of the records from the educational agency or institution where the failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

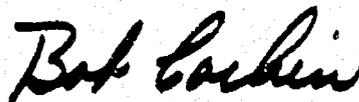
May 15, 1980

In addition to the enforcement procedures provided in such act the superior court of this state may grant injunctive or special action relief if any educational agency or institution or officer or employee of such agency or institution fails to comply with such act regardless whether such agency or institution is a recipient of any federal funds subject to termination pursuant to such act or whether administrative remedies through any federal agency have been exhausted. (Emphasis added.)

While A.R.S. § 15-151 contains no definition of the terms "educational agency" or "institution", by adopting the Family Educational Rights and Privacy Act by reference, it has incorporated that Act's definitions. However, by adding the above-quoted language of subsection B, it appears that the legislative intent is to expand the federal definition to encompass any public or private school, irrespective of whether that school is the recipient of federal funds.

Having determined that private schools are subject to the provisions of 20 U.S.C. §§ 1232g and 1232h and their implementing regulations, we conclude that a private school may adopt a policy denying a request for copies of a student's academic records when requested by the parent or eligible student, unless failure to release such records will effectively prevent the parent or student from access to the records. This issue has been previously addressed with reference to public schools in *Ariz.Att'yGen.Op. No. 179-110*. See 45 C.F.R. §§ 99.5 and 99.11.

Sincerely,



BOB CORBIN
Attorney General

BC:MAP:1fc